

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8398 SENATE LABOR & COMMERCE

293.741 Council may contract with others to perform investment officer functions; compensation; bond. The council may enter into contracts with one or more persons whom the council determines to be qualified, whereby the persons undertake, in lieu of the investment officer, to perform the functions specified in ORS 293.736 to the extent provided in the contract. Performance of functions under contract so entered into shall be paid for out of the gross interest or other income of the investments with respect to which the functions are performed, and the net interest or other income of the investments after that payment shall be considered income of the investment funds. The council may require a person contracted with to give to the state a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the council, with corporate surety authorized to do business in this state. Contracts so entered into and functions performed thereunder are not subject to the State Personnel Relations Law or ORS 279.545 to 279.746. [1967 c.335 §10]

293.745 [Formerly 291.612; repealed by 1967 c.335 §60]

293.746 Opinion of bond attorney or Attorney General; investment counseling and mortgage services. (1) In the acquisition or disposition of bonds with which approving legal opinions ordinarily are furnished, the investment officer may require an original or certified copy of the written opinion of a reputable bond attorney or attorneys, or the written opinion of the Attorney General, certifying to the legality of the bonds.

(2) The council may arrange for the furnishing to the investment officer of investment counseling services. The furnishing and acquisition of those services are not subject to the State Personnel Relations Law or ORS 279.545 to 279.746.

(3) The investment officer, with the approval of the council, may arrange for services with respect to mortgages in which moneys in the investment funds are invested. Those services shall be paid for out of the gross interest of the mortgages with respect to which the services are furnished, and the net interest of the mortgages after that payment shall be considered income of the investment funds. The furnishing and acquisition of those services are not subject to the State Personnel Relations Law or ORS 279.545 to 279.746. [1967 c.335 §11]

293.750 [Formerly 291.613; repealed by 1967 c.335 §60]

293.751 Custody of title instruments; deposit for safekeeping; form; collection and disposition of principal and interest;

default proceedings. (1) Except as provided in ORS 293.741 and this subsection, all instruments of title of all investments of the investment funds shall remain in the custody of the investment officer. The investment officer may deposit with one or more custodial agents or banks those instruments of title that the State Treasurer considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income, or of the proceeds of sale or maturity. For purposes of this section, instruments of title of investments of the investment funds may include such evidence of title as the investment officer shall consider secure and consistent with modern investment, banking and commercial practices, and may include book entry and automated recordation of such title.

(2) Except as provided in ORS 293.741 and 293.746 (3) and subsections (1) and (3) of this section, the investment officer shall collect the principal and interest or other income of investments of the investment funds, title of which is in the investment officer's custody, when due and payable, and shall pay the principal and interest or other income, when so collected, into the appropriate fund. Except as otherwise provided by law, interest or other income of investments of funds in the hands of the State Treasurer that are not required to meet current demands shall be paid into the General Fund to be available for the payment of general governmental expenses.

(3) In the event of default in the payment of principal or interest or other income of any investment of the investment funds, the investment officer, with the approval of the council, may:

(a) Institute the proper proceedings to collect the matured principal or interest or other income.

(b) Accept for exchange purposes refunding bonds or other evidences of indebtedness at interest rates to be agreed upon by the investment officer and obligor.

(c) Make compromises, adjustments or disposition of the matured principal or interest or other income as the investment officer considers advisable for the purpose of protecting the moneys invested.

(d) Make compromises or adjustments as to future payments of principal or interest or other income as the investment officer considers advisable for the purposes of protecting the moneys invested. [1967 c.335 §12; 1979 c.475 §1; 1981 c.194 §2; 1991 c.88 §3]

293.755 [Formerly 291.614; repealed by 1967 c.335 §60]

293.756 Separate accounting for funds. The investment officer shall keep, for each

fund included in the investment funds for which investments are made, a separate account, which shall record the individual amounts and the totals of all investments of moneys in the fund. [1967 c.335 §13]

293.760 [Formerly 291.616; repealed by 1967 c.335 §60]

**293.761 Monthly reports by investment officer with respect to funds.** The investment officer shall report monthly to the officer or body having control and administration of each fund included in the investment funds the changes in investments made during the preceding month for the fund. If requested by the officer or body, the investment officer shall furnish to the officer or body the details on the investment transactions for any fund. [1967 c.335 §14]

293.765 [Formerly 291.618; repealed by 1967 c.335 §60]

**293.766 Monthly reports by investment officer to council.** Not later than 15 days after the last day of each month, the investment officer shall submit to the council a report of the investments made during the preceding month. The report shall include a detailed summary of investment, reinvestment, purchase, sale and exchange transactions, setting forth, among other matters, the investments bought, sold and exchanged, the dates thereof, the prices paid and obtained, the names of the dealers involved and a statement of the accounts referred to in ORS 293.756. The investment officer may send copies of the report to investment bankers and brokers recommended by the council. [1967 c.335 §15]

293.770 [Formerly 291.620; repealed by 1967 c.335 §60]

**293.771 Reports by council to Governor and legislature.** The council shall report to the Governor and Legislative Assembly on the investment funds investment program at each regular session of the Legislative Assembly and at other times as the council considers in the public interest. [1967 c.335 §16]

293.775 [1963 c.520 §3; repealed by 1967 c.335 §60]

**293.776 Examination and audit of investment program; report.** The council shall provide for an examination and audit of the investment funds investment program, and for submission to the council of a report based on the examination and audit, at least once every four years and at other times as the council may require. The examination and audit, and the report based thereon, shall include an evaluation of current investment funds investment policies and practices and of specific investments of the investment funds in relation to the objective set forth in ORS 293.721, the standard set forth in ORS 293.726 and other criteria as

may be appropriate, and recommendations relating to the investment funds investment policies and practices and to specific investments of the investment funds as are considered necessary or desirable. The council shall make copies of the report or a summary thereof available for distribution to interested persons. [1967 c.335 §17]

**293.780 Group annuity contracts with insurers on behalf of Public Employees' Retirement System and Board.** The Oregon Investment Council, for and on behalf of the Public Employees' Retirement System and Public Employees' Retirement Board, may enter into group annuity contracts with one or more insurance companies authorized to do business in this state. In lieu of any investment of moneys in the Public Employees' Retirement Fund as provided in ORS 293.701 to 293.706, 293.810 and 293.820, the council may pay, from time to time under contracts so entered into, any moneys in that fund available for investment purposes. Contracts so entered into are not subject to ORS 279.545 to 279.746. [1967 c.335 §18]

**293.790 Holding, investing and disposing of corporate stock.** (1) Under authority of section 6, Article XI of the Oregon Constitution, the state, subject to subsection (2) of this section, may hold and dispose of the stock of any company, association or corporation, including stock already received, that is donated or bequeathed and the state, acting by and through the State Board of Higher Education, subject to subsection (2) of this section, may invest and reinvest in the stock of any company, association or corporation, any funds or moneys of the State Board of Higher Education that:

(a) Are or have been donated or bequeathed for higher education purposes; or

(b) Are the proceeds from the disposition of stock that is donated or bequeathed for higher education purposes, including stock already received; or

(c) Are dividends paid with respect to stock that is donated or bequeathed for higher education purposes, including stock already received.

(2) The state, including any of its agencies having control of, or authority to invest and reinvest in, any stock described in subsection (1) of this section, in holding, disposing of or investing and reinvesting in such stock, shall be governed by ORS 128.057 and 128.065, notwithstanding the date of acquisition of such stock. Moneys received from the disposition of such stock, including dividends, shall be maintained separate and distinct from the General Fund, and those moneys, including interest earned thereon, are appropriated continuously for the pur-

poses of the donation or bequest and of the investments and reinvestments authorized by subsection (1) of this section and by ORS 351.130. Except as specifically authorized by law, the state or any of its agencies may not purchase stock.

(3) This section does not apply to investment and reinvestment of moneys in the Public Employees' Retirement Fund and Industrial Accident Fund or to acquisition, retention, management and disposition of investments of those funds as provided in ORC 293.701 to 293.776, 293.810 and 293.820. [Formerly 291.630; 1967 c.335 §2; 1971 c.339 §1; 1989 c.966 §21]

293.805 [1971 c.339 §2; repealed by 1975 c.363 §2]

### INVESTING LOCAL FUNDS

**293.810 Investment of local government funds; restrictions.** Notwithstanding anything to the contrary in ORS 293.721 to 293.736, as to funds tendered to the investment officer by any county, municipality, school district or other political subdivision of the state for investment pursuant to ORS 294.805 to 294.895:

(1) The investment officer shall at all times hold investments which mature in three years or less, in an amount not less than an amount equal to the aggregate of all funds placed with the investment officer by local governments under ORS 294.805 to 294.895, which investments shall be from the funds defined in ORS 293.701 (2)(r).

(2) Notwithstanding subsection (1) of this section, the investment officer may purchase legally issued general obligations of the United States and of the agencies and instrumentalities of the United States if the seller thereof has agreed to repurchase the same within 90 days following the date on which the investment officer makes the investment therein. If the maturity of the security exceeds 18 months, the price paid by the investment officer for such security may not exceed 98 percent of the current market value.

(3) In making investments of such funds, the investment officer shall not:

(a) Make a commitment to invest funds or sell securities more than 14 business days prior to the anticipated date of settlement of the purchase or sale transaction;

(b) Enter into any agreement to invest funds or sell securities for future delivery for a fee other than interest;

(c) Lend securities to any person or institution, except on a fully collateralized basis;

(d) Pay for any securities purchased by the investment officer until the investment

officer has received physical possession, or other sufficient evidence, as determined under ORS 293.751 (1), of title thereof. However, the investment officer may instruct any custodian bank, as defined in ORS 295.005 (2), to accept securities on the investment officer's behalf against payment therefor previously deposited with the institution by the investment officer; or

(e) Deliver securities to the purchaser thereof upon sale prior to receiving payment in full therefor. However, the investment officer may deliver the securities to any custodian bank, as defined in ORS 295.005 (2), upon instructions to hold the securities pending receipt by the institution of full payment therefor. [1981 c.880 §2; 1991 c.88 §4]

**293.820 Separate accounts for each local government; report; investment rules.**

(1) When the investment officer invests the funds of any county, municipality, school district or other political subdivision of this state, the investment officer shall keep a separate account for each such governmental unit the funds of which are being invested.

(2) The investment officer shall report monthly to each such governmental unit the changes made during the preceding month in the investments for the account of that governmental unit. The monthly reports shall be provided to the governmental units within 30 days after the end of the month to which they pertain.

(3) All funds invested by the investment officer shall be invested in accordance with rules adopted or readopted at least annually by the Oregon Short Term Fund Board and approved by the Oregon Investment Council. Such rules shall be published, shall be made available to all interested parties and shall be distributed at least annually to all local governments investing funds pursuant to ORS 294.805 to 294.895. [1981 c.880 §3]

### INVESTMENT POOLS

**293.822 Investment pools authorized.** The Legislative Assembly recognizes that changes in federal arbitrage regulations have imposed substantial additional financial and administrative burdens on state agencies and local governments which issue tax-exempt obligations. The impact of these burdens is exacerbated by the fiscal restrictions placed on these agencies and governments by section 11b, Article XI of the Oregon Constitution. The Legislative Assembly finds that it will benefit the citizens of the state to authorize the State Treasurer to create one or more investment pools which are designed to reduce these burdens of compliance with federal arbitrage rules. [1991 c.902 §107]

poses of the donation or bequest and of the investments and reinvestments authorized by subsection (1) of this section and by ORS 351.130. Except as specifically authorized by law, the state or any of its agencies may not purchase stock.

(3) This section does not apply to investment and reinvestment of moneys in the Public Employees' Retirement Fund and Industrial Accident Fund or to acquisition, retention, management and disposition of investments of those funds as provided in ORS 293.701 to 293.776, 293.810 and 293.820. [Formerly 291.630; 1967 c.335 §32; 1971 c.339 §1; 1989 c.966 §21]

293.805 (1971 c.339 §2; repealed by 1975 c.363 §2)

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(1) The investment officer shall at all times hold investments which mature in three years or less, in an amount not less than an amount equal to the aggregate of all funds placed with the investment officer by local governments under ORS 294.805 to 294.895, which investments shall be from the funds defined in ORS 293.701 (2)(r).

(2) Notwithstanding subsection (1) of this section, the investment officer may purchase legally issued general obligations of the United States and of the agencies and instrumentalities of the United States if the seller thereof has agreed to repurchase the same within 90 days following the date on which the investment officer makes the investment therein. If the maturity of the security exceeds 18 months, the price paid by the investment officer for such security may not exceed 98 percent of the current market value.

(3) In making investments of such funds, the investment officer shall not:

(a) Make a commitment to invest funds or sell securities more than 14 business days prior to the anticipated date of settlement of the purchase or sale transaction;

(b) Enter into any agreement to invest funds or sell securities for future delivery for a fee other than interest;

(c) Lend securities to any person or institution, except on a fully collateralized basis;

(d) Pay for any securities purchased by the investment officer until the investment

officer has received physical possession, or other sufficient evidence, as determined under ORS 293.751 (1), of title thereof. However, the investment officer may instruct any custodian bank, as defined in ORS 295.005 (2), to accept securities on the investment officer's behalf against payment therefor previously deposited with the institution by the investment officer; or

(e) Deliver securities to the purchaser thereof upon sale prior to receiving payment in full therefor. However, the investment officer may deliver the securities to any custodian bank, as defined in ORS 295.005 (2), upon instructions to hold the securities pending receipt by the institution of full payment therefor. (1981 c.880 §2; 1981 c.88 §4)

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(2) The investment officer shall report monthly to each such governmental unit the changes made during the preceding month in the investments for the account of that governmental unit. The monthly reports shall be provided to the governmental units within 30 days after the end of the month to which they pertain.

(3) All funds invested by the investment officer shall be invested in accordance with rules adopted or readopted at least annually by the Oregon Short Term Fund Board and approved by the Oregon Investment Council. Such rules shall be published, shall be made available to all interested parties and shall be distributed at least annually to all local governments investing funds pursuant to ORS 294.805 to 294.895. (1981 c.880 §3)

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293.824 Investment pool procedures; duties of State Treasurer. (1) As used in this section:

(a) "Council" means the Oregon Investment Council.

(b) "Governmental unit" has the meaning given the term under ORS 288.150.

(c) "Investor" means an entity which deposits proceeds with the State Treasurer for investment in a pool.

(d) "Pool" means a fund or account established by the State Treasurer for the investment of proceeds for one or more investors, pursuant to this section.

(e) "Proceeds" means funds obtained from the sale of tax-exempt obligations, and other funds which secure, or are held to pay debt service on, tax-exempt obligations.

(f) "Tax-exempt obligations" means bonds, notes, certificates or other obligations, the interest on which is excluded from gross income under the United States Internal Revenue Code.

(2) In addition to the other powers granted to the State Treasurer, the State Treasurer may create one or more pools for the investment of proceeds. The pools shall be separate and distinct from the General Fund. Amounts in a pool shall be invested under the standards for investment of state funds which are provided in ORS 293.701 to 293.776. However, the investment objective for the pools shall be to make the amounts therein as productive to the investor as is administratively reasonable, taking into account restrictions imposed by the United States on the investment of the proceeds and the ability of the investor to retain investment earnings for its benefit. Amounts in a pool shall be invested according to policies established by the Oregon Investment Council. ORS 293.810 (1), (2) and (3)(a) and 293.820 shall not apply to investments of amounts in a pool. The State Treasurer or the council may enter into agreements with investors regarding the investment of proceeds in a pool authorized by this section, and may take other action reasonably required to establish and operate pools for the investment of proceeds in a manner which reduces the burden on investors of complying with federal arbitrage laws.

(3) The State Treasurer or the council may contract for trust, investment management, legal, accounting, financial advisory and other services with respect to the funds invested in a pool. Costs of the services may be paid from earnings on proceeds invested in a pool, from fees charged to investors or from any other legally available funds. The State Treasurer may charge investors fees for deposit or withdrawal of amounts from a

pool. The fees shall not exceed the State Treasurer's reasonable estimate of the costs of creating and operating the pool.

(4) The State Treasurer shall establish policies and procedures for the allocation of pool expenses, earnings and losses among investors in a pool, and for the deposit and withdrawal of amounts in a pool. Net earnings on amounts in pools shall be distributed among investors in accordance with the policies and procedures established by the State Treasurer.

(5) The State of Oregon, its agencies, governmental units and trustees which hold proceeds may invest proceeds through the State Treasurer in a pool. [1991 c. 222 § 1]

#### OREGON ANTI-APARTHEID ACT OF 1987

293.830 Short title. ORS 293.830 to 293.870 may be cited as the "Oregon Anti-Apartheid Act of 1987." [1987 c.193 §1]

Note: 293.830 to 293.870 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 293 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

293.835 Definitions for ORS 293.830 to 293.870. As used in ORS 293.830 to 293.870:

(1) "Business arrangements" means projects, ventures, undertakings, contractual relations or other efforts requiring ongoing or periodic performance by either or both parties.

(2) "Business entity" means any organization, firm, association, corporation, partnership or venture, or its subsidiary or affiliate, which exists for profit-making purposes or otherwise to secure economic advantage.

(3) "Business operations" means the maintenance of equipment, facilities, personnel or any other apparatus of business or commerce, including the ownership or possession of real or personal property located in South Africa.

(4) "Directly investing" means owning 10 percent or more of one or more business entities in South Africa, as identified by the Investor Responsibility Research Center.

(5) "Investment" or "invest" means the commitment of funds or other assets to a business entity, including a loan or other extension of credit made to that entity, or security given for the other assets to that business entity, or the beneficial ownership or control of a share or interest in that business entity, or of a bond or other debt instrument issued by that business entity.

(6) "South Africa" means the Republic of South Africa, any territory under the admin-

istration, legal or illegal, of South Africa and the "Bantustans" or "homelands."

(7) "State moneys" means all moneys, bonds and securities in possession of or collected by any state agency.

(8) "State trust fund" means any investment fund that is held in trust by this state.

(9) "Strategic products or services" means articles designated as arms, ammunition and implements of war, as defined in the United States Code of Federal Regulations 22 Part 121, and data processing equipment and computers sold for military or police use in the Republic of South Africa.

(10) "Subject investment funds" means:

(a) The Public Employees' Retirement Fund described in ORS 237.271;

(b) The Industrial Accident Fund described in ORS 656.632;

(c) The Common School Fund;

(d) The Oregon War Veterans' Fund;

(e) Investment funds of the State Board of Higher Education lawfully available for investments or reinvestments by the Oregon Investment Council or State Treasurer; or

(f) Any funds in the custody of the Oregon Investment Council or State Treasurer that are not required to meet short-term demands. [1987 c.193 §3; 1991 c.135 §1]

Note: See note under under 293.830.

**293.840 Findings.** (1) The Legislative Assembly opposes the apartheid policies of the Republic of South Africa.

(2) The Legislative Assembly finds:

(a) The law of apartheid in South Africa enforces a social, political and economic structure which institutionalizes inequality solely based on race.

(b) Apartheid is absolutely contrary to the fundamental principles of human rights and standards of justice and individual freedom.

(c) The United States of America, under the Federal Anti-Apartheid Act of 1986, has rejected the system of apartheid as immoral and indefensible; and encourages the establishment of a nonracial, democratic form of government.

(d) The practice of apartheid in South Africa is repugnant to the principles of liberty and justice found in the Bill of Rights, Article I of the Oregon Constitution, which are fundamental to the character of a free society.

(e) The investment of Oregon trust funds and state moneys in business firms and financial institutions with close ties to South Africa is fiscally imprudent, given the political and economic instability in South

Africa, and inconsistent with the moral and political values of the people of Oregon.

(f) Investment in banks and companies doing business in and with South Africa contribute directly or indirectly to the perpetuation of a system which we oppose.

(g) Divestment and reinvestment of subject investment funds should be achieved without monetary loss and shall be accomplished in a reasonable and prudent manner by investment in acceptable institutions at comparable rates and return. [1987 c.193 §2; 1991 c.135 §2]

Note: See note under 293.830.

**293.845 Review of investment policies of state.** (1) In consultation with the Oregon Investment Council, the State Treasurer shall review the investment policies of this state to determine consistency with the legislative policy, findings and provisions of ORS 293.830 to 293.870.

(2) No later than January 15, 1988, after public hearing, the Oregon Investment Council and the State Treasurer shall adopt an investment policy and procedures that establish and implement a prudent alternative for investments in South Africa, consistent with the policy, findings and provisions of ORS 293.830 to 293.870. [1987 c.193 §4; 1991 c.135 §3]

Note: See note under 293.830.

**293.850 Investment prohibitions.** On and after July 1, 1987, in divestiture Phase I of the divestiture program, all investors of state trust funds and state moneys are prohibited from:

(1) Making any new loans, extending new credit or making any other new investment in South Africa;

(2) Financially contributing to the development of technology for research, development or production of new South African energy resources or strategic products or services;

(3) Making any deposits in South African banks;

(4) Knowingly maintaining deposits in banks continuing to lend directly to business entities owned by or headquartered in South Africa;

(5) Knowingly maintaining deposits in banks continuing to lend directly to the government of South Africa; or

(6) Having investments in any business entity owned, wholly or in part, by the government of South Africa. [1987 c.193 §5; 1991 c.135 §4]

Note: See note under 293.830.

**293.855 Evaluation of investments by State Treasurer; divestiture; procedure.**

To begin no later than February 15, 1988, and continuing thereafter, until February 15, 1992, in divestiture Phase II of the divestiture program:

(1) The State Treasurer shall make every reasonable effort to evaluate all investments of subject investment funds during Phase II. In cooperation with the State Treasurer, the Oregon Investment Council shall report regularly to the governing bodies of the subject investment funds in business entities found not to comply with the policy, findings and provisions of ORS 293.830 to 293.870.

(2) The Oregon Investment Council shall order divestiture and the State Treasurer shall proceed in an orderly, prudent manner, in accordance with ORS 293.721 and 293.726, to divest funds in stocks and bonds in United States business entities directly investing in South Africa. The council and the State Treasurer shall endeavor to meet a minimum annual divesting equal to one-fourth of the value of investments ultimately to be divested.

(3) In order to effect an orderly and prudent divestment in accordance with ORS 293.830 to 293.870, every three months commencing January 15, 1988, the investment staff of the State Treasurer's office and the private investment managers authorized by ORS 293.741 shall identify, from the current Investor Responsibility Research Center list of business entities with direct investments in South Africa, which stocks and bonds in the manager's portfolio may prudently be replaced, given the manager's investment style. Every three months, the State Treasurer shall provide each manager with a list of restricted stocks and bonds to be divested from that manager's portfolio. The restricted list shall be continually reviewed and revised as necessary. Copies of the list shall be sent to the members of the Oregon Investment Council. (1987 c.193 §6; 1991 c.135 §5)

Note: See note under 293.830.

**293.860 Grace period.** (1) In implementation of Phase II ORS 293.855, the Oregon Investment Council may order the treasurer to grant a grace period not to extend beyond February 15, 1989, applicable to a United States business entity directly investing in South Africa if by resolution of its governing body, the business entity adopts a policy not to expand existing business operations or to establish new business operations in South Africa, or to renew existing business arrangements, or to make additional new business arrangements with the government of South Africa.

(2) The business entity shall submit a copy of each resolution described in sub-

section (1) of this section to the Oregon Investment Council and the State Treasurer. The business entity shall also submit information which provides a description of the business agreements and arrangements in South Africa. A copy of a certification issued under penalty of perjury, that the adopted policy is being complied with shall be submitted to the Oregon Investment Council and the State Treasurer. The resolution submitted to the council and the treasurer shall be considered a public record and shall be open to public inspection. (1987 c.193 §7; 1991 c.135 §6)

Note: See note under 293.830.

**293.865 Annual report on divestiture.**

(1) As long as the Oregon Investment Council continues to hold investments in stocks and bonds in United States business entities directly investing in South Africa, the Oregon Investment Council and State Treasurer shall file an annual report with the Governor and the Legislative Assembly by January 15 of each year, specifying:

(a) The name of the issuer of the stocks, bonds, securities and other evidence of indebtedness.

(b) The cost and market value of the stock or book value of the investment.

(c) The amount, yield and maturity date of any bond investment.

(d) The operations of the business entity in South Africa, or with the government of South Africa.

(2) The State Treasurer shall include in the report required by subsection (1) of this section, the actual rate of divestiture as compared with the goal stated in ORS 293.855 (2) with an explanation if the rate does not equal or exceed the minimum rate described in ORS 293.855 (2). (1987 c.193 §8; 1991 c.135 §7)

Note: See note under 293.830.

**293.867 Application of ORS 293.830 to 293.870 to changed conditions in South Africa.** (1) Subject to subsection (2) of this section, ORS 293.830 to 293.870 shall not apply if South Africa:

(a) Releases from prison all persons persecuted for their political beliefs or detained unduly without trial;

(b) Repeals the state of emergency in effect on May 3, 1991, and releases all detainees held under such state of emergency;

(c) Unbans democratic political parties and permits the free exercise by South Africans of all races of the right to form political parties, express political opinions and otherwise participate in the political process;

(d) Repeals the Group Areas Act and the Population Registration Act and institutes no other measures with the same purposes; and

(e) Agrees to enter into good faith negotiations with truly representative members of the Black majority without preconditions.

(2) The State Treasurer shall no longer be required to comply with any of the measures required by ORS 293.830 to 293.870 within 30 days after the treasurer finds that the President of the United States has determined and the Congress of the United States has not disagreed that South Africa has:

(a) Taken the action described in paragraph (a) of subsection (1) of this section;

(b) Taken three of the four actions listed in paragraphs (b) to (e) of subsection (1) of this section; and

(c) Made substantial progress toward dismantling the system of apartheid and establishing a non racial democracy. [1991 c.135 §9]

Note: See note under 293.830.

**293.870 Fiduciary responsibilities of State Treasurer.** Nothing in ORS 293.830 to 293.870 is intended to abrogate the fiduciary responsibilities of the State Treasurer as stated in ORS 293.721 and 293.726. [1987 c.193 §10]

Note: See note under 293.830.

**293.880 Accounts and funds established to comply with federal legislation relating to state and federal cash management reform.** The State Treasurer may establish accounts, and the Executive Department may establish funds, as needed to comply with the requirements of federal legislation relating to the state and federal cash management reform. These accounts and funds shall be separate and distinct from the General Fund. Interest earned, if any, shall inure to the benefit of the account or fund. Moneys in these accounts and funds are

continuously appropriated for the following purposes:

(1) To the extent authorized by federal legislation, administrative expenses of the Executive Department, the State Treasurer and the Division of Audits of the Secretary of State in the performance of their duties relating to the program known as the state and federal cash management reform. Payment of such expenses by the Executive Department shall be based on properly documented claims and shall be paid the same as other claims against the State of Oregon.

(2) The transfer of interest earnings to the Federal Government in accordance with signed agreements between the United States Treasury and this state.

(3) The transfer of interest earnings to the General Fund or other separate funds if documentation shows that state funds have been used in anticipation of the receipt of federal funds. The use of state funds in lieu of federal funds must be in accordance with signed agreements between the United States Treasury and this state. [1989 c.552 §2]

#### PENALTIES

**293.990 Penalties.** (1) Any person, official or state agent violating ORS 293.265 to 293.280 or failing to comply with any of the requirements of those sections within the time provided shall be liable on the official bond of the person, officer or state agent and shall, upon conviction thereof, be punished by a fine not exceeding \$1,000 or by imprisonment in the county jail for a period not exceeding one year, or both.

(2) In addition to civil liability, violation of ORS 293.620 is punishable, upon conviction, by a fine of not less than \$25 nor more than \$500 and the costs of the prosecution in accordance with ORS 161.665. [Formerly 291.990 (2), (3); 1971 c.743 §353]

# OREGON REVISED STATUTES

## Volume 16 ANNOTATIONS (1992 Cumulative Supplement)

PUBLISHED PURSUANT TO ORS 171.275  
by the  
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ATTY. GEN. OPINIONS: Authority of the Emergency Board to provide funds for administration and enforcement of Oregon Laws 1973, c. 421, (1973) Vol 36, p 595

## 291.326

## NOTES OF DECISIONS

Where Personnel Division had statutory responsibility for classification and compensation plans for classified service, Forestry Department lacked authority to promulgate directive requiring division, as part of reclassification proposal, to submit to Emergency Board request for salary increases for all employees placed into classification with higher salary range. *Berry v. State Forestry Dept.*, 35 Or App 703, 582 P2d 473 (1978), Sup Ct review denied

ATTY. GEN. OPINIONS: Authority of the Emergency Board to provide funds for administration and enforcement of Oregon Laws 1973, c. 421, (1973) Vol 36, p 595; limitations on allocations by the Emergency Board. (1976) Vol 37, p 1125

## 291.371

## NOTES OF DECISIONS

There is no requirement that Emergency Board approve upward reclassifications of classified employees where no interim budgetary adjustment is necessary for salary increases. *Berry v. State Forestry Dept.*, 35 Or App 703, 582 P2d 473 (1978), Sup Ct review denied

Where employe was dismissed for refusal to transfer to Portland in reclassified position, and he claimed that employer's actions, taken without approval of legislative review agency, violated this section, findings of fact on issue of employer's good faith were required. *Ashman v. Children's Services Division*, 37 Or App 865, 528 P2d 665 (1978)

ATTY. GEN. OPINIONS: Expenditures with respect to employes in unclassified service for life and disability insurance, physical examinations, and physical fitness programs. (1978) Vol 38, p 1770

## 291.990

ATTY. GEN. OPINIONS: Incurring and payment of expenses in excess of expenditure limitation. (1974) Vol 36, p 845

## 292.010 to 292.160

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## 292.045

ATTY. GEN. OPINIONS: Work of state employes during office hours for United Fund campaign. (1981) Vol 41, p 347

## NOTES OF DECISIONS

Under this section union could "contract to the contrary" with employer to deprive employe of union contract right to cancel dues at end of first year. *Stines v. OSEA*, 287 Or 643, 601 P2d 799 (1979)

ATTY. GEN. OPINIONS: Refusal of employe's request that state deduct from salary or wages amount for payment to labor organization. (1982) Vol. 42, p 349

## 292.495

ATTY. GEN. OPINIONS: Payment of expenses of members of the Governor's Task Force on Medical Malpractice, (1976) Vol 37, p 1319; expenses incurred by a state legislator as an appointee of the Governor's Committee on Aging, (1976) Vol 37, p 1475; payment of expenses of advisory committees created by statute, by Executive Order, and by state agency (1977) Vol 38, p 571; federal social security withholding taxes with respect to public members of Oregon Investment Council and public members of Municipal Debt Advisory Commission, (1978) Vol 38, p 2117; recovery of erroneous per diem payments to members of Travel Information Council, (1977) Vol 38, p 1484; performance of official duties by chairperson of Oregon Investment Council when working on council business outside of council meetings, (1979) Vol 40, p 22; meaning of "portion thereof" in relation to per diem allocation, (1979) Vol 40, p 22; reimbursement for expenses directly related to performance of official duties by any board or commission member, (1979) Vol 40, p 22

## Chapter 293

ATTY. GEN. OPINIONS: Duty or authority of Secretary of State to conduct performance audits, (1985) Vol. 44, p 351

## 293.235 to 293.260

## NOTES OF DECISIONS

Where property tax refund was intercepted by respondent to recover costs previously awarded in unemployment compensation proceeding and petitioner filed petition for review more than 60 days after original order but less than 60 days after amended order, amended order superseded and replaced original order so petition was timely. *Callahan v. Employment Division*, 97 Or App 234, 776 P2d 21 (1989)

## 293.240

## NOTES OF DECISIONS

This section, providing that uncollectible debts may be assigned to Department of Revenue for collection and that debts are not to be deemed uncollectible unless setoff has been considered, did not preclude Department of Revenue from withholding tax refunds as setoffs against debts owed state. *Brown v. Lobdell*, 36 Or App 397, 585 P2d 4 (1978), Sup Ct review denied

ATTY. GEN. OPINIONS: Doubtful collectibility as sole factor in determining whether to compromise, settle or adjust a receivable, (1978) Vol 38, p 2063; right of set off applied to claims against state, (1977) Vol 38, p 1438

293.250

NOTES OF DECISIONS

This section did not preclude Department of Revenue from withholding tax refunds as setoff against debts owed state, in absence of Executive Department rules and formal assignment of debts. *Brown v. Lobdell*, 36 Or App 397, 585 P2d 4 (1978), Sup Ct review denied

ATTY. GEN. OPINIONS: Right of set off applied to claims against state, (1977) Vol 38, p 1438

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ATTY. GEN. OPINIONS: Donated funds for volunteer programs, (1974) Vol 36, p 1012; funds voluntarily contributed to Oregon State Police Relief Fund, (1980) Vol 40, p 229

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ATTY. GEN. OPINIONS: Return of examination fee to unqualified applicant, (1974) Vol 36, p 1035; disposition of support moneys when obligee cannot be located, (1980) Vol 40, p 264

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ATTY. GEN. OPINIONS: Necessity of probate if abandoned property is claimed by heirs, (1972) Vol 35, p 1177

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ATTY. GEN. OPINIONS: Necessity of probate if abandoned property is claimed by heirs, (1972) Vol 35, p 1177

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ATTY. GEN. OPINIONS: Necessity of probate if abandoned property is claimed by heirs, (1972) Vol 35, p 1177

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ATTY. GEN. OPINIONS: Authority for division of fund into several subaccounts, (1977) Vol 38, p 1276

293.701 to 293.776

ATTY. GEN. OPINIONS: Effect of Board of Higher Education order directing divestiture of stock in companies doing business in Southern Africa, (1978) Vol 38, p 2017; State Treasurer authority to enter into reverse repurchase agreements, (1979) Vol 39, p 569; real estate holdings through investment for Oregon Public Employees' Retirement Fund, (1981) Vol 41, p 503

293.701

ATTY. GEN. OPINIONS: Earnings derived from excess fund investment, (1976) Vol 37, p 1309; construing "lawfully available for investment," (1976) Vol 38, p 271; Oregon Investment Council rather than State Board of Higher Education has primary authority to make investment decisions regarding higher education investment funds, (1989) No. 3198; board and investment

council may cooperate in setting investment policy regarding higher education funds, (1989) No. 3198

293.706

ATTY. GEN. OPINIONS: Federal social security withholding taxes with respect to public members of Oregon Investment Council, (1978) Vol 38, p 2117

293.711

ATTY. GEN. OPINIONS: Federal social security withholding taxes with respect to members of Oregon Investment Council, (1978) Vol 38, p 2117

293.721

ATTY. GEN. OPINIONS: Earnings derived from excess fund investment, (1976) Vol 37, p 1309; conditions under which an investment may be sold at a loss, (1976) Vol 38, p 75; local governments investing deferred compensation in guaranteed annuity contracts, (1980) Vol 40, p 333

293.726

ATTY. GEN. OPINIONS: "Prudent man" rule as applied to divestiture of stocks in companies doing business in Southern Africa, (1978) Vol 38, p 2017; public official entering into standb" or forward commitments to purchase securities, (1980) Vol 40, p 295; local governments investing deferred compensation in guaranteed annuity contracts, (1980) Vol 40, p 333; time deposits in mutual savings bank or state or federal savings and loan association of state moneys from Oregon Excess Fund, (1980) Vol 40, p 495

293.731

ATTY. GEN. OPINIONS: Respective investment roles of Board of Higher Education Oregon Investment Council and investment managers, (1978) Vol 38, p 2017; Oregon Investment Council rather than State Board of Higher Education has primary authority to make investment decisions regarding higher education investment funds, (1989) No. 3198; board and investment council may cooperate in setting investment policy regarding higher education funds, (1989) No. 3198

293.736

ATTY. GEN. OPINIONS: Propriety of requests to investment managers to sell or refrain from buying certain stocks, (1978) Vol 38, p 2017

293.741

ATTY. GEN. OPINIONS: Voting rights on common stock investments, (1978) Vol 38, p 2190

293.790

ATTY. GEN. OPINIONS: Interpretations of this section, (1976) Vol 38, p 271

293.830 to 293.870

ATTY. GEN. OPINIONS: Oregon Investment Council rather than State Board of Higher Education has primary authority to make investment decisions regarding higher education investment funds, (1989) No. 3198; board and investment council may cooperate in setting investment policy regarding higher education funds, (1989) No. 3198

(a) Multiply the gross payroll reported by the employer during the four most recent calendar quarters by the current percentage rate of payment into the fund.

(b) Subtract the amount of benefits attributable to the employer that was reimbursed from the fund during the most recent four calendar quarters from the product determined in paragraph (a) of this subsection.

(c) If the remainder obtained in paragraph (b) of this subsection is more than zero, subtract the remainder from the negative balance of the account.

(d) If the remainder in paragraph (b) of this subsection is zero or less, make no adjustment to the amount of the negative balance of the account.

(e) Divide the amounts determined in either paragraph (c) or (d) of this subsection by four. The resulting amount shall be the additional payment required for each quarter.

Only one such determination shall be made in any four-quarter period. If the negative balance is eliminated before the end of the four quarters in which the additional payments were determined necessary, no further additional payments will be required under this subsection.

(8) During the first four calendar quarters in which a political subdivision is a participant in the fund, additional payments shall be required if the account balance of the political subdivision is negative at the end of any of the four quarters. The additional payment shall be determined in the same manner described in subsection (7) of this section except that the computation in paragraphs (a) and (b) of subsection (7) of this section shall include only those quarters in which the political subdivision was a participant in the fund. (1977 c.491 §5; 1981 c.5 §1; 1983 c.53 §2; 1989 c.135 §3)

**294.740 Refund of account balances; payment of deficits; erroneous benefit payments.** (1) The Employment Division shall refund to a political subdivision electing to cancel its request as provided by ORS 657.513 any account balance remaining after the division has made all payments to the Unemployment Compensation Trust Fund required to be made on behalf of the political subdivision.

(2) A political subdivision canceling a request having a negative account balance shall make such additional payments into the fund as necessary to maintain a zero account balance.

(3) Erroneous benefit payments determined after June 30, 1978, and attributable to wages paid by a political subdivision making payments under ORS 294.735 shall be ex-

cluded from the account balance determination and the determination of the benefit cost rate of that political subdivision. (1977 c.491 §56, 7; 1989 c.135 §4)

**294.745 Analysis of fund receipts and expenditures; report to Legislative Assembly.** The Employment Division shall investigate the experience of political subdivision participation in operations of the fund, including the relationship of fund receipts to fund expenditures and report the results of the investigation to the legislature at least 30 days prior to the date a regular session of the legislature is scheduled to convene. The report shall include any recommended changes in the provisions of ORS 293.701, 294.725 to 294.755 and 657.513. (1977 c.491 §8; 1989 c.135 §5)

**294.750 Experience and liability of successor political subdivisions; unpaid assessment.** (1) The experience and liabilities of a political subdivision that has ceased to exist shall be acquired by the successor political subdivision.

(2) Notwithstanding subsection (1) of this section, all units of government who are parties to an agreement to form a political subdivision shall be liable for any unpaid assessments of that political subdivision and for such amounts as necessary to maintain the account balance of the political subdivision, if no longer in existence, at zero dollars. (1977 c.491 §9)

**294.755 Payment on quarterly basis; remedies for collection.** Political subdivisions electing to participate in the Local Government Employer Benefit Trust Fund shall pay into the fund on a quarterly basis and are subject to all remedies for the collection of delinquent taxes provided in ORS chapter 657. (1977 c.491 §10)

#### LOCAL GOVERNMENT INVESTMENT POOL

**294.805 Definitions for ORS 294.805 to 294.895.** As used in ORS 294.805 to 294.895:

(1) "Board" means the Oregon Short Term Fund Board.

(2) "Council" means the Oregon Investment Council created under ORS 293.706.

(3) "Funds" means funds under the control or in the custody of any local government official by virtue of office that are not required to meet current demands.

(4) "Investment officer" means the State Treasurer in capacity as investment officer for the council and the investment pool.

(5) "Investment pool" means the aggregate of all funds from local government officials that are placed in the custody of the investment officer for investment and rein-

vestment as provided under ORS 294.805 to 294.895.

(6) "Local government official" means each officer or employee of any agency, political subdivision or public corporation of this state, including the Oregon State Bar, who by law is made the custodian of or has control of any funds. (1973 c.748 §1; 1951 c.380 §14; 1987 c.381 §1)

**294.810 Local governments authorized to place limited funds in pool.** (1) With the consent of the governing body, a local government official may place in the aggregate up to \$10 million of its funds in the investment pool, or, if the assets of the investment pool have been transferred pursuant to ORS 294.882, in the state investment fund established pursuant to ORS 293.721, for investment and reinvestment by the investment officer as provided under ORS 294.805 to 294.895, or 293.701 to 293.776, as the case may be. The \$10 million limitation stated in this section shall not apply to funds of a governing body which are placed in the investment pool on a pass-through basis. Local governments must remove pass-through funds which result in an account balance in the pool in excess of \$10 million within 10 business days. County governments must remove such excess funds within 20 business days. The investment officer shall promptly report each instance of noncompliance with, or apparent abuse of, the limitations of this section to the Secretary of State and to the governing body of the local government involved.

(2) The \$10 million limitation contained in subsection (1) of this section shall not apply to a local government whose governing body, by ordinance or resolution, authorizes their officials to place not more than \$20 million in the investment pool. The additional amount, not exceeding \$10 million, must be placed in an account which has been assigned a separate participant account number within the investment pool. This separate account shall not be used to receive or disburse pass-through funds, and shall be subject to such deposit and withdrawal procedures, requirements and restrictions as are deemed appropriate by the investment officer, including, but not limited to an advance notice requirement for withdrawal. (1973 c.748 §2; 1981 c.380 §15; 1987 c.381 §2)

**294.815 Period of investments; withdrawal of funds.** Subject to the right of the unit of local government to specify the period in which its funds may be held in the investment pool for investment and reinvestment, the investment officer by rule shall prescribe the time periods for investments in the investment pool and the procedure for withdrawal of funds. (1973 c.748 §3)

**294.820 Separate long-term investments limited.** With the consent of the governing body, a local government official of a city or municipal corporation may, before July 1, 1979, deposit funds with the State Treasurer for long-term investments of the funds by the State Treasurer separate from investments of the investment pool. (1973 c.748 §4; 1979 c.608 §1)

**294.825 State Treasurer as investment officer; bond; employment of personnel; rules.** (1) The State Treasurer is the investment officer for the council and the investment pool, and shall perform functions in that capacity as authorized or required by law and, consistent with law, by the council.

(2) The bond of the State Treasurer required from the State Treasurer by law shall be deemed to extend to the faithful performance of all functions of the office of investment officer under ORS 294.805 to 294.895.

(3) The investment officer may:

(a) Subject to any applicable provision of the State Personnel Relations Law, employ, prescribe the functions and fix the compensation of personnel necessary to facilitate and assist in carrying out the functions of the council, investment officer and investment pool.

(b) Require a fidelity bond of any person employed by the investment officer who has charge of, handles or has access to any of the moneys in the investment pool. The amounts of the bonds shall be fixed by the investment officer, except as otherwise provided by law, and the sureties shall be approved by the investment officer. The premiums on the bonds shall be an expense of the State Treasurer.

(4) Subject to review by the board, the investment officer may, pursuant to ORS 183.310 to 183.550, make reasonable rules necessary for the administration of ORS 294.805 to 294.895. (1973 c.748 §§5, 18)

294.830 (1973 c.748 §7; repealed by 1979 c.608 §2 (294.831 enacted in lieu of 294.830))

**294.831 Investment objective; limit on maturity dates.** (1) The local government investment pool shall seek to obtain a competitive return on investments subject to the standards set forth in ORS 294.835 and consistent with the liquidity requirements demanded by the short term nature of local government deposits in the pool.

(2) The investment officer shall at all times hold investments which mature in three years or less, in an amount not less than an amount equal to the aggregate of all funds placed with the investment officer by local governments under ORS 294.805 to 294.895, which investments shall be from the funds defined in ORS 293.701 (2)(r).

(3) Notwithstanding subsection (2) of this section, the investment officer may purchase legally issued general obligations of the United States and of the agencies and instrumentalities of the United States if the seller thereof has agreed to repurchase the obligations within 90 days following the date on which the investment officer makes the investment therein. If the maturity of the security exceeds 18 months, the price paid by the investment officer for such security may not exceed 98 percent of the current market value.

(4) Investments and commitments of the investment pool which do not conform to the quality or maturity requirements set forth in ORS 294.805 to 294.895 shall be liquidated by the investment officer once the market value of such investments and commitments reaches book value, or as soon as is practicable thereafter. [1979 c.608 §3 (enacted in lieu of 294.830); 1981 c.380 §16; 1987 c.381 §3]

**294.835 Standard of care; investment in certain stocks prohibited.** (1) In investing and reinvesting moneys in the investment pool and in acquiring, retaining, managing and disposing of investments of the investment pool there shall be exercised the judgment and care under the circumstances then prevailing, which individuals of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the limitations of the foregoing standard and subject to subsections (2) and (3) of this section, there may be acquired, retained, managed and disposed of as investments of the investment pool every kind of investment which individuals of prudence, discretion and intelligence acquire, retain, manage and dispose of for their own account.

(2) Notwithstanding subsection (1) of this section, moneys in the investment pool may not be invested in the stock of any company, association or corporation.

(3) Notwithstanding subsection (1) of this section, no moneys in the investment pool shall be invested, after June 30, 1979, in any securities originating outside the United States. [1973 c.748 §8; 1979 c.608 §4]

**294.840 Investment policies; review; separate policies for individual local government units.** Subject to the objective set forth in ORS 294.831 and the standards set forth in ORS 294.835, the council shall formulate policies for the investment and reinvestment of moneys in the investment pool and the acquisition, retention, management and disposition of investments of the investment pool. The council, from time to time,

shall review those policies and make changes therein as it considers necessary or desirable. The council may formulate separate policies for any funds from any single governmental unit included in the investment pool. [1973 c.748 §9]

**294.845 Investment officer to invest, reinvest pool funds.** In amounts available for investment purposes and subject to the policies formulated by the council, the investment officer shall invest and reinvest moneys in the investment pool and acquire, retain, manage, including exercise of any voting rights, and dispose of investments of the investment pool. [1973 c.748 §10]

**294.847 Prohibited conduct for investment officer.** In making investments pursuant to ORS 294.805 to 294.895, the investment officer shall not:

(1) Make a commitment to invest funds or sell securities more than 14 business days prior to the anticipated date of settlement of the purchase or sale transaction;

(2) Enter into any agreement to invest funds or sell securities for future delivery for a fee other than interest;

(3) Lend securities to any person or institution, except on a fully collateralized basis;

(4) Pay for any securities purchased by the investment officer until the investment officer has received physical possession, or other sufficient evidence, as determined under ORS 293.751 (1), of title thereof. However, the investment officer may instruct any custodian bank, defined in ORS 295.005 (2), to accept securities on the investment officer's behalf against payment therefor previously deposited with the institution by the investment officer; or

(5) Deliver securities to the purchaser thereof upon sale prior to receiving payment in full therefor. However, the investment officer may deliver the securities to any custodian bank, defined in ORS 295.005 (2), upon instructions to hold the same pending receipt by the institution of full payment therefor. [1981 c.380 §11; 1991 c.38 §6]

**294.850 Contracts with persons to perform investment functions; compensation; bond.** The council may enter into contracts with one or more persons whom the council determines to be qualified, whereby the persons undertake, in lieu of the investment officer, to perform the functions specified in ORS 294.845 to the extent provided in the contract. Performance of functions under contract so entered into shall be paid for out of the gross interest or other income of the investments with respect to which the functions are performed, and the net interest or other income of the invest-

ments after that payment shall be considered income of the investment pool. The council may require a person contracted with to give to the state a fidelity bond in a penal sum as may be fixed by law or, if not so fixed, as may be fixed by the council, with corporate surety authorized to do business in this state. Contracts so entered into and functions performed thereunder are not subject to the State Personnel Relations Law or ORS 279.545 to 279.746. (1973 c.748 §11)

**294.855 Legal opinions; investment counseling services; mortgage services.** (1) In the acquisition or disposition of bonds with which approving legal opinions ordinarily are furnished, the investment officer may require an original or certified copy of the written opinion of a reputable bond attorney or attorneys, or the written opinion of the Attorney General, certifying to the legality of the bonds.

(2) The council may arrange for the furnishing to the investment officer of investment counseling services. The furnishing and acquisition of those services are not subject to the State Personnel Relations Law or ORS 279.545 to 279.746.

(3) The investment officer, with the approval of the council, may arrange for services with respect to mortgages in which moneys in the investment pool are invested. Those services shall be paid for out of the gross interest of the mortgages with respect to which the services are furnished, and the net interest of the mortgages after that payment shall be considered income of the investment pool. The furnishing and acquisition of those services are not subject to the State Personnel Relations Law or ORS 279.545 to 279.746. (1973 c.748 §12)

**294.860 Custody of investment documents; collection of income; distribution to local governments; calculation and allocation of profit and loss; defaulted payments of principal and interest, collection, compromise.** (1) Except as provided in ORS 294.850 and this subsection, all instruments of title of all investments of the investment pool shall remain in the custody of the investment officer. The investment officer may deposit with one or more custodial agents or banks those instruments of title that the State Treasurer considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income, or of the proceeds of sale or maturity. For purposes of this section, instruments of title of investments of the investment pool may include such evidence of title as the investment officer shall consider secure and consistent with modern investment, banking and commercial prac-

tices, and may include book entry and automated recordation of such title.

(2) Except as provided in ORS 294.850 and 294.355 (3) and subsections (1) and (3) of this section, the investment officer shall collect the principal and interest or other income of investments of the investment pool, title of which is in the investment officer's custody, when due and payable, and shall pay to the appropriate local government official the principal and interest or other income, within 30 days after the last day of the calendar quarter in which the principal and interest or other income accrues. Not less often than quarterly, the investment officer shall compute the amount by which the current fair market value exceeds or is less than the net purchase price of all investments in the investment pool maturing more than 270 days from the date computation is made. The investment officer shall compute the fair market value of such investments based upon the mean value of the bid and ask price of such investments as of the date of computation, based upon quotations from reputable dealers or financial institutions dealing in such investments. If the amount so computed by the investment officer totals more than one percent of the balance of the pool, either in terms of a gain or loss, the investment officer shall allocate the amount to all pool participants. Any addition to or deduction from amounts to be distributed shall be allocated among the municipalities participating in the pool at any time during the month in proportion to their average daily balances of funds invested through the pool. Investments maturing 270 days or less from the date of computation shall not be subject to the foregoing computation, but for other purposes shall be valued at book value or original purchase price.

(3) In the event of default in the payment of principal or interest or other income of any investment of the investment pool, the investment officer, with the approval of the council, may:

(a) Institute the proper proceedings to collect the matured principal or interest or other income.

(b) Accept for exchange purposes refunding bonds or other evidences of indebtedness at interest rates to be agreed upon by the investment officer and obligor.

(c) Make compromises, adjustments or disposition of the matured principal or interest or other income as the investment officer considers advisable for the purpose of protecting the moneys invested.

(d) Make compromises or adjustments as to future payments of principal or interest or other income as the investment officer

considers advisable for the purposes of protecting the moneys invested. [1973 c.748 §13; 1979 c.475 §2; 1987 c.381 §4; 1991 c.38 §1]

**294.865 Monthly deductions from income received for reimbursement of expenses, repayment of initial appropriation.** (1) The State Treasurer may deduct monthly a maximum of one percent of the amount of income received from the earnings of the investment pool during the preceding month. Amounts so deducted:

(a) Shall reimburse the State Treasurer for expenses the State Treasurer incurs as investment officer and to the extent they are so used shall be deposited in the Miscellaneous Receipts Account established in the General Fund for the State Treasurer, and are appropriated for payment of the expenses of the office of State Treasurer, incurred as investment officer; and

(b) In excess of expenses incurred by the State Treasurer during the preceding month, shall be used to return to the General Fund the appropriation made to initially cover the costs of administering the investment pool.

(2) Once enough moneys have been deducted from the earnings of the investment pool and returned to the General Fund to repay the initial appropriation, the State Treasurer may deduct, up to one percent of the income, only such amounts as are needed to reimburse the State Treasurer for the actual expenses the State Treasurer incurs as investment officer of the investment pool. [1973 c.748 §6; 1975 c.740 §9; 1977 c.266 §17; 1991 c.88 §2]

**294.870 Separate accounts for local governments; reports on investment changes and monthly financial statements required.** (1) The investment officer shall keep, for each governmental unit with funds in the investment pool, a separate account, which shall record the individual amounts and the totals of all investments of its moneys in the investment pool.

(2) The investment officer shall report monthly to the local government official of a governmental unit with funds in the investment pool the changes in its account made during the preceding month for the investment pool. The investment officer shall also furnish a financial report monthly to each participating governmental unit investor in the local government investment pool. The financial report shall include, but not be limited to, such comparative data for the preceding six months operation of the investment pool as will provide a basis for analyzing trends and comparing operating results and financial position. A monthly statement shall be distributed within 30 days after the end of that month. [1973 c.748 §§14, 15; 1979 c.608 §5; 1989 c.569 §4]

**294.875 Monthly report of investments of pool funds; distribution.** Not later than 15 days after the last day of each month, the investment officer shall submit to the council and the board a report of the investments made during the preceding month. The report shall include a detailed summary of investment, reinvestment, purchase, sale and exchange transactions, setting forth, among other matters, the investments bought, sold and exchanged, the dates thereof, the prices paid and obtained, the names of the dealers involved and a statement of the accounts referred to in ORS 294.870 (1). The reports shall include a description of every investment in the portfolio of assets in the investment pool showing issuer, coupon, purchase date, maturity date, yield to maturity, book value, market value as of the end of the month for which the report is rendered and the method used to value pool investments; a computation of the average life of the portfolio of assets in the investment pool weighted according to the market value of each investment that matures more than 270 days from the report date as of the end of the month for which the report is rendered; and a computation of the annualized rate of return of the investment pool portfolio, net of expense. A copy of the reports shall be made available to each county, municipality, school district and other political subdivision the funds of which are then being invested by the investment officer. The investment officer may send copies of the report to investment bankers and brokers recommended by the council. [1973 c.748 §16; 1991 c.880 §17; 1997 c.381 §5]

**294.880 Program examination and audit; report; distribution.** An examination and audit of the investment pool shall be made separately from the audit of the treasurer for submission to the council, local governmental units which are investors in the pool, the Legislative Assembly and the board at least once a year and at other times as the council may require. An audit report shall be submitted to the individuals and units specified within 60 days after the end of the fiscal year or as soon as practical. The report shall include a statement prepared by the State Treasurer of the investment rules governing investments authorized by the council. [1973 c.748 §17; 1979 c.608 §6]

**294.882 Merger or subsequent separation of local government investment pool and state investment fund; preconditions.** It is recognized that a time might come when the interest of local governments diminishes to the extent that participation in the local government investment pool no longer warrants its operation as a separate fund. If the local government investment pool

decreases to a level below \$125 million, the State Treasurer may transfer the assets of the pool to the state investment fund established pursuant to ORS 293.701 (2)(q). In that event, the local government investment pool participant accounts will be treated as are other state funds and accounts in receiving a proportionate share of the earnings of that investment fund. The State Treasurer, at the discretion of the treasurer may reestablish the local government investment pool as a separate fund, if the participant accounts increase to over \$125 million and in the State Treasurer's judgment, sufficient interest by local government exists to insure the local government investment pool will remain over \$125 million. Prior to reestablishing the pool as a separate fund, the State Treasurer shall first present a plan for operation, including the reasons for such action, to the Oregon Investment Council at a regularly scheduled meeting for its review and comment. The State Treasurer shall publish notice in the Secretary of State's administrative rules bulletin of the treasurer's intent to reestablish the pool as a separate fund at least 30 days prior to the meeting at which the Oregon Investment Council shall review the proposal, and notice of the meeting time and location of the Oregon Investment Council at which the proposal will be discussed. [1979 c.608 §9; 1980 c.19 §7; 1983 c.456 §3]

**294.885 Oregon Short Term Fund Board; members; appointment; term; vacancies.** (1) There is created the Oregon Short Term Fund Board consisting of seven members.

(2) One member shall be the State Treasurer or the treasurer's designated representative. Three members who are qualified by training and experience in the field of investment or finance and who do not hold any other public office or employment, shall be appointed by the State Treasurer. Three members, who are treasurers, finance or fiscal officers or business managers of any county, city or school district, shall be appointed by the Governor. In making the appointment, the Governor may consider persons recommended by:

- (a) The Association of Oregon Counties.
- (b) The League of Oregon Cities.
- (c) The Oregon School Boards Association.

(3) The term of office of each appointed member of the board is four years, but each appointed member serves at the pleasure of the appointing authority. A vacancy in the appointed membership occurring other than by expiration of term shall be filled in the same manner as the original appointment,

but for the unexpired term only. [1973 c.748 §19; 1979 c.608 §7; 1981 c.880 §18; 1989 c.1006 §2]

**294.890 Board members serve without compensation; selection of chairman.** (1) A member of the board shall serve without compensation.

(2) The board shall select one of its members as chairman, for a term and with the powers and duties necessary for the performance of the functions of the office as the board shall determine. [1973 c.748 §20]

**294.895 Board duties, generally.** The board shall:

(1) Advise the council and the investment officer in the management of the investment pool and in the investment of all funds defined in ORS 293.701 (2)(r) and invested pursuant to ORS 293.721.

(2) Review the rules promulgated by the investment officer as authorized under ORS 294.825 (4).

(3) Consult with the council and the investment officer on any matter relating to the investment and reinvestment of funds in the investment pool and on any matter relating to the investment or reinvestment of funds defined in ORS 293.701 (2)(r) and invested pursuant to ORS 293.721. [1973 c.748 §21; 1981 c.880 §19]

## COUNCILS OF GOVERNMENTS

**294.900 "Council of governments" defined.** As used in ORS 294.900 to 294.930, "council of governments" means an entity organized by units of local government under an intergovernmental agreement under ORS 190.003 to 190.110, which does not act under the direction and control of any single member government and does provide services directly to individuals. [1987 c.666 §1]

**Note:** 294.900 to 294.930 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 294 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**294.905 Budget committee; membership; term; vacancies; officers; meetings to be public.** (1) A council of governments shall establish a budget committee in accordance with the provisions of this section.

(2) The budget committee shall consist of the members of the governing body of the council of governments and an equal number of representatives of the services provided by the council of governments. If there are fewer representatives of the services than the number of members of the governing body of the council, the governing body and the representatives willing to serve shall be the budget committee. If there are no representatives willing to serve, the governing body shall be the budget committee.

Incentive Under Consideration	Suggested Bonus Value (maximum percent of contract)
<ul style="list-style-type: none"> <li>• <i>Disadvantaged Business Enterprises/ Equal Employment Opportunity</i>, both state and federal mandates are address by the current program. (5% of the value of the qualifying DBE/EEO contracted services, up to the allowable maximum dollar amount, would be paid.)</li> </ul>	Recommended bonus . . . 2%
<ul style="list-style-type: none"> <li>• <i>Alaska Hire Program</i>, currently a state program which mandates the use of the local work force on state funded construction projects. (5% of the salaries – as documented in the certified payroll - for all alaskan workers, up to the allowable maximum dollar amount, would be eligible for a bonus.)</li> </ul>	Recommended bonus . . . 2%
<ul style="list-style-type: none"> <li>• <i>Alaska Bidder's Preference</i>, currently a state preference program within AS 36.30 which gives bidders residing in Alaska a bidding advantage over non-resident bidders. In its present form this is not an allowable incentive on federal aid contracts.</li> </ul>	Recommended bonus . . . 2%
<ul style="list-style-type: none"> <li>• <i>Alaska Products Preference</i>, currently a state preference program within AS 36.30 which gives bidders a bidding advantage when using products made in Alaska. In its present form this is not an allowable incentive on federal aid contracts. (3, 5 or 7% of the invoice amount – as documented by the manufacturer - for all alaskan products, up to the allowable maximum dollar amount, would be eligible for a bonus.)</li> </ul>	Recommended bonus . . . 2%
<ul style="list-style-type: none"> <li>• <i>Subcontracting</i>, currently the state requirements within AS 36.30 make it difficult, though not impossible, for non-resident subcontractors to work on state funded construction projects. An alternative to this approach is to reward prime contractors for using local subcontractors. (5% of the value of the qualifying alaskan subcontracted services, up to the allowable maximum dollar amount, would be paid.)</li> </ul>	Recommended bonus . . . 2%

**Bonus Program Details:**

The department has developed conceptual guidelines and parameters in each of the above incentive areas. We would be happy to share this information with lawmakers or assist them in whatever way possible.

**Example:**

A bridge project with an award amount of \$1,000,000 to resident bidder; locally manufactured materials valued at \$300,000; a local workforce payroll for the prime contractor of \$400,000; local subcontractor services valued at \$100,000; and DBE contracts valued at \$50,000 would produce the following bonus.

- Bidder's Preference for the prime yields a bonus of  $\$1,000,000 \text{ times } .02 = \$20,000.00$
- Alaska Product preference for locally manufactured concrete components with a manufactured value of \$300,000 and a DCED Class III certification yields  $\$300,000 \text{ times } .07 = \$21,000.00$ , but by specification this amount is capped at  $\$20,000.00$
- Alaska Hire based upon a certified payroll of \$400,000 yields  $\$400,000 \text{ times } .05 = \$20,000.00$
- Subcontracting Bonus based on subcontracts valued at \$100,000 yields  $\$100,000 \text{ times } .05 = \$5,000.00$
- DBE Subcontracting Bonus based on subcontracts valued at \$50,000 yields  $\$100,000 \text{ times } .05 = \underline{\$2,500.00}$   
Yields a subtotal Project bonus of  $= \$67,500.00$

But, the OVERALL PROJECT bonus is capped at 5%. Thus the maximum amount payable to the contractor on a \$1 million award is \$50,000.00

## 840 CMR 16.00: INVESTMENT ADVICE AND MANAGEMENT

## Section

- 16.01: Definitions
- 16.02: Employment of Investment Advisor
- 16.03: Authority of Investment Advisor to Invest Funds
- 16.04: Use of Securities Depository; Nominees
- 16.05: Review of Investment Performance
- 16.06: Notice to Cease and Desist

- These are the standard rules for investment advice and management promulgated by the Commissioner of Public Employee Retirement pursuant to M.G.L. c. 7, s. 50 and M.G.L. c. 32, ss. 21 and 23. Except as may otherwise be provided by the Commissioner, or by supplementary rules of a particular retirement board approved by the Commissioner pursuant to 840 CMR 14.02, or by statute, these rules shall govern investment advice and management provided to any retirement board in the Commonwealth.

16.01: Definitions

Unless a different meaning is plainly required by the context, words and phrases used in 840 CMR 16.00 to 840 CMR 22.00, inclusive, shall have the meanings assigned them by 840 CMR 16.01. If no meaning is assigned by this section they shall have the meanings assigned them by M.G.L. c. 32 and if no meaning is so assigned, they shall have their ordinary meanings.

(1) Fiduciary or retirement board fiduciary means any person who exercises any discretionary authority or discretionary control respecting management of the funds of any retirement system or exercises any authority or control respecting management or disposition of its assets, including, without limitation:

- (a) Any retirement board member;
- (b) Any retirement board staff member who exercises such authority or control;
- (c) Any investment advisor.

(2) Investment advisor means any person who provides investment advice to, or manages the funds of, a retirement system with or without compensation, including, without limitation, any retirement board member, fiduciary, employee, broker or agent who provides such advice or manages such funds.

(3) Person means an individual, partnership, joint venture, corporation, association, trust, estate or organization of members of a retirement system.

(4) Qualified investment advisor means an investment advisor who is:

- (a) registered as an investment advisor pursuant to the Investment Advisors Act of 1940 (15 U.S.C. 80b-1 et seq.);
- (b) a bank as defined by the Investment Advisors Act of 1940;
- (c) an insurance company qualified to manage, acquire or dispose of assets in a plan pursuant to the laws of more than one state; or
- (d) a person determined by the Commissioner of Public Employee Retirement to have an investment management record, including experience managing the investments of one or more Massachusetts public employee retirement systems, that qualifies such person to serve as an investment advisor; provided that any board seeking to employ as a qualified investment advisor any person qualifying under 840 CMR 16.01(4)(d) shall set forth, in writing, its justifications for doing so, and provided further that the commissioner, in making said determination, shall set forth in writing his justification for approving such person as a qualified investment advisor under 840 CMR 16.01(4)(c).

16.02: Employment of Investment Advisor

(1) Any board may employ a qualified investment advisor as defined in 840 CMR 16.01(4) to advise the board on investments or to manage the funds of the system.

16.02: continued

(2) No person who is not a qualified investment advisor as defined by 840 CMR 16.01(4) shall advise any board on investments or manage on behalf of any board the funds of any system.

(3) Any board may incur expenses for investment advice or management of the funds of the system by a qualified investment advisor and may charge such expenses against earned income from investments provided that such expenses shall not exceed in any one year:

- (a) 1% of the value of the fund for the first \$5 million, and
- (b) 0.5% of the value of the fund in excess of \$5 million.

16.03: Authority of Investment Advisors to Invest Funds

(1) Any retirement board may by vote authorize a qualified investment advisor as defined by 840 CMR 16.01(4) to invest and reinvest the funds of the system on behalf of the board:

- (a) on a transaction by transaction basis as directed by the board, or
- (b) on a monthly basis in accordance with the board's statement of investment objectives and such further direction as may be provided by the board.

(2) Every investment made by an investment advisor on behalf of a board shall comply with the requirements of M.G.L. c. 32, s. 23 and 840 CMR 16.00 through 21.00.

(3) Every board that authorizes an investment advisor to invest and reinvest the funds of the system on a monthly basis shall review such investments monthly and shall approve each investment transaction within thirty (30) days following settlement of the transaction.

16.04: Use of Securities Depository Nominees

(1) Any board may designate one or more banks or trust companies, organized under the laws of the Commonwealth or of the United States, custodian of the securities of the system and may designate as members of any nominee holding securities of the system any authorized employee of such custodian.

(2) Any board may authorize a custodian designated pursuant to 840 CMR 16.04(1) to place the securities of the system in a securities depository registered with the Securities and Exchange Commission for the purpose of facilitating security trading and certificate delivery.

16.05: Review of Investment Performance

(1) Every retirement board shall review the performance of system investments at least semi-annually.

(2) Every retirement board that has a qualified investment advisor shall at least semi-annually:

- (a) require its investment advisor to provide a comprehensive written report of investment performance.
- (b) review each such report in depth with its investment advisor.

16.06: Notice to Cease and Desist

If the Commissioner of Public Employee Retirement has reason to believe that any person including, without limitation, any board or member or investment advisor thereof is investing the funds of the system without being qualified to do so or otherwise in violation of any provision of M.G.L. c. 32, s. 23 and 840 CMR 16.00 through 22.00, inclusive, the Commissioner shall issue a notice to such person to cease and desist from doing so and, if the Commissioner finds that protection of system funds so require, he may:

- (1) Remove any such investment advisor.

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16.06: continued

(2) Revoke any exemption granted to such board pursuant to 840 CMR 19.05.

(3) Petition the superior court to compel the observance and restrain the violation of any provision of M.G.L. c. 22, s. 23 and of 840 CMR 16.00 through 22.00.

REGULATORY AUTHORITY

840 CMR 16.00: M.G.L. c. 7, s. 50;  
M.G.L. c. 22, ss. 21 and 22.

## 840 CMR 17.00: STANDARDS OF CONDUCT FOR FIDUCIARIES AND INVESTMENT ADVISORS

## Section

- 17.01: Bonding of Persons Having Access to Retirement Board Funds
- 17.02: Code of Ethics for Fiduciaries
- 17.03: Standards of Conduct for Fiduciaries
- 17.04: Standards of Conduct for Investment Advisors

These rules establishing standards of conduct for fiduciaries and investment advisors are promulgated by the Commissioner of Public Employee Retirement pursuant to M.G.L. c. 7, s. 50 and M.G.L. c. 32, ss. 21 and 23. Except as may otherwise be provided by the Commissioner, or by supplementary rules of a particular retirement board approved by the Commissioner pursuant to 840 CMR 14.02, or by statute, these rules shall govern the conduct of all retirement board fiduciaries and investment advisors. No person who is not a qualified investment advisor as defined by 840 CMR 16.01(4) shall provide investment advice to or manage the funds of any retirement system.

17.01: Bonding of Persons Having Access to Retirement Board Funds

All persons having access to retirement board funds shall be bonded in an amount sufficient to provide reasonable protection against losses due to fraud and dishonesty.

17.02: Code of Ethics for Fiduciaries

Fiduciaries shall subscribe and conform to the following code of ethics:

- (1) Fiduciaries should conduct themselves with integrity and act in an ethical manner in their dealings with the public, retirement board, employers, employees, and fellow fiduciaries.
- (2) Fiduciaries should conduct themselves and should encourage other fiduciaries to perform their functions in a professional and ethical manner that will reflect credit on themselves and their profession.
- (3) Fiduciaries should act with competence and should strive to maintain and improve their competence and that of others in their profession.
- (4) Fiduciaries should use proper care and exercise independent professional judgment.

17.03: Standards of Conduct for Fiduciaries

Every fiduciary shall know and comply with all applicable provisions of M.G.L. c. 268A governing the conduct of public officials and employees and shall conform to the standards of conduct prescribed by M.G.L. c. 268A, s. 23.

- (1) Every fiduciary shall:
  - (a) Discharge his or her duties for the exclusive purpose of providing benefits to retirement system members and their beneficiaries;
  - (b) Act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims;
  - (c) Diversify investments of the retirement system so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so;
  - (d) Operate in accordance with retirement system procedures, documents and instruments; and
  - (e) Inform each retirement system investment advisor of the Code of Ethics and Standards of Conduct applicable to investment advisors pursuant to 840 CMR 17.02 and 17.04.

17.03: continued

- (2) No fiduciary shall:
- (a) Receive additional compensation for services as a retirement board fiduciary if he or she is employed full-time by an employer whose employees are members of that retirement system except as otherwise provided by law;
  - (b) Deal with retirement system assets for his or her own account or in his or her own interest;
  - (c) Act in any manner affecting a retirement system on behalf of any person or organization whose interests are adverse to the interests of the system, its members or beneficiaries;
  - (d) Receive any thing of value for his or her own personal account from any person or organization in connection with a transaction involving retirement system assets;
  - (e) Cause a retirement system to engage in a transaction which involves, directly or indirectly, a sale, exchange, lease or transfer of assets to or from, or the use of assets by or for the benefit of, or the furnishing of goods, services or facilities to or by, or the lending of money or extension of credit to or by, a party in interest. A party in interest includes:
    - 1. any board member, fiduciary, employee, broker, agent or person providing services to the board;
    - 2. any organization of members of the retirement system;
    - 3. any corporation, partnership, or trust or estate of which or in which 10 percent or more of --
      - a. the voting stock or value of all stock of such corporation,
      - b. the interest in capital or profits of such partnership, or
      - c. the beneficial interest of such trust or estate, is owned directly or indirectly by persons described in 840 CMR 17.03(2)(e)1.;
    - 4. any spouse, ancestor, lineal descendant, or spouse of a lineal descendant of any individual described in 840 CMR 17.03(2)(e)1.

17.04: Standards of Conduct for Investment Advisors

- (1) Compliance with Applicable Law, Regulations, Code of Ethics and Standards of Conduct.
- (a) Knowledge of and Compliance with Applicable Law, etc. Every investment advisor shall maintain knowledge of and shall comply with all applicable laws and rules and regulations, including rules and regulations of any self-regulatory agency of the profession, and the Standards of Conduct of 840 CMR 17.03 and 17.04 and the Code of Ethics of 840 CMR 17.02.
  - (b) Assisting Legal and Ethical Violations Prohibited. No investment advisor shall knowingly participate in, or assist any act in violation of any statute or regulation governing securities matters or any act in violation of the Code of Ethics of 840 CMR 17.02 or the Standards of Conduct of 840 CMR 17.03 and 17.04.
  - (c) Use of Material Non-public Information Prohibited. Every investment advisor shall comply with all laws and regulations relating to the use of material non-public information. No investment advisor shall communicate or take investment action on the basis of such information until it is publicly disseminated and any investment advisor who acquires such information, other than as a result of a special or confidential relationship with an issuer, shall make reasonable efforts to achieve public dissemination of such information by the issuer.
- (2) Supervision of Employees. Every investment advisor shall exercise reasonable supervision over employees and agents subject to his or her control to prevent violation by such persons of applicable statutes, regulations, the Code of Ethics of 840 CMR 17.02 and the Standards of Conduct of 840 CMR 17.03 and 17.04.
- (3) Investment Recommendations and Actions.
- (a) Reasonable Judgment. Every investment advisor shall exercise diligence and thoroughness in making investment recommendations and in taking investment actions for a retirement board and shall:
    - 1. have a reasonable and adequate basis for each investment recommendation and action, supported by appropriate research and

17.04: continued

investigation; and

2. maintain appropriate records to support the reasonableness of each investment recommendation and action.

(b) Portfolio Investment Recommendations and Actions. Every investment advisor shall, when making an investment recommendation or taking an investment action for any portfolio or retirement board, consider its appropriateness and suitability for that particular portfolio or board. In doing so, the investment advisor shall take into account the needs and circumstances of the board, the basic characteristics of the total portfolio and the basic characteristics of the investment involved. An investment advisor shall use reasonable judgment in determining the factors to be considered and the weight to be given to each factor and shall distinguish between fact and opinion in presenting investment recommendations.

(4) Misrepresentation Prohibited. No investment advisor shall make any statement, orally or in writing, which materially misrepresents the services that the investment advisor is capable of performing for the board, the qualifications of the investment advisor, the investment performance that the investment advisor has achieved or can be expected to achieve for the board or the expected performance of any investment. No investment advisor shall make any unsupported statement concerning these matters or any statement, orally or in writing, about any investment which guarantees or conveys any unsupported assurances, explicitly or implicitly.

(5) Fair Dealing With Retirement Boards. Every investment advisor shall act in a manner consistent with the investment advisor's obligation to deal fairly with a board when making investment recommendations, making material changes in prior investment advice, and taking investment action.

(6) Priority of Transactions. Every investment advisor shall conduct himself or herself in such a manner that transactions for the retirement board have priority over personal transactions, and that personal transactions do not operate adversely to the board's interest. An investment advisor making a recommendation about the purchase or sale of a security shall give the board at least two business days to act on this recommendation before acting on the investment advisor's own behalf.

(7) Disclosure of Conflicts.

(a) An investment advisor, when making an investment recommendation, or taking an investment action, shall disclose to the board in writing any conflict of interest the investment advisor may have and any beneficial ownership of the securities involved which could reasonably be expected to impair the investment advisor's ability to render unbiased and objective advice.

(b) An investment advisor shall disclose to the board in writing all matters which could reasonably appear to interfere with the investment advisor's duty to the board or ability to render unbiased and objective advice.

(c) An investment advisor shall also comply with all requirements as to disclosure of conflicts of interest imposed by law and by rules and regulations of organizations governing the activities of investment advisors and shall comply with any prohibitions on such activities if a conflict of interest exists.

(8) Compensation.

(a) Disclosure of Additional Compensation Arrangements. An investment advisor shall inform the board of any arrangements for compensation by others in connection with the investment advisor's services to the board.

(b) Disclosure of Referral Fees. An investment advisor shall disclose to the board any consideration paid or expected to be paid to others for recommending the services of the investment advisor to the board.

(9) Relationships with Others.

(a) Preservation of Confidentiality. An investment advisor shall preserve the confidentiality of information communicated by the board concerning matters within the scope of the confidential relationship, unless the

17.04: continued

investment advisor receives information concerning illegal or potentially illegal activities on the part of any fiduciary or employee of the board. Any knowledge of illegal or potentially illegal activities on the part of any fiduciary or employee of the board shall be conveyed to all the members of the board and the Commissioner of Public Employee Retirement.

(b) Maintenance of Independence and Objectivity. An investment advisor, in relationships and contracts with an issuer of securities, whether individually or as a member of a group, shall use particular care and good judgment to achieve and maintain independence and objectivity.

(10) Enforcement and Liability.

(a) Every investment advisor shall be deemed to have agreed with the retirement board:

1. to be liable to the board for any losses due to any violation of the provisions of M.G.L. c. 32, s. 23 or of 840 CMR 16.00 to 22.00 including, without limitation, any violation of the Code of Ethics of 840 CMR 17.02 or the Standards of Conduct of 840 CMR 17.03 and 17.04;

2. to be subject to removal as an investment advisor by the Commissioner of Public Employee Retirement in the event that the Commissioner determines that the investment advisor has violated any of the provisions of M.G.L. c. 32, s. 23 or of 840 CMR 16.00 to 22.00 including, without limitation, any provision of the Code of Ethics of 840 CMR 17.02 or the Standards of Conduct of 840 CMR 17.03 and 17.04; and

3. that neither the board nor the Commissioner of Public Employee Retirement shall be liable to the investment advisor for any such loss, by way of indemnity or otherwise, or for any such removal.

(b) No investment advisor removed by the Commissioner pursuant to 840 CMR 17.04(10)(a)2. shall continue to serve or be employed as an investment advisor by any other retirement board except as may otherwise be authorized by the Commissioner.

REGULATORY AUTHORITY

850 CMR 17.00: M.G.L. c. 7, s. 50;  
M.G.L. c. 32, ss. 21 and 23.

840 CMR 18.00: STATEMENT OF INVESTMENT OBJECTIVES

Section

- 18.01: General Requirement
- 18.02: Matters to be Included in Statement of Investment Objectives
- 18.03: Alternative Time Horizons
- 18.04: Updates of Statement of Investment Objectives

18.01: General Requirement

Every board shall, on or before March 31, 1985 and, on or before December 31, 1988 and every fourth year thereafter, file a statement of investment objectives and shall, on or before December 31 of every other year, file a statement updating the most recently filed statement of investment objectives.

18.02: Matters to be Included in Statement of Investment Objectives

Every statement of investment objectives shall be filed on Form 18-1, shall cover the three (3) year period starting January 1 of the year following the year for which the statement is filed, and shall include the following information:

- (1) Fiduciaries. The name, address, background and responsibilities of each retirement board fiduciary, including any investment advisor employed or expected to be employed by the board;
- (2) Investment Advisor. The terms of employment and compensation of any investment advisor and any retirement board fiduciary receiving additional compensation as a fiduciary;
- (3) Investment Policy. A statement of investment policy indicating how investment objectives are to be accomplished including the investment philosophy and method of investment, whether an investment advisor will be employed and, if so, the method of selection to be used, and including the method to be used to select brokers on a competitive basis for investment transactions;
- (4) Rate of Return. A statement of the rate of return objective for the entire portfolio which shall be at least one per cent (100 basis points) greater than a composite performance index consisting of thirty per cent of the Standard and Poors "500" Stock Index and seventy per cent of the Shearson Lehman Government/Corporate Bond Index, cumulated quarterly;
- (5) Risk. The expected level of risk for the equity portion of the portfolio expressed in terms of an annual average beta coefficient with 1.0 equal to market volatility which, for boards partially or wholly exempt from statutory investment restrictions pursuant to 840 CMR 18.05, shall be not less than .70 nor more than 1.15 as determined in accordance with the beta service approved by the Commissioner;
- (6) Asset Mix. The expected portfolio asset mix, expressed as a percentage of the entire portfolio, of equities, fixed income investments and cash and short term investments;
- (7) Diversification. The expected degree of diversification by asset class for equities, fixed income investments and cash and short term investments; and
- (8) Other. Such further information as may be required pursuant to 840 CMR 18.03 of these rules or as may otherwise be required by the Commissioner of Public Employee Retirement.

18.03: Alternative Time Horizons

Any board and any investment advisor employed by a board may use time horizons other than the three (3) year period prescribed by 840 CMR 18.02 for establishing investment objectives and measuring performance but, in this event,

18.03: continued

the information required by 840 CMR 18.02 shall be stated both with respect to the time horizon so used and with respect to the three year period prescribed by 840 CMR 18.02.

18.04: Updates of Statement of Investment Objectives

Every statement updating a statement of investment objectives shall be filed on Form 16-2, shall cover the period since the next preceding statement of investment objectives or updating statement, as the case may be, and shall include all changes in the information required to be included in the most recently filed statement of investment objectives since that statement or the most recently filed updating statement was filed.

REGULATORY AUTHORITY

840 CMR 18.00: M.G.L. c. 7, s. 50;  
M.G.L. c. 32, ss. 21 and 23.

## 840 CMR 19.00: EXEMPTION FROM INVESTMENT RESTRICTIONS

## Section

- 19.01: Application for Exemption
- 19.02: Matters to be Included in Application
- 19.03: Determination of Qualifications of Investment Advisor; Review of Application
- 19.04: Rating of Investment Performance and Qualifications
- 19.05: Partial, or Complete Exemption by Commissioner
- 19.06: Change of Investment Advisor
- 19.07: Revocation of Exemption

19.01: Application for Exemption

Any board may apply for exemption from the restrictions on investments of M.G.L. c. 32, s. (2)(b), Clause (i) to (vii), inclusive, by filing an application on Form 19-1 with the Commissioner of Public Employee Retirement. A board having more than one investment advisor shall include in its application the information required by 840 CMR 19.02 with respect to each investment advisor.

19.02: Matters to be Included in Application

Every application for exemption shall include the following information:

- (1) The past performance of the board's investment advisor, if any, over the five (5) year period preceding the year of application expressed as a five (5) year compound annual time weighted rate of return of fixed income, equity, and cash and cash equivalent investments of all client portfolios during the period.
- (2) The professional qualifications of the investment advisor including any professional degrees, memberships in professional associations and teaching, research and other academic positions held in the fields of financial and economic analysis.
- (3) The investment advisor's experience with public and private pension accounts, indicating whether the investment advisor has previously managed public pension fixed income, equity and cash and cash equivalent accounts, and private pension accounts.
- (4) Whether the investment advisor is registered under the Investment Advisor's Act of 1940.
- (5) The investment advisor's review and control procedures indicating whether the investment advisor:
  - (a) has computer capability permitting daily pricing of portfolios.
  - (b) has access to a financial news service.
  - (c) does daily analysis of market conditions, individual issues and interest rates.
- (6) The investment advisor's procedures for daily supervision of portfolios indicating whether the investment advisor has one or more in-house analysts who are members of the Financial Analysts Federation and qualified to analyze:
  - (a) Fixed income investments by industry.
  - (b) Equity investments by industry.
  - (c) Cash and cash equivalent investments.
  - (d) Economic conditions.
  - (e) Market trends.
  - (f) Portfolios.
- (7) The investment advisor's trading capability indicating whether the investment advisor has trading capability for fixed income, equity and cash and cash equivalent investments.
- (8) Such other information as the Commissioner of Public Employee Retirement may require.

19.03: Determination of Qualifications of Investment Advisor: Review of Application

(1) Investment Advisor. The Commissioner of Public Employee Retirement shall determine, for every application for exemption, whether the board has a qualified investment advisor as defined by 840 CMR 16.01(4).

(2) Review of Application. If the Commissioner determines that the board has a qualified investment advisor, he shall review the information contained in the application for exemption, consider the diversification of the mix of the investments of the board, and rate the investment performance of the board and the investment performance and professional qualifications of the investment advisor in accordance with 840 CMR 19.04.

19.04: Rating of Investment Performance and Qualifications

In rating investment performance and qualifications the Commissioner of Public Employee Retirement shall assign points as follows:

	<u>Total Points Possible</u>
(1) <u>Investment Performance of Board</u>	
(a) Average return (yield) on investments relative to the median average return (yield) of all boards for the two years next preceding January 1 of the year of application.	20
1. greater than median + 1.5%	20
2. greater than median + .75% to median + 1.5%	15
3. greater than median to median + .75%	10
4. greater than median - .75% to median	5
5. median - .75% or lower	0
(b) Two year compound annual time weighted rate of return of investment portfolio for the two years next preceding January 1 of the year of application.	10
1. greater than or equal to Salomon Brothers High Grade Long Term Bond Index or greater than or equal to the Shearson Lenman/American Express Government/Corporate Bond Index.	10
2. less than both indexes.	0
(2) <u>Investment Performance of Investment Advisor</u>	
(a) Five (5) year compound annual time weighted rate of return of fixed income investments for the five years next preceding January 1 of the year of application.	5
1. greater than or equal to the Salomon Brothers High Grade Long Term Bond Index or greater than or equal to the Shearson Lenman/American Express Government/Corporate Bond Index.	5
2. less than both indexes.	0
(b) Five (5) year compound annual time weighted rate of return of equity investments for the five years next preceding January 1 of the year of application.	5
1. greater than or equal to the Standard and Poors "500" Stock Composite Index.	5
2. less than the index.	0
(c) Five year compound annual time weighted rate of return of cash and cash equivalent investments for the five years next preceding January 1 of the year of application.	5
1. greater than or equal to 90 day Treasury Bills.	5
2. less than 90 day Treasury Bills.	0

840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

19.04: continued

	<u>Total Points Possible</u>
(3) <u>Professional Qualifications of Investment Advisor.</u> Investment advisor is, or has at least one full-time staff member who is, a Chartered Financial Analyst, a member of the Financial Analysts Federation, or a teacher, dean or research fellow in the field of financial or economic analysis at a college or university.	5
(a) If yes	5
(b) If no	0
(4) <u>Pension Accounts Managed by Investment Advisor.</u> Public and private pension accounts managed by investment advisor as of the year preceding the year of application.	5
(a) Public fixed income accounts.	
1. If managed	1
2. If not	0
(b) Public equity accounts	
1. If managed	1
2. If not	0
(c) Public cash and cash equivalent accounts.	
1. If managed	1
2. If not	0
(d) Private pension accounts	
1. If managed	2
2. If not	0
(5) <u>Registration of Investment Advisor Under the Investment Advisors Act of 1940.</u>	5
(a) If registered	5
(b) If not	0
(6) <u>Investment Advisor's Review and Control Procedures.</u> Investment advisor's review and control procedures include:	10
(a) Computer capability permitting daily pricing of portfolios	
1. If yes	4
2. If no	0
(b) Access to a financial news service	
1. If yes	3
2. If no	0
(c) Daily analysis of	
1. Market conditions	
a. If yes	1
b. If no	0
2. Individual issues	
a. If yes	1
b. If no	0
3. Interest rates	
a. If yes	1
b. If no	0

19.04: continued

	<u>Total Points Possible</u>
(7) <u>Daily Supervision of Portfolio.</u>	
(a) Investment advisor is, or has at least one full-time staff person who is, a member of the Financial Analysts Federation and is qualified to analyze:	24
1. Fixed income investments by industry	
a. If yes	4
b. If no	0
2. Equity Investments by industry	
a. If yes	4
b. If no	0
3. Cash and cash equivalent investments	
a. If yes	4
b. If no	0
4. Economic conditions	
a. If yes	4
b. If no	0
5. Market trends	
a. If yes	4
b. If no	0
6. Portfolios	
a. If yes	4
b. If no	0
(B) Investment advisor has trading capability in:	6
(a) Fixed income investments	
1. If yes	2
2. If no	0
(b) Equity Investments	
1. If yes	2
2. If no	0
(c) Cash and cash equivalent investments	
1. If yes	2
2. If no	0
	<hr/> 100

19.05: Partial, or Complete Exemption by Commissioner

The Commissioner shall grant exemption from the restrictions on investment of M.G.L. c. 32, s. 23(2)(b), Clause (i) to (vii), inclusive, as follows:

(1) Complete Exemption. Boards assigned 70 points or more pursuant to 840 CMR 19.04 shall be granted complete exemption.

(2) Partial Exemption.  
 (a) Boards assigned 60 points or more but less than 70 points pursuant to 840 CMR 19.04 shall be granted exemption with respect to 50% of the market value of their portfolio.  
 (b) Boards assigned 50 points or more but less than 60 points pursuant to 840 CMR 19.04 shall be granted exemption with respect to 25% of the market value of their portfolio.

(3) No Exemption. Boards assigned less than 50 points pursuant to 840 CMR 19.04 shall be granted no exemption.

(4) PRIT Fund Purchase. Pursuant to M.G.L. c. 32, s. 23(2)(g) all retirement systems are authorized to purchase shares in the PRIT fund.

19.06: Change of Investment Advisor

Any board granted partial or complete exemption pursuant to 840 CMR 19.05 that terminates its investment advisor or changes investment advisors shall file an application for continued exemption on Form 19-1 with the Commissioner of Public Employee Retirement. Unless the board's exemption is sooner revoked pursuant to 840 CMR 19.07, the exemption shall remain in effect pending the Commissioner's determination of the application for continued exemption.

19.07: Revocation of Exemption

If the Commissioner has reason to believe that a board granted partial or complete exemption pursuant to 840 CMR 19.05, or the investments of any such board, do not comply with the requirements of M.G.L. c. 32, s. 23(3), or with the requirements of 840 CMR 4.00 to 4.03, or 840 CMR 16.06, or 840 CMR 17.00 to 17.04, or 840 CMR 20.00 to 20.09 or 840 CMR 21.00, he may require the board to show cause why the exemption should not be revoked. If the board fails to establish that its investments do so comply, the Commissioner may revoke the exemption and the board shall thereafter be subject to the restrictions on investments of M.G.L. c. 32, s. 23(2)(b), Clause (i) to (vii), inclusive.

19.08: Right of Appeal

Any board aggrieved by a decision of the Commissioner pursuant to 840 CMR 19.05 through 19.07, inclusive, shall have the right of appeal to the Commissioner. Rejection of said appeal by said Commissioner shall constitute exhaustion of administrative relief for the purposes of M.G.L. c. 221A.

REGULATORY AUTHORITY

840 CMR 19.00: M.G.L. c. 7, s. 50;  
M.G.L. c. 22, ss. 21 and 23.

## 840 CMR 20.00: STANDARD RULES FOR INVESTMENTS BY EXEMPT BOARDS

## Section

- 20.01: Standard of Care
- 20.02: Standard of Risk
- 20.03: Portfolio Asset Mix
- 20.04: Quality of Investments
- 20.05: Diversification of Investments
- 20.06: Bond Investments
- 20.07: Equity Investments
- 20.08: Cash and Short Term Investments
- 20.09: Venture Capital Investments

These are the standard rules for investments by retirement systems investing in accordance with M.G.L. c. 32, s. 23 and which are partially or completely exempt from the provisions of M.G.L. c. 32, s. 23 (2)(b), Clause (i) to (vii), inclusive. These rules are promulgated by the Commissioner of Public Employee Retirement pursuant to M.G.L. c. 7, s. 50 and M.G.L. c. 32, ss. 21 and 23. Except as may otherwise be provided by the Commissioner, or by supplementary rules of a particular retirement board, approved by the Commissioner pursuant to 840 CMR 14.02, or as otherwise in accordance with M.G.L. c. 32, s. 23(2)(b), these rules shall govern all investments by boards granted complete exemption, and shall govern the exempt portion of investments by boards granted partial exemption, pursuant to 840 CMR 19.05.

20.01: Standard of Care

Investments shall be made and all investment action shall be taken with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and by diversifying the investments of the system so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

20.02: Standard of Risk

The equity portion of a board's portfolio shall not be exposed to risks that exceed an annual average beta coefficient of 1.15 where 1.0 is equal to market volatility.

20.03: Portfolio Asset Mix

- (1) Equity investments shall not exceed 40% of the total book value of the portfolio at the time of purchase.
- (2) At least 40% but no more than 80% of the total portfolio valued at market shall consist of fixed income investments with a maturity of more than one year.
- (3) Cash and short term investments with a maturity of one year or less shall not exceed 40% of the total portfolio valued at market.

20.04: Quality of Investments

All investments shall consist of recognized quality marketable securities issued by:

- (1) United States based corporations.
- (2) Obligations issued and guaranteed by the United States Government.
- (3) Obligations of United States Government agencies.
- (4) Obligations issued and guaranteed by the Commonwealth of Massachusetts and local governments located within the Commonwealth of Massachusetts.

20.04: continued

(5) Obligations issued by agencies of the Commonwealth of Massachusetts or local governments located within the Commonwealth of Massachusetts.

20.05: Diversification of Investments

(1) Assets shall be diversified by asset class among fixed income, cash and short term investments and equity investments.

(2) At no time shall an investment in securities, other than securities issued and guaranteed by the United States Government, the Commonwealth of Massachusetts, local governments located within the Commonwealth of Massachusetts, or their agencies, exceed ten percent of all classes of securities issued by a single issuer.

20.06: Bond Investments

(1) Fixed income investments shall be diversified by industry and by maturity.

(2) Bonds shall have a minimum quality rating of BAA or equivalent as rated by one or more recognized bond rating service.

(3) At least 75% of the fixed income investments at all times shall carry a quality rating of A or equivalent or higher.

(4) Fixed income holdings which are downgraded by one or more recognized rating services to below a BAA or equivalent rating must be sold within a reasonable period of time not to exceed one year.

(5) No more than 5% of the total market value of all investments shall be invested in the debt obligations of any one fixed income issuer except for securities issued and guaranteed by the United States Government, or its agencies, which may be held without limitation.

(6) Bonds issued and guaranteed by the Commonwealth of Massachusetts and local governments located within the Commonwealth of Massachusetts, or by their agencies, may be held without limitation.

(7) Fixed income investments shall be made only in issues with an outstanding value of at least \$50 million, valued at par, at the time of purchase.

(8) Purchases and sales of fixed income investments with maturities exceeding one year shall not exceed 100% of the market value of all fixed income obligations in any twelve month period, excluding cash and short term obligations.

(9) Fixed income investments may be sold at a loss pursuant to 840 CMR 22.00.

20.07: Equity Investments

(1) The issuer of equity securities must have a publicly available operating record of at least five years, including past performance resulting from mergers, acquisitions, and spinoffs.

(2) At least 75% of the market value of equity investments shall be in companies for which the market value of the outstanding equity exceeds \$100 million.

(3) Equity investments shall consist of no fewer than 20 holdings diversified by industry.

(4) No more than 5% of the total book value of equity investments shall be invested in the equity securities of any one company.

(5) Equity investments shall be made only in securities listed on a United States stock exchange or traded over the counter in the United States.

20.07: continued

- (6) Purchases and sales of equity investments shall not exceed 50% of the average market value of all equity holdings in any twelve month period.
- (7) Equity holdings may be sold at a loss.
- (8) Commingled or mutual funds may be used to achieve the desired degree of diversification.
- (9) Commingled real estate equity funds shall not exceed 5% of the total book value of the portfolio at the time of purchase.

20.08: Cash and Short Term Investments

- (1) Cash and cash equivalent investments shall be made only in:
  - (a) money market funds;
  - (b) securities rated A-1 by Moody or P-1 by Standard and Poors or better by a recognized credit rating service;
  - (c) in insured bank deposits;
  - (d) repurchase agreements, provided there is evidence of a pledge of Treasury securities matching the repurchase agreement by reason of non-duplicated depository receipt; or provided the board takes physical possession of the pledged Treasury securities.

20.09: Venture Capital Investments

- (1) Venture capital investments shall not exceed 3% of the total market value of the portfolio at the time of the investment provided that in any system with assets in excess of nineteen million dollars, venture capital investments may be made up to an amount equal to five percent of the total market value of the portfolio at the time of investment.
- (2) Venture capital investments shall only be made in venture capital funds operated by venture capital firms having their principal places of business in Massachusetts.
- (3) All venture capital investments shall be made in companies which have their principal places of business in Massachusetts.
- (4) No more than 10% of the venture capital monies placed with any one firm may be invested in the securities of any one enterprise.
- (5) All venture capital investments must achieve a measure of risk reduction through syndication of investments.
- (6) For diversification, systems may commingle venture capital funds.
- (7) To the extent consistent with sound investment practice, and in accordance with the standards of fiduciary responsibility applicable to this section, systems shall endeavor to make all venture capital investments in areas of the Commonwealth in which unemployment exceeds 150% of the statewide average, or which are characterized by other indications of economic blight; provided further that to the extent consistent with sound investment practice, and in accordance with the standards of fiduciary responsibility applicable to this section, said investments shall be likely to lead to significant job creation.

REGULATORY AUTHORITY

840 CMR 20.00: M.G.L. c. 7, s. 50;  
M.G.L. c. 32, ss. 21 and 23.

## 840 CMR 21.00: PROHIBITED INVESTMENTS

These rules establish a list of prohibited investments for retirement system funds invested pursuant to M.G.L. c. 32, s. 23. Except as may otherwise be provided by the Commissioner, or by supplementary rules of a particular retirement board approved by the Commissioner pursuant to 840 CMR 14.02, or by statute, these rules shall prohibit the investment of retirement system funds invested pursuant to M.G.L. c. 32, s. 23, whether or not exempt pursuant to 840 CMR 19.05, in any of the following investments at any time:

- (1) Purchases of securities by partial payment of their cost (purchases on margin).
- (2) Sale of securities not owned by the system at the time of sale (short sales).
- (3) Futures contracts.
- (4) Call options written against securities in the portfolio other than as follows:
  - (a) Call options may be written against securities in the portfolio by an investment advisor registered under the Investment Advisors Act of 1940.
  - (b) Call options may be written against securities in the portfolio to a maximum of 25% of the market value of the equity portfolio.
  - (c) Only options listed on a registered exchange may be written.
- (5) Purchases of options other than as required to close out options positions.
- (6) Lettered or restricted stock (with the exception of those investments that are venture capital investments).
- (7) Mortgages.
- (8) Collateral loans including leverage buy-outs.
- (9) Loans to employees or individuals.
- (10) Direct purchase or lease of real estate.

## REGULATORY AUTHORITY

840 CMR 21.00: M.G.L. c. 7, s. 50;  
M.G.L. c. 32, ss. 21 and 23.

840 CMR 22.00: RECOGNITION OF GAINS AND LOSSES ON FIXED INCOME INVESTMENTS; TRANSFERS TO PRIT FUND

Section

- 22.01: General Rules; Exemptions
- 22.02: Fixed Income Investments Not Paying Income
- 22.03: Certain Exchanges Defined
- 22.04: Recognition of Gain or Loss on Exchange of Fixed Income Securities
- 22.05: Recognition of Gain or Loss on Transfer of Assets to PRIT Fund

These are the standard rules for recognizing gains and losses on the sale or exchange of fixed income investments of boards and on the transfer of assets by boards to the PRIT fund promulgated by the Commissioner of Public Employee Retirement pursuant to M.G.L. c. 7, s. 50 and M.G.L. c. 22, ss. 21 and 23. Except as may otherwise be provided by the Commissioner, or by supplementary rules of a particular retirement board approved by the Commissioner pursuant to 840 CMR 14.02, or by statute, these rules shall govern the recognition by all retirement boards of gains or losses on fixed income investments and on assets transferred to the PRIT fund.

22.01: General Rules; Exemptions

Gains and losses on fixed income investments shall be recognized at the time such investments are sold except as provided in 840 CMR 22.02, 22.04 and 22.05.

22.02: Fixed Income Investments Not Paying Income

Any fixed income investment that fails to pay income according to its terms for a period of one year shall be recognized as a loss in the amount of book value less market value, if any, as of the next following December 31. A gain or loss shall be recognized as of each December 31 thereafter in the amount by which market value exceeds or is less than, respectively, book value at that time.

22.03: Certain Exchanges Defined

(1) Exchange of Fixed Income Securities. A purchase of one fixed income security and sale of another is an exchange for purposes of 840 CMR 22.02 to 22.05, inclusive, if each security has a time to maturity of at least three years and such purchase and sale:

- (a) are planned simultaneously, each being undertaken in contemplation of the other and each executed on condition that the other be executed,
- (b) are made on the same day although settlement may occur on different dates,
- (c) result in an increase in the net yield to maturity or in the quality of the security held, and
- (d) do not result in lowering the quality of the security held more than one investment grade below the quality of the security sold.

(2) Transfer of Assets to PRIT Fund. A transfer of assets of a participating retirement system to the Pension Reserves Investment Trust fund pursuant to M.G.L. c. 22, s. 22 is an exchange.

- (a) On a quarterly basis, the board shall file form 22-1, Explanation of Bond Exchange for Amortization of Gains/Losses, for all exchanges of fixed income securities pursuant to 840 CMR 22.03(1).

(3) Failure to Classify Gains as Exchanges. If the Commissioner has reason to believe that a retirement system has failed to properly classify the transaction whereby the purchase of one fixed income security and the sale of another results in a gain, as an exchange, he shall declare such gain subject to the amortization provided for in 840 CMR 22.04.

22.04: Recognition of Gain or Loss on Exchange of Fixed Income Securities

(1) Amortization of Annual Gains and Losses. Gains and losses from all exchanges of fixed income securities during a calendar year shall be amortized

22.04: continued

over the average time to maturity for such exchanges, as determined pursuant to Section 22.04 (2), or ten years, whichever is less.

(2) Average Time to Maturity. The average time to maturity for exchanges during a calendar year is determined by a division. The numerator is the sum of the products for all such exchanges of the market value at the time of exchange of the security having the shorter time to maturity and the time to maturity of such security. The divisor is the sum of the market values of such securities at the time of exchange.

22.05: Recognition of Gain or Loss on Transfer of Assets to PRIT Fund.

Gains and losses on a transfer of assets to the PRIT fund shall be combined for all assets transferred. The net gain shall be realized at the time of the transfer; the net loss shall be amortized over ten years.

REGULATORY AUTHORITY

840 CMR 22.00: M.G.L. c. 7, s. 50;  
M.G.L. c. 22, ss. 21 and 23.

840 CMR 23.00: RECOGNITION OF GAINS AND LOSSES

Section

23.01: Amortization Schedule

23.02: Definition of Realized Gains or Losses and Unrealized Gains and Losses

23.01: Amortization Schedule

The actuary may, in the determination of the appropriation amounts pursuant to M.G.L. c. 32, s. 22(3)(d) or, for the state employees' retirement system, the teachers' retirement system and those systems who have elected to adopt M.G.L. c. 32, s. 22D, in the determination of a funding schedule, amortize realized gains and losses and unrealized gains and losses over a period of five years or any other period of time as prescribed by the Commissioner.

23.02: Definition of Realized Gain or Loss and Unrealized Gain or Loss

Pursuant to 840 23.01, a realized gain (loss) is any profit (loss) sustained on the sale or maturity of any investment of any system, due to the amount received being more (less) than the book value on the date of its sale or maturity. An unrealized gain (loss) is any amount by which the market value of any investment required to be valued at its market value pursuant to M.G.L. c. 32, s. 21, paragraph (b) is more (less) than the value at which such investment was included in the assets of the system on the date of the last previous valuation.

REGULATORY AUTHORITY

840 CMR 23.00: M.G.L. c. 7, s. 50; c. 32, s. 21.

# Alaska State Legislature

Senator Tim Kelly, Chair  
Senator Steve Hieger, Vice Chair  
Senator Bert Sharp  
Senator Judy Salo  
Senator Georgianna Lincoln



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## SPONSOR STATEMENT

### SB 212: "BUY ALASKA" LEGISLATION

State government is one of the largest purchasers of goods and services in the Alaskan economy, purchasing everything from road design and construction services to copy machines and paper and pencils. The use of services and products provided by Alaskan businesses stabilizes and diversifies Alaska's economy.

SB 212 aims to help strengthen Alaska's economy by increasing the share of State government's contracts for goods and services going to Alaskan businesses.

Specifically, this legislation would establish an Innovative Construction Procurement Methods Pilot Program within the DOT/PF for a period of two years to implement an Alaska Bonus Program to replace the current preferences.

Current incentives include the Alaskan Bidders Preference, Alaska Subcontracting, Disadvantage Business Enterprises/Equal Employment Opportunity programs, and Alaska Products Preference, and the Alaska Hire Program. The latter two are largely unworkable and consequently underutilized or not utilized at all. Allowing the DOT/PF to test on a trial basis a bonus system which provides bonuses at project completion and encourages the same policy goals would be more economically beneficial for vendors, reduce administrative costs and bid protests, and could likely be used in joint federal/state projects where State preferences are currently not allowed.

The commissioner would establish this program through regulation and report to the legislature on the program's progress 15 and 27 months after implementation. If successful, the legislature could expand and extend this program indefinitely, replacing the current preferences.

Lastly, this bill incorporates a number of provisions from the "Make-It-Alaskan" legislation from the 17th Legislature, House Bill 245, which would also increase the amount of State work going to Alaskans. This bill would:

- 1) Encourage procurement officers to restrict notice of contract solicitation to Alaskan suppliers and providers of services desiring to compete for state contract work. (This practice is already standard in DOT/PF);
- 2) Require the commissioner to include in his report to the legislature on State procurements the number of bidders located in-state and out-of-state that bid or made proposals on procurements;
- 3) Replace the statutory requirement that State publications be produced at State-operated facilities with a requirement that State publications be produced at a private sector facility located in the State when practicable. In addition, standards for the production of publications would be established by the Department of Administration, and a cost box would be required for all publication's exceeding \$1,500 in cost.

Discussion Bullets for:

## Procurement Code Modifications to Implement a State Bonus Program

### Background:

For several years those agencies conducting public works contracts have been concerned over the effectiveness of incentive programs such as "Disadvantaged Business Enterprises/ Equal Employment Opportunity", "Alaskan Hire", and Alaska "preferences" within the State Procurement. And while a considerable effort in both manpower and money have gone into these areas, it remains their belief that the fullest, most positive results possible from these incentive programs have not been attained. Therefore it is suggested that the current preferences be replaced with a bonus program.

### Benefits:

The following benefits will be achieved by incorporating a bonus program:

- The program will be more "economically" beneficial to vendors and hence more readily used.
- Administrative enforcement costs associated with bid protests, record keeping requirements and inspections will be reduced.
- "Game playing" on the part of vendors, for the sole purpose of obtaining the contract, would be decreased or eliminated.
- Federal and state mandated incentives could still be implemented, but at a time more conducive to the overall project and with reduced administration costs to all parties.
- Federal regulations which prohibit "localized bidding preferences" do not prohibit performance incentives – and in fact the federal agencies may even provide funding.
- Reciprocal trade statutes based on "preferences" would become inconsequential.
- Over time effectiveness of the incentive programs would improve, administrative costs would decrease, and bid prices would return to the competitive levels that were encountered prior to the bonus program.

### Suggested Overview of the Bonus Program:

It is envisioned that the bonus program could pay up to 5% of the contract award amount in additional bonus money. By basing the value of the bonus on the contract award amount, contingency funds could be set aside at the time of award for payment of the bonus at a later date. Upon satisfactory performance, bonus payments in the following areas and in the suggested amounts, could be paid. The various levels of a bonus would be set in the specifications or regulations so they could be adjusted to the changing procurement needs.

(see table on following page)

- DISCUSSION BULLETS -  
FOR "BONUS" SYSTEM

Incentive Under Consideration	Suggested Bonus Value (maximum percent of contract)
<ul style="list-style-type: none"> <li>• <i>Disadvantaged Business Enterprises/ Equal Employment Opportunity</i>, both state and federal mandates are address by the current program. (5% of the value of the qualifying DBE/EEO contracted services, up to the allowable maximum dollar amount, would be paid.)</li> </ul>	Recommended bonus . . . 2%
<ul style="list-style-type: none"> <li>• <i>Alaska Hire Program</i>, currently a state program which mandates the use of the local work force on state funded construction projects. (5% of the salaries – as documented in the certified payroll - for all alaskan workers, up to the allowable maximum dollar amount, would be eligible for a bonus.)</li> </ul>	Recommended bonus . . . 2%
<ul style="list-style-type: none"> <li>• <i>Alaska Bidder's Preference</i>, currently a state preference program within AS 36.30 which gives bidders residing in Alaska a bidding advantage over non-resident bidders. In its present form this is not an allowable incentive on federal aid contracts.</li> </ul>	Recommended bonus . . . 2%
<ul style="list-style-type: none"> <li>• <i>Alaska Products Preference</i>, currently a state preference program within AS 36.30 which gives bidders a bidding advantage when using products made in Alaska. In its present form this is not an allowable incentive on federal aid contracts. (3, 5 or 7% of the invoice amount – as documented by the manufacturer - for all alaskan products, up to the allowable maximum dollar amount, would be eligible for a bonus.)</li> </ul>	Recommended bonus . . . 2%
<ul style="list-style-type: none"> <li>• <i>Subcontracting</i>, currently the state requirements within AS 36.30 make it difficult, though not impossible, for non-resident subcontractors to work on state funded construction projects. An alternative to this approach is to reward prime contractors for using local subcontractors. (5% of the value of the qualifying alaskan subcontracted services, up to the allowable maximum dollar amount, would be paid.)</li> </ul>	Recommended bonus . . . 2%

**Bonus Program Details:**

The department has developed conceptual guidelines and parameters in each of the above incentive areas. We would be happy to share this information with lawmakers or assist them in whatever way possible.

**Example:**

A bridge project with an award amount of \$1,000,000 to resident bidder; locally manufactured materials valued at \$300,000; a local workforce payroll for the prime contractor of \$400,000; local subcontractor services valued at \$100,000; and DBE contracts valued at \$50,000 would produce the following bonus.

- Bidder's Preference for the prime yields a bonus of  $\$1,000,000 \text{ times } .02 = \$20,000.00$
- Alaska Product preference for locally manufactured concrete components with a manufactured value of \$300,000 and a DCED Class III certification yields  $\$300,000 \text{ times } .07 = \$21,000.00$ , but by specification this amount is capped at  $\$20,000.00$
- Alaska Hire based upon a certified payroll of \$400,000 yields  $\$400,000 \text{ times } .05 = \$20,000.00$
- Subcontracting Bonus based on subcontracts valued at \$100,000 yields  $\$100,000 \text{ times } .05 = \$5,000.00$
- DBE Subcontracting Bonus based on subcontracts valued at \$50,000 yields  $\$100,000 \text{ times } .05 = \underline{\$2,500.00}$   
Yields a subtotal Project bonus of  $= \$67,500.00$

But, the OVERALL PROJECT bonus is capped at 5%. Thus the maximum amount payable to the contractor on a \$1 million award is  $\$50,000.00$

# NFIB Alaska

National Federation of  
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS  
NFIB/ALASKA

IN  
SUPPORT  
OF

SB 212 - STATE AGENCY PUBLICATIONS

9159 Skywood Lane  
Juneau, AK 99801



The Guardian of  
Small Business

N.F.I.B. Position Paper

CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I AM THE STATE DIRECTOR FOR THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I AM HAPPY TO BE HERE TODAY IN SUPPORT OF SB 212.

NFIB/ALASKA IS COMPRISED OF 4,400 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERS ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

FOR THE RECORD THE FOLLOWING IS THE RESULT OF THE 1990 NFIB/ALASKA BALLOT QUESTION REGARDING GOVERNMENT COMPETITION:

Should legislation be passed that would restrict government agencies from competing with private business in Alaska?

Yes 83%      No 6%      Undecided 11%

CURRENT LAW REQUIRES PUBLICATIONS OF STATE AGENCIES TO BE PRODUCED AT A STATE OPERATED FACILITY WHENEVER POSSIBLE. THIS PUTS THE STATE IN DIRECT COMPETITION WITH SMALL BUSINESSES. IT ALSO, PUTS SMALL BUSINESSES AT A DISTINCT DISADVANTAGE IF THEY WANT TO DO BUSINESS WITH THE STATE.

SECTION 10 ON PAGE 5, LINE 12 SB 212 REPEALS THAT LAW AND SHIFTS THE PREFERENCE FROM STATE OPERATED PRINTING FACILITIES TO PRIVATELY OWNED BUSINESSES. NFIB/ALASKA BELIEVES THAT SB 212 WILL HELP LIMIT THE SIZE AND COST OF STATE GOVERNMENT AND FOSTER ECONOMIC GROWTH IN THE PRIVATE SECTOR.

ALTHOUGH IT DOES NOT ELIMINATE COMPETITION FROM OTHER STATE OR

LOCAL AGENCIES WHOSE COMMERCIAL ACTIVITIES RANGE FROM GIFT SHOPS TO DAY CARE AND VIDEO OUTLETS - IT IS CERTAINLY A BIG STEP IN THE RIGHT DIRECTION.

THANK YOU FOR THE OPPORTUNITY TO BE HERE TODAY AND TO SUPPORT THIS WORTHY LEGISLATION. I WOULD URGE YOU TO MOVE THE BILL OUT OF COMMITTEE SO WE CAN, HOPEFULLY, SEE IT BECOME LAW THIS YEAR. IF YOU HAVE ANY QUESTION, I WOULD BE HAPPY TO TRY AND ANSWER THEM.

# Alaska State Legislature



Legislative Research Agency

P.O. Box Y  
Juneau, AK 99811-3100  
Phone: (907) 165-3991  
Fax: (907) 163-3351

February 21, 1991

## MEMORANDUM

TO: Representative Dave Choquette

FROM: Glenn T. Gray <sup>GTG</sup>  
Legislative Analyst

RE: State Purchase of Local Goods and Services in Other States  
Research Request 91.118

This memorandum reports on efforts by other states to encourage state government purchases of local goods and services. States use a variety of methods to assure that in-state businesses have ample opportunities to secure government contracts. Strategies range from across-the-board preferences to education and training programs.

We obtained the information for this memorandum from government reports, national organization reports, state statutes and telephone interviews. We contacted purchasing officials from twenty-one states to supplement other information.<sup>1</sup> This memorandum does not discuss state "buy local" programs targeting purchases by the private sector.

Many states have enacted in-state preference laws that mandate government purchase of local goods and services. Some states provide seminars to the business community to encourage in-state businesses to bid on state government contracts. Other states have developed computerized databases or publications to alert in-state businesses to government contracts. Each of these methods is discussed below.

## IN-STATE PREFERENCE LAWS

States use several methods to give preference to in-state businesses. One approach mandates that contracts be awarded to in-state businesses if their bid is within a certain percentage of an out-of-state bid. Another method gives total preference to in-state businesses for certain goods or services.

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<sup>1</sup>States queried about practices encouraging state government purchase of in-state goods and services were: Arkansas, California, Connecticut, Florida, Hawaii, Idaho, Indiana, Iowa, Louisiana, Maine, Massachusetts, Michigan, Montana, New Mexico, New York, Ohio, Oklahoma, Oregon, South Carolina, Washington, and Wyoming.

Preferences may apply only to specific groups of people. Many states without their own preference statute use the same standards as a state with a preference law when dealing with businesses from that states. Table One, attached, indicates the type of preferences each state has. Attachment A contains a table about in-state preferences produced by the State of Oregon, and Attachment B contains copies of in-state preference statutes.

States use various means to determine if a business is an in-state company: place-of-business, length of residency, how long state taxes have been paid, or preregistration. Arkansas used to determined residency by place of business, but after losing a court case it now determines residency by how long a company has been paying state taxes.

Some states give preference for all products sold by businesses within the state while others provide a preference only for goods produced within the state. Hawaii and Alaska determine the amount of certain preferences by the degree of value-added within the state.

The Council of State Governments (CSG) recommends that in-state or local preferences "be given only when there is no sacrifice or loss in quality, performance, or price."<sup>2</sup> Many states, however, give preference to in-state businesses even though their products or services cost more. The CSG reports that a 1986 study found that percentage preference laws increase government spending.

#### Instate Preference Laws Using Percentages

At least nineteen states apply an in-state preference for certain state purchases when the bid is within a certain percentage of a bid from a company outside the state. Although some states do not have specific preferences, all states select in-state bids when they tie with an out-of-state bid. Many states apply their percentage preference laws to all in-state goods, services or construction contractors. Other states give preferences only for specific products (e.g., use of coal, agricultural products, or dairy products), specific services (e.g., construction projects, or printing), or for specific groups of people (e.g., prisoners, blind people, or handicapped people).

The percentage of preference given to an in-state business varies from state to state and may vary within a state, depending on the kind of product or service. For example, Arkansas has a five percent preference for commodities sold within the state; however, if an out-of-state correctional institute bids on a construction project, a fifteen percent preference is given to in-state business.

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<sup>2</sup>*State and Local Government Purchasing*, Third edition, The Council of State Governments, 1988, p. 23.

### Preferences for Specific Goods and Services

Many states provide in-state preferences only for certain goods or services. For example, some states mandate that printing of state publications be done within the state. Michigan enacted its printing law in the 1930s. Other states target specific types of goods such as coal mined within the state, steel rolled in the state, local agricultural or dairy products, forest products or recycled products. For example, New York requires agencies to purchase state-grown or state-processed food products as long as they are so designated. Some states also target recycled goods. Alaska requires that the goods be recycled in the state while New York gives a preference for recycled goods regardless of where they are recycled.

### Preferences Targeting Specific Groups

Another type of in-state preference targets specific groups of people. Some states give these groups a percentage preference while others award such contracts without soliciting competitive bids. Some states require state agencies to purchase certain products produced by prisoners, or they at least give a percentage preference to these goods. Other groups of people targeted for preferences include blind people, handicapped people, women-owned businesses and minorities. Projects occurring in distressed areas may obtain a preference in some states if they employ a certain percentage of local people. Some states also give small businesses a preference. However, John Babich, deputy director of the Procurement Division for California, says that 90 percent of the contracts issued to small businesses under the state's small business set-aside program would have gone to larger businesses within California. In other words, depending on how the statute is worded, small business set-aside programs may not be in-state preferences. While most preference laws target in-state businesses, Ohio also includes businesses from border states.

### PROGRAM TO EDUCATE IN-STATE BUSINESSES

Most states limit efforts to educate businesses about opportunities to bid on government contracts to "how to" booklets or to public notices printed in local newspapers. A few states, however, actively recruit in-state businesses to bid on state government contracts. Hawaii holds seminars for in-state businesses to encourage them to bid on state projects. New York puts on half-day presentations to businesses about how to get on the state mailing list, how to bid on contracts and how to get paid. The New Mexico Department of General Services conducts a series of workshops for small businesses, and its colleges provide procurement counseling. Oregon has an outreach program which includes training programs with vendors. According to Sandy Burt, administrator of the Oregon Department of General Services, the department organizes two formal training programs each year, as well as numerous regional or one-on-one

training opportunities. The state also has a Vendor Information Program that lists state contracts. South Carolina provides classes to businesses, although they are not regularly scheduled. Other states, such as Indiana and New Mexico, limit education efforts to minority businesses.

#### COMPUTER MATCHING SERVICES

Several states maintain computer databases to encourage local businesses to bid on state contracts. Hawaii maintains an electronic bulletin board listing all state contracts. The Oklahoma Department of Vocational Technical Information manages its Bid Assistance Program through its statewide vocational technical schools. Twenty-three bid centers throughout the state assist in-state businesses to apply for federal and state contracts. Staff create business profiles of Oklahoma businesses and search the database by geographical area or the types of goods or services needed.

The Maine Procurement Assistance Center administers the Maine Supplier Access System. This computer database matches Maine suppliers with buyers throughout the country. The center also assists Maine businesses to bid on federal contracts. Joan Anderson, director of the Maine Products Marketing Office, says that eventually state contracts will be added to this service.

#### OTHER METHODS

Methods to encourage in-state purchases may be more subtle than the approaches described above. For example, for certain contracts Iowa limits the number of bids it will accept, but the state assures that at least some in-state bids are included. The potential exists that these in-state bids would be higher than those by out-of-state businesses not given the opportunity to bid on such contracts.

Some states permit state officials to use discretion for purchases under a certain limit. For example, for purchases under \$5,000 by New York State government, officials may choose a bid within fifteen percent of the lowest bid. Although discouraged by purchasing officials, some state contracts are written with specifications so specific that only a local business will qualify.

#### RECIPROCAL LAWS

Many states without in-state preference laws retaliate against states with such laws by applying in-kind preference laws only when dealing with those states. For instance, Michigan applies the in-state preference of another state when it bids on Michigan state contracts.

Representatives Choquette  
February 21, 1991  
Page 5

Some states are wary of in-state preferences because of the threat of retaliation. According to John Maroni, purchasing program specialist for New York, a ten percent in-state preference in New York led Pennsylvania to remove all New York businesses from its state procurement mailing list in 1975. New York has since rescinded its in-state preference law.

#### SUMMARY

Many states apply some kind of in-state preferences although they vary from state-to-state in content and how they are applied. Such preferences are actually a subsidy and may cost taxpayers more money for goods and services than if there were no preferences given to in-state businesses. Although preference laws may provide in-state businesses with an edge over other companies, they may lead to retaliation from other states. The Council of State Governments (CSG) recommends that in-state or local preferences be limited to situations where there is no difference in quality, performance, or cost.

Besides in-state preferences, other methods show promise to encourage state purchase of local goods and services. Some states educate local businesses about how to do business with the state by providing seminars, workshops, one-on-one training, and "how to" pamphlets. Many states, however, only rely on printing public notices in local papers. Some states use computer databases to let businesses know about state contracts. These databases either interact, permitting businesses to match their services with current contracts proposals, or just list state contracts being solicited.

I hope that this information is useful to you. Please contact this office if we may assist you further.

Attachments

**TABLE ONE**  
**In-state and Other Preferences Used for State Purchases**

State	In-State Preference	Printing Preference	Contracts With Manufacturers May Provide For Local Sales/Services	Prison Industry Preference	Small Business Preference	Reciprocity Practices	Other Preferences
Alabama	No	Some printing must be done in-state.	Yes	Yes			
Alaska	5% for vendors 3-7% for products 10% for RFPs		Yes	Yes		No	Recycled Alaska products
Arizona	No		Yes	Yes		No	
Arkansas	5% for commodities 3% for construction 15% for prison industry	Yes	Yes	Yes		No	
California	No		Yes	Yes	Yes	No	For high-risk unemployed in some areas
Colorado	No		Yes	Yes	No	In-kind	
Connecticut	10% for in-state small businesses				Yes	No	
Delaware	Repealed in 1982		Yes				
Florida	No		Yes	Yes		Yes	
Georgia	State forest products to be used if available		Yes			Yes	
Hawaii	3 - 10% for products depending on value-added	All government printing must be done in-state (University is exempted)	Yes			No	
Idaho	No	All printing, except statutes to be done in state unless cost is excessive	Yes	Yes		Yes	

**TABLE ONE**  
**In-state and Other Preferences Used for State Purchases**

State	In-State Preference	Printing Preference	Contracts With Manufacturers May Provide For Local Sales/Services	Prison Industry Preference	Small Business Preference	Proximity Practices	Other Preferences
Illinois	10% for coal		Yes	Yes	Yes	In-kind	Females & handicapped
Indiana	5% for goods Must use state coal	Yes	No	Yes	Yes	No	
Iowa	5% for coal	Yes	Yes	Yes	Yes	In-kind	Minority businesses may bid on all contracts
Kansas	No		Yes			Yes	
Kentucky	No		Yes	Yes	Yes		
Louisiana	5-7% for products 4-7% for meat products 5% for rodeo organizers 10% for steel	Yes	Yes	Yes	Yes	In-kind	Women & disabled (sheltered workshops)
Maine	No		Yes			No	Blind & sheltered workshops; recycled paper
Maryland	No		Yes	Yes	Yes, 5%	In-kind	Blind & sheltered workshops
Massachusetts	2-5% for products	Yes	Yes			No	Depressed areas
Michigan	No	All printing to be done in-state	Yes	Yes	Yes	In-kind	Sheltered workshops
Minnesota	No		Yes			In-kind	
Mississippi	No		Yes			Yes	
Missouri	State institutions must use state coal		Yes	Yes		Yes	
Montana	3% for construction 3% products 5% for Montana made	Yes	Yes		Yes (not often used)	In-kind	Sheltered workshops
Nebraska	No		Yes	Furniture		In-kind	

**TABLE ONE**  
**In-state and Other Preferences Used for State Purchases**

<b>State</b>	<b>In-State Preference</b>	<b>Printing Preference</b>	<b>Contracts With Manufacturers May Provide For Local Sales/Services</b>	<b>Prison Industry Preference</b>	<b>Small Business Preference</b>	<b>Reciprocity Practices</b>	<b>Other Preferences</b>
<b>Nevada</b>	No		Yes			No	
<b>New Hampshire</b>	No		Yes			No	Autos and trucks
<b>New Jersey</b>	No	Printing to be done in-state	Yes		15% of state contracts for small business	Yes	Minority & women owned businesses
<b>New Mexico</b>	5% for products, construction & services	Yes	Yes			No	
<b>New York</b>	3% for some foods	Yes	Yes			No	15% for discretionary purchases under \$5,000, 10% for recycled products
<b>North Carolina</b>	No		Yes	No		No	
<b>North Dakota</b>	No		Yes			Yes	
<b>Ohio</b>	5% for services & products if there is competition	All printing must be done in-state	Yes	Yes	No	No	Minority business set-aside
<b>Oklahoma</b>	5% for products produced or grown in-state		Yes			Yes	5% for minority businesses
<b>Oregon</b>	No	Printing to be done in-state if reasonably priced	Yes			Yes	
<b>Pennsylvania</b>	No		Yes			Yes	
<b>Rhode Island</b>	No		No			No	
<b>South Carolina</b>	2% for products/services 5% for products grown or made in-state		Yes			No	Additional 1.5% for distressed areas
<b>South Dakota</b>	5% for Grade A milk		Yes			Yes	
<b>Tennessee</b>	No		Yes	Yes	Yes	No	

**TABLE ONE**  
**In-state and Other Preferences Used for State Purchases**

<b>State</b>	<b>In-State Preference</b>	<b>Printing Preference</b>	<b>Contracts With Manufacturers May Provide For Local Sales/Services</b>	<b>Prison Industry Preference</b>	<b>Small Business Preference</b>	<b>Reciprocity Practices</b>	<b>Other Preferences</b>
<b>Texas</b>	No		Yes			Yes	
<b>Utah</b>	No		Yes	Yes	No	Yes	
<b>Vermont</b>	No		Yes			No	
<b>Virginia</b>	4% for coal		Yes			Yes	
<b>Washington</b>	No	Yes	Yes	Yes - 10%	No	Yes	Handicapped
<b>West Virginia</b>	2% for commodities, services & construction		Yes			Yes	
<b>Wisconsin</b>	No		Yes	Yes - right of first refusal	Yes	Yes	2% for sheltered workshops
<b>Wyoming</b>	5% for commodities & construction	10% for printing if 75% of work done in-state	Yes			No	

Sources: The Council of State Governments, 1988, State and Local Government Purchasing;  
 Oregon Department of General Services, Summary of In-state Practices, January 1990;  
 and state statutes

Prepared by the Legislative Research Agency, February 1991 (91.118)

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

MEMORANDUM

April 9, 1993

**SUBJECT:** Delegation of legislative authority in procurement bill draft  
(Work Order No. 8-LS0878\J, 4-9-93)

**TO:** Senator Tim Kelly  
Attn: Josh

**FROM:** Theresa L. Bannister *TB*  
Legislative Counsel

This memo accompanies the draft that you requested to add to your procurement bill provisions relating to innovative procurement methods and a bonus pilot program.

In the general section authorizing innovative procurement methods, the use of the innovative procedures depends on whether they would be in the "best interests" of the state. Using this test as the standard may be considered to be an unconstitutional delegation of legislative power because the legislature is delegating its authority without providing adequate standards. In order to avoid this issue, you may wish to consider identifying in more detail what standards the commissioner is to use when making the determination, or, in other words, what you want "best interests" to mean.

If I may be of further assistance, please advise.

TLB:gc  
93-325.glc

Enclosure

8-LS0878J

Bannister

4/9/93

## SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST OF THE SENATE  
ECONOMIC TASK FORCE

Introduced:

Referred:

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to publications produced by state agencies and to the  
2 procurement of property, property interests, and services by state agencies."

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

4 \* Section 1. FINDINGS, PURPOSE, AND INTENT. (a) The legislature finds that

5 (1) the state needs to develop and maintain a strong, stable, and prosperous  
6 economy based on private investment;

7 (2) the existence of a strong and healthy free enterprise system is directly  
8 related to the well-being and competitive strength of Alaskan businesses and to the opportunity  
9 for Alaskan businesses to have free entry into the business market and to grow and expand;

10 (3) the use of products manufactured, grown, or produced in Alaska  
11 strengthens, stabilizes, and diversifies Alaska's economy;

12 (4) when governmental agencies purchase and use out-of-state products and  
13 services, they reduce job-creating investments and limit the growth of the economy of Alaska;

14 (5) when bid documents for public contracts do not specify the use of available

1 Alaskan products, comparable out-of-state goods are usually purchased instead, and these  
2 purchases result in a loss of revenue in the state and weaken Alaska's economic base;

3 (6) contracts are frequently awarded to out-of-state firms, even though Alaskan  
4 suppliers, manufacturers, and providers of services are more accessible and responsive to the  
5 needs of Alaska's business community than their out-of-state counterparts;

6 (7) there is a need for Alaska to examine its purchasing practices in order to  
7 ensure that state agencies support Alaskan businesses by making every reasonable effort to  
8 identify available Alaskan goods and services and to foster bidding by local businesses and  
9 labor forces;

10 (8) state agencies should look outside Alaska for goods and services only if  
11 they have provided notice of the procurement in Alaska.

12 (b) The legislature declares that the purpose of secs. 3 and 5 - 17 of this Act is to  
13 foster a procurement process where Alaskan businesses obtain a fair proportion of Alaska's  
14 total procurement contracts by providing Alaskan businesses with a fair, equitable, and  
15 competitive bid process.

16 (c) It is the intent of the legislature that

17 (1) except as prohibited under AS 36.30.320(d), a state agency shall, when  
18 practicable and economically feasible, design procurements in a way that fosters participation  
19 by Alaska bidders or offerors;

20 (2) except as prohibited under AS 36.30.320(d), and unless it is anticipated that  
21 two or more Alaska bidders or offerors would be capable of performing the procurement, an  
22 agency that is proposing a procurement shall, when practicable and economically feasible,  
23 divide or otherwise structure the procurement so that it can be performed by Alaska bidders  
24 or offerors, if the proposed procurement is too large to be performed by Alaska bidders or  
25 offerors, and if the procurement officer determines that Alaska bidders or offerors generally  
26 would be capable of performing the procurement if the procurement were reduced in size or  
27 otherwise restructured; in this paragraph, "Alaska bidders or offerors" means persons who  
28 qualify as Alaska bidders under AS 36.30.170(b).

29 \* Sec. 2. AS 24.55.275 is amended to read:

30 Sec. 24.55.275. PROCUREMENT [CONTRACT] PROCEDURES. The  
31 ombudsman shall adopt by regulation procedures consistent with AS 36.30 to be

1 followed by the office of the ombudsman in procuring supplies, services,  
2 professional services, construction, and office space [CONTRACTING FOR  
3 SERVICES]. However, the procedures based on competitive principles do  
4 [PROCEDURE FOR REQUESTS FOR PROPOSALS DOES] not apply to contracts  
5 for investigations under AS 24.55.100.

6 \* Sec. 3. AS 36.30.005(c) is amended to read:

7 (c) Notwithstanding other provisions of law, all rights, powers, duties, and  
8 authority relating to the procurement of supplies, services, professional services, and  
9 construction and the disposal of supplies for the University of Alaska are transferred  
10 to the Board of Regents. Notwithstanding the other provisions of this subsection,  
11 the University of Alaska is subject to AS 36.30.540(b) and 36.30.895. To the  
12 maximum extent possible, authority granted under this subsection shall be exercised  
13 in accordance with this chapter. The Board of Regents shall adopt regulations under  
14 this subsection that are substantially equivalent to the regulations adopted by the  
15 commissioner of administration to implement this chapter. For the purposes of this  
16 subsection, unless the context otherwise requires, in this chapter

17 (1) "agency" means a subunit of the University of Alaska;

18 (2) "attorney general" means the president of the University of Alaska;

19 (3) "chief procurement officer" means a person designated by the  
20 president of the University of Alaska whose qualifications are substantially equivalent  
21 to those provided in AS 36.30.010(a);

22 (4) "commissioner," "commissioner of administration," or  
23 "commissioner of transportation and public facilities" means the Board of Regents or  
24 the president of the University of Alaska if so designated by the Board of Regents by  
25 regulations adopted under this subsection; and

26 (5) "department" means the University of Alaska.

27 \* Sec. 4. AS 36.30.020 is amended to read:

28 Sec. 36.30.020. LEGISLATURE. Except as provided under AS 24.55.275,  
29 the [THE] Legislative Council shall adopt and publish procedures to govern the  
30 procurement of supplies, services, professional services, and construction by the  
31 legislative branch. The procedures must be based on the competitive principles

1 consistent with this chapter and must be adapted to the special needs of the legislative  
2 branch as determined by the Legislative Council. The procedures must be consistent  
3 with the provisions of AS 36.30.080(b) - (e).

4 \* Sec. 5. AS 36.30.130(a) is amended to read:

5 (a) The procurement officer shall give adequate public notice of the invitation  
6 to bid at least 21 days before the date for the opening of bids. If a determination is  
7 made in writing that a shorter notice period is necessary for a particular bid, the  
8 21-day period may be shortened. The determination shall be made by the chief  
9 procurement officer for bids for supplies, services, or professional services. The  
10 determination shall be made by the commissioner of transportation and public facilities  
11 for bids for construction or acquisition of property for the state equipment fleet.  
12 Notice shall be published in the Alaska Administrative Journal. The time and manner  
13 of notice must be in accordance with regulations adopted by the commissioner of  
14 administration. When practicable, notice may include

15 (1) publication in a newspaper calculated to reach prospective bidders  
16 located in the state;

17 (2) notices posted in public places within the area where the work is  
18 to be performed or the material furnished; and

19 (3) notices mailed to all active prospective contractors on the  
20 appropriate list maintained under AS 36.30.050

21 (A) if the contractors are located in the state;

22 (B) upon request, if the contractors are not located in the  
23 state.

24 \* Sec. 6. AS 36.30 is amended by adding a new section to read:

25 Sec. 36.30.315. INNOVATIVE CONSTRUCTION PROCUREMENT  
26 METHODS. Notwithstanding the other provisions of this chapter, if the commissioner  
27 of transportation and public facilities determines in writing that using innovative  
28 construction procurement methods for the procurement of construction contracts would  
29 be in the best interests of the state, the commissioner may modify the provisions of  
30 this chapter as necessary to use the innovative methods when procuring construction  
31 contracts. The determination must find that the innovative methods are not contrary

1 to the intent of this chapter, demonstrate that the innovative methods are in the best  
2 interests of the state, and describe how the innovative methods modify the procurement  
3 methods and procedures of this chapter.

4 \* Sec. 7. AS 36.30.336 is amended to read:

5 Sec. 36.30.336. APPLICATION. Notwithstanding other provisions of this  
6 chapter, AS 36.30.322 - 36.30.338 apply to all procurements subject to this chapter,  
7 except as provided in AS 36.15.050, AS 36.30.315 and 36.30.322(b) [AND  
8 AS 36.30.322(b)].

9 \* Sec. 8. AS 36.30.540 is amended to read:

10 Sec. 36.30.540. REPORT TO LEGISLATURE. On or before December 1  
11 of each odd-numbered year. [BEGINNING WITH DECEMBER 1, 1989.] the  
12 commissioner shall biennially report to the legislature concerning procurements by  
13 agencies. The report must include

14 (1) the records maintained by the commissioner under AS 36.30.510  
15 and the records maintained under AS 36.30.520(a) for the previous two fiscal years;

16 (2) recommendations for changes in this chapter or other laws based  
17 on implementation of this chapter in the previous two fiscal years;

18 (3) a description of any matters that involved litigation concerning this  
19 chapter in the previous two fiscal years;

20 (4) a list of procurements made under this chapter from out-of-state  
21 sources during the previous two fiscal years together with the total number of  
22 procurement contracts entered into during that period with out-of-state contractors and  
23 the total value of these contracts; this paragraph does not apply to procurements made  
24 under AS 36.30.320; and

25 (5) a list of procurements made under this chapter from state sources  
26 during the previous two fiscal years together with the total number of procurement  
27 contracts entered into during that period with state contractors and the total value of  
28 these contracts; this paragraph does not apply to procurements made under  
29 AS 36.30.320;

30 (6) the number of bidders and offerors that bid on or made  
31 proposals for procurements under this chapter, the number of these bidders and

1 offerors that were located in the state, and the number of these bidders and  
2 offerors that were located outside the state; this paragraph does not apply to  
3 procurements made under AS 36.30.320.

4 \* Sec. 9. AS 36.30.540 is amended by adding a new subsection to read:

5 (b) A state agency that is subject to AS 36.30.895 and that contracts for  
6 investment and brokerage services shall submit to the legislature on or before  
7 December 1 of each year a report covering the preceding fiscal year and reporting on  
8 the state agency's progress in implementing AS 36.30.895.

9 \* Sec. 10. AS 36.30.850(b)(13) is amended to read:

10 (13) purchases of income-producing assets for the state treasury or a  
11 public corporation of the state, except as provided by AS 36.30.540(b) and  
12 36.30.895;

13 \* Sec. 11. AS 36.30.850(b)(15) is amended to read:

14 (15) a contract that is a delegation, in whole or in part, of investment  
15 powers held by the commissioner of revenue under AS 14.40.400, AS 14.42.200,  
16 14.42.210, AS 18.56.095, AS 37.10.070, 37.10.071, or AS 37.14, except as provided  
17 by AS 36.30.540(b) and 36.30.895;

18 \* Sec. 12. AS 36.30.850(b)(16) is amended to read:

19 (16) a contract that is a delegation, in whole or in part, of investment  
20 powers or fiduciary duties of the Board of Trustees of the Alaska Permanent Fund  
21 Corporation under AS 37.13, except as provided by AS 36.30.540(b) and 36.30.895;

22 \* Sec. 13. AS 36.30.850(b) is amended by adding a new paragraph to read:

23 (30) contracts to be performed in an area outside of the country and  
24 requiring knowledge of the customs, procedures, rules, or laws of the area.

25 \* Sec. 14. AS 36.30 is amended by adding a new section to read:

26 Sec. 36.30.895. STATE POLICY FOR PROCUREMENT OF INVESTMENT  
27 SERVICES. It is the policy of the state that state agencies that procure investment and  
28 brokerage services increase the utilization of brokerage and investment services  
29 provided by persons located in the state. In this section, "state agency" includes the  
30 University of Alaska, the Alaska Railroad Corporation, the Alaska Housing Finance  
31 Corporation, the Alaska Aerospace Development Corporation, the Alaska State Pension

1 Investment Board, and the Alaska permanent fund established under AS 37.13.010, but  
2 does not include the state trustees or federal trustees under AS 37.14.450.

3 \* Sec. 15. AS 44.99.200 is repealed and reenacted to read:

4 Sec. 44.99.200. PRODUCTION OF PUBLICATIONS. The publications of a  
5 state agency shall be produced at a private sector facility located in the state when  
6 practicable. The Department of Administration shall establish standards for the  
7 production of publications by state agencies, except that the Board of Regents of the  
8 University of Alaska shall establish the standards for the university. The standards  
9 shall be designed to promote simplicity, low cost, and consistency.

10 \* Sec. 16. AS 44.99.210 is amended to read:

11 Sec. 44.99.210. DISCLOSURES ON PUBLICATION. If [A PUBLICATION  
12 OF A STATE AGENCY IS EXEMPTED UNDER AS 44.99.200(a) FROM BEING  
13 PRODUCED AT A STATE-OPERATED FACILITY AND IF] the actual annual costs  
14 for a [THE] publication of a state agency that are paid from the general fund exceed  
15 \$1,500, the publication must include a statement that gives the name of the agency  
16 releasing the publication, the purpose of the publication, the cost for each copy of the  
17 publication, and the city and state where the printing was done. The statement must  
18 read: "This publication was released by . . . (name of state agency) . . ., produced at  
19 a cost of \$ . . . . per copy to . . . (statement of purpose) . . ., and printed in . . . .  
20 . (city and state where printed)." If the publication is required by law, the statement  
21 must also include: "This publication is required by . . . (appropriate citation to Alaska  
22 law)." The statement may include, if applicable, a declaration of the revenue raised  
23 by the sale of the publication or from the purchase of advertising in the publication.  
24 The statement shall be printed in one conspicuous place in the body of the publication  
25 in a type size that is not smaller than eight points and shall be placed in a box  
26 composed of at least one point rule. In this section, "cost for each copy" means the  
27 figure that results after dividing the total contract cost of producing the publication by  
28 the number of copies produced. This section does not apply to a publication that is  
29 intended primarily for foreign or other out-of-state use, or to a program for a public  
30 ceremony of a state agency.

31 \* Sec. 17. AS 44.99.230 is repealed.

1 \* Sec. 18. CONSTRUCTION BONUS PILOT PROGRAM. Within six months after the  
2 effective date of this Act, the commissioner of transportation and public facilities shall begin  
3 a two-year pilot program under AS 36.30.315, enacted by sec. 6 of this Act, for the  
4 procurement of construction services by using bonuses to replace the preferences required  
5 under AS 36.30. The commissioner is not required to make the determination required by  
6 AS 36.30.315 for the pilot program, but shall issue a written description of how the innovative  
7 methods modify the procurement methods and procedures of AS 36.30. Within 15 months  
8 after the pilot program begins, the commissioner shall report to the legislature on the  
9 construction contracts awarded during the first year of the pilot program. Within 27 months  
10 after the pilot program begins, the commissioner shall report to the legislature on the  
11 construction contracts awarded during the second year of the pilot program. The legislature  
12 may review the pilot program at any time during the program and may extend the program  
13 indefinitely.

14 \* Sec. 19. AS 36.30.540(6), enacted by sec. 8 of this Act, applies to reports due after the  
15 effective date of this Act.

16 \* Sec. 20. IMPLEMENTATION REPORTS. (a) The first report under AS 36.30.540(b),  
17 enacted by sec. 9 of this Act, is due December 1, 1996, and must cover the 1996 fiscal year  
18 of the reporting state agency.

19 (b) Within nine months after the effective date of this Act, a state agency that is  
20 subject to AS 36.30.540(b) and 36.30.895, enacted by sec. 14 of this Act, and that contracts  
21 for investment and brokerage services after the effective date of this Act shall submit to the  
22 legislature a report on the state agency's progress in implementing AS 36.30.895 during the  
23 first six months after the effective date of this Act.

24 (c) On or before December 1, 1995, a state agency that is subject to AS 36.30.540(b)  
25 and 36.30.895 and that contracts for investment and brokerage services after the effective date  
26 of this Act shall submit to the legislature a report on the state agency's progress in  
27 implementing AS 36.30.895 during the period that

28 (1) starts after the period covered in the report required in (b) of this section;  
29 and

30 (2) ends June 30, 1995.

# Alaska State Legislature

Senator Tim Kelly, Chair  
Senator Steve Rieger, Vice Chair  
Senator Drue Pearce  
Senator Judy Salo  
Senator Georgianna Lincoln



## SENATE LABOR AND COMMERCE COMMITTEE

STATE CAPITOL, SUITE 101  
JUNEAU, ALASKA 99801-1182  
PHONE: (907) 465-3822  
FAX: (907) 465-3756

3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7612

### MEMORANDUM

**TO:** Senator Rick Halford  
Senate President

**FROM:** Senator Tim Kelly, Chair *TDK*  
Senate Labor & Commerce Committee

**DATE:** May 6, 1993

**RE:** SB 212 - Relating to the production of State publications,  
the procurement code, and State investments

---

I respectfully request that the first committee of referral for SB 212 be the Labor & Commerce Committee.

This legislation, introduced by the Labor & Commerce Committee at the request of the Senate Economic Task Force, aims to increase the amount of State contract work going to businesses located in Alaska. It is my intention to hold hearings on this legislation in the interim.

Thank you for your consideration.



October 27, 1993

*A partnership program of*

Anchorage Chamber  
of Commerce

Anchorage Economic  
Development Corporation

University of Alaska  
Small Business  
Development Center

State of Alaska  
Department of Commerce  
and Economic Development

TO: Senator Kelly  
Josh Fink

FROM: Mary Rucker  
BUY ALASKA Program Manager

RE: Questions for the Permanent Fund and Department of  
Revenue

On Trades that you do directly, what firms and what branches do you work with?

What efforts have you made to work with brokers in Alaska, or to provide credit to branches in Alaska?

In the last five years, has there been an increased amount of trades done locally or increased credits to local branches?

What percentage of equity trades (listed and OTC) are done directly with brokers in Alaska? Fixed income trades?

What percentage of equity trades (listed and OTC) are done with firms that have branches in Alaska? Fixed income trades? How does this compare to the national market share percentages of those companies?

Does any credit come back to local offices on new issues purchased?

Please provide a recap of commissions generated by each money manager and by trades done directly.

Have you done any research on the impact of directed trades on quality of execution? Is there any written evidence that trades directed to Alaska brokers would impact execution capability?

Are you aware of the soft dollar arrangements your different money managers have? Do any of these arrangements benefit the Permanent Fund/State?

Do existing money manager soft dollar arrangements constrain them

University of Alaska  
Small Business  
Development Center

430 W. 7th Avenue, Suite 110  
Anchorage, Alaska 99501

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from doing business directly with brokers in Alaska or from providing credit back to those brokers?

Have you considered suggesting your money managers use step-outs?  
(Trades done with one broker and apportioned out to others)

Do you include the money management divisions of local investment firms in your searches.

Would you consider automatically placing money management divisions of local investment firms on a short list if they provide the type of management under consideration?

Have you considered using local firms for:

- securities lending programs
- commodities hedging programs
- underwriting?

Have you investigated the institutional capabilities of local brokers?

If you desired to work with local brokers, but the firms' policy was to use branches Outside, would you require that services be purchased locally? Would you consider requesting a change of firm policy to meet state policy or desires?

Are you willing to encourage and nurture institutional brokerage expertise in Alaska?



**PROGRAM RESULTS TO DATE  
FEBRUARY 1994**

**BUYER/SELLER NETWORK**

*A partnership program of*

Anchorage Chamber of Commerce  
Anchorage Economic Development Corporation  
University of Alaska Small Business Development Center  
State of Alaska Department of Commerce and Economic Development

<u>Statistics</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
Enrollments	479	242	321
Contacts	750	661	1700
Buying Needs	96	199	235
Matches	26	39	62
Match \$ Value	\$1.85 Million	\$4.81 Million	\$6.1 Million
Jobs Created	37	95	122

Program to Date

- 1072 Organizations Enrolled
- 530 Buying Needs Researched
- 127 Buyer/Seller Matches
- \$13 Million Retained in Alaska
- 255 Direct and Indirect Jobs Created

Major Matches

1991	Piquiniq Management Corporation	\$1,200,000
	Alaska Clean Seas	\$ 420,000
	Mapco Express	\$ 60,000
1992	Keiwit Construction	\$2,500,000
	Alaska Railroad	\$1,800,000
	State of Alaska General Services	\$ 250,000
1993	Providence Hospital	\$2,500,000
	University of Alaska	\$1,048,000
	Sheraton Anchorage	\$ 125,000
	Wal*Mart Stores, Inc.	\$1,500,000

**ADVERTISING CAMPAIGN**

- Produced 6 major advertising campaigns for TV, radio and newspaper utilizing over \$500,000 of in-kind media donations.

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April 1, 1993

A partnership program of  
 Anchorage Chamber  
 of Commerce  
 Anchorage Economic  
 Development Corporation  
 University of Alaska  
 Small Business  
 Development Center  
 State of Alaska  
 Department of Commerce  
 and Economic Development

**MEMORANDUM**

**To: Senator Tim Kelly**

**Attention: Josh Fink**

**From: Mary Rucker, Program Manager, BUY ALASKA**

**RE: BUY ALASKA for Brokerage and Investment Services**

The importance of innovative policy and legislation regarding the consideration and use of in-state companies by the State of Alaska is paramount to the success of BUY ALASKA. The economic benefits to the private sector are obvious.

We at BUY ALASKA support efforts to enhance local purchasing of all products and services available here in Alaska. We appreciate your consideration of the following report on the advantages and benefits of in-state procurement of financial services.

Thank you.

University of Alaska  
 Small Business  
 Development Center

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 FAX (907) 274-9524

## BUY ALASKA for Brokerage and Investment Services

### General comments on Department of Revenue and Permanent Fund memos:

- While technical points need to be addressed, many can be resolved with an attitude of "how can we make it happen?" as opposed to "how can we find reasons why it can't happen?"
- The recent loss of two national accounting firms from Alaska highlights the need to nurture in-state professional services.
- The professional investment officers employed by the state are properly addressing issues of fiduciary responsibility and performance obligations. Their comments should be viewed in a positive light, and as a beginning for working closer with the Alaska investment community.
- Without compromising integrity or fiduciary responsibility, many, if not all, trades can be done through local brokers.
- An open, cooperative relationship with the Alaska investment community will prove mutually beneficial. Local brokers and managers have more reasons to give state officials the very best prices and service than do brokers outside.
- The following comments address only securities brokerage. A very significant amount is spent by the state on money management. While specific issues differ between brokerage and money management, the general principles of "Buy Alaska" and its economic benefits apply.
- Cooperation and mutual support will only come from a written policy making clear the state's intent to do business locally.
- Accountability and reporting to the legislature will give investment officers both direction and incentive to "Buy Alaska." It will also give them flexibility to fulfill their fiduciary responsibilities.

### Response to Department of Revenue Memorandum dated March 9, 1993:

- "A long standing policy of encouraging the money management firms...to execute trades with brokerage firms that have offices located in Alaska on an "all things being equal" basis.... This policy is articulated in the contracts with external money managers and by law."
  - Are copies of contracts and applicable law available?
  - How well-known, enforced, or effective have these policies been?
  - Does the Department of Revenue have a breakdown of how many trades

have been done in Alaska?

- Portfolio managers use particular brokers to execute block trades for both good executions and market information

- While certain trades may be done better by particular brokers, many trades can be efficiently executed by local brokers who can match the price being charged by outside brokers. As opposed to other bidding processes, no "Alaskan preference" is required or appropriate. All that is needed is a chance to work closely with state investment officers.

- Trades with Alaskan brokers should only be done by those who prove they are capable of handling a particular type of transaction. A fundamental assumption is that "all things are equal." Closer relationships with Alaskan brokers can result in more revenues flowing back to the state.

- Enhancing the volume and expertise of local brokers will go a long way towards "providing the citizens of Alaska with a strong, committed financial community."

- Trading *debt*:

In general, some of the principles mentioned above apply. It is not a case of "all or nothing." Many steps can be taken to increase brokerage done in Alaska without costing more or getting poor executions. The following comments were made:

1. Need information on a timely basis and access to institutional desks.

- With modern communications and computers, some local brokers are dealing regularly and directly with the same institutional desks and traders as outside institutional brokers presently used by state investment officers. This will substantially increase with greater use of in-state brokers. In fact, that is one of the big reasons to do more trades in-state.

2. Limiting competition increases prices and lessens access to information.

- Under no circumstances should investment officers be forced to deal with in-state brokers. Only those that perform should get the business. However, by policy, investment officers should make a legitimate effort to include local brokers in their discussions and bidding.

3. Local brokerage firms need to be well capitalized.

- Local firms include such national powerhouses as Dean Witter, Shearson Lehman Brothers, Merrill Lynch, Kemper, and Paine Webber. These are well-capitalized firms capable of handling large state transactions. In addition, several regional firms can handle smaller transactions. Do we want a repeat of the same job loss that occurred in the accounting profession? Including local brokers *increases* the competitive environment instead of reducing it.

4. International securities

- The large national firms mentioned above have active international trading operations. Local brokers can interface with specialists in their firms without adding costs or impeding transactions.

- Alaska is turning its attention to the Pacific Rim, and attempting to assume a significant international position. A strong local financial community with expertise in international investing and a world perspective will be indispensable future economic growth.

Response to Permanent Fund Memorandum dated February 26, 1993:

In addition to points already covered above, the following addresses issues specific to the Permanent Fund.

- Of the total FY 92 domestic equity brokerage business of \$5,797,000 done by the Fund, only 22.8% or \$1,320,000 was commission business credited to the accounts of Alaska brokerage firms or offices. This does not include international equity trades.
- Virtually no fixed income trades are done with Alaskan offices. The largest part of the Permanent Fund portfolio is fixed income.
- Some Alaska brokerage firms maintain market hours matching the New York markets. Adjusting hours would be easy if a reason existed to do so.
- The major national brokerage firms with offices in Alaska have large institutional trading desks in New York City. Some already maintain close ties to their institutional desks. Others could do so with the increased institutional business the Permanent Fund could provide.
- Some Alaska brokerage firms have institutional computer systems and trading relationships that keep them up-to-date on new issues and major blocks of bonds available. They have the same information available to institutional brokers in New York or Seattle. Other brokers could develop these systems if demand warranted it. Without a written policy from the state, some local offices are prohibited from contacting the state or its agencies.
- As a practical matter, only firms who have already made a commitment to maintain offices in Alaska, or those willing to do so, will benefit from increased usage of local offices. It would be unrealistic to envisage outside firms opening 2 or 3 person offices in Alaska just to do trades with the state. Infrastructure, communications, schedule coverage and other considerations strongly argue against the economics of tiny brokerage offices. It is hard to see how increased dollars flowing through the Alaska economy, with its concomitant employment, could hurt the state economy.

Fees Generated:

Further research needs to be done, but the following estimates begin to delineate the size of the brokerage industry and potential for increase:

Total annual revenues from existing brokerage industry:	\$15-20,000,000
Dept. of Revenue Equity trades (DOR est. approx.)	\$2,000,000
Dept. of Revenue Fixed Income (estimate)	1,000,000
Permanent Fund Equity trades (PF est. approx.)	5,800,000
Permanent Fund Fixed income (PF est. approx.)	<u>2,200,000</u>
Total	\$11,000,000

Does not include:

- Alaska Industrial Development Export Authority
- Alaska Railroad
- Alaska Housing Finance Corporation
- University of Alaska
- Alaska Post Secondary Education Commission
- Permanent Fund international equity business
- Other state agencies and departments

This also does not include the "spin off" impact that would help repatriate more dollars from boroughs, municipalities, school districts, authorities, etc. to say nothing of private corporations, native corporations, and potential new investing in Alaska.

**SUMMARY:** Depending on what percentage of current state business is done in state, direct potential exists to increase in-state business up to 50-70%. "Spin-off" benefits could be substantially greater.

#### Impact on Employment:

- The local brokerage industry tends to justify its staffing levels based on revenue volume. While some economies of scale exist, increases in revenue volume will have a direct impact on employment.
- The Alaskan brokerage community employs perhaps 200 people. These are permanent, skilled, year-round jobs.
- Any material increase in state brokerage business done in Alaska will have a two-fold impact: 1. A direct increase in permanent, professional employment; and, 2. Increased skill, expertise, connections and internal clout which will benefit all Alaskans and their businesses that use brokerage services.
- Local brokers will be spending more money in-state travelling to and visiting with state investment officers in Alaska.
- "Buy Alaska" policies for money management could result in additional material increases in employment.

EMPLOYEES' RETIREMENT SYSTEM  
DISTRIBUTION OF BROKERAGE COMMISSION

1. Each manager is charged with the responsibility of seeking the best execution and best price in the best interest of the ERS.
2. Each manager shall utilize the services of Hawaii firms as much as possible for trades, the general understanding being that the usage of such firms are solely for the purpose of the best execution and best price at the time of the trade (such as where a firm has the stocks in inventory or on a block basis).
3. All commissions generated by ERS business to Hawaii firms must revert 100% back to the credit of the Hawaii office, and accounted for as income by the Hawaii office.
4. No trades of any advisor shall be done through a parent firm, a subsidiary firm, or a related firm.
5. No advisor shall use trades or commissions for the purpose of paying for or compensating for research of other firms.
6. In those ERS brokerage transactions where no best execution and best price situations exist (such as stock in inventory or on a block basis) and where all brokerage firms can be competitive and provide best execution and best price, each investment manager will allocate no more than 20% of total brokerage commission to any one Hawaii firm in any given year.
7. If any of the Hawaii firms cannot execute trades on a competitive basis under normal circumstances, and the situation continues over a period of time, the advisors are to inform the Trustees of the situation.
8. At least thirty percent of all brokerage transactions shall be directed to the following brokers participating in the ERS' Commission Recapture Program:



FACSIMILE TRANSMITTAL

A partnership program of

Anchorage Chamber of Commerce

Anchorage Economic Development Corporation

University of Alaska Small Business Development Center

State of Alaska Department of Commerce and Economic Development

Date: 2 8-94 # of Pages 2

To: <u>JOSH FINIK</u>	From: <u>Mary Rucker</u>
Co: <u>Senator Kelly</u>	Phone: <u>(907) 274-7232</u>
Fax No: <u>465-3756</u>	Fax No: <u>(907) 274-9524</u>

MESSAGE

JOSH -

THIS LOOKS LIKE  
A GREAT POLICY.

WE NEED IT!

University of Alaska  
Small Business  
Development Center

430 W. 7th Avenue, Suite 110  
Anchorage, Alaska 99501

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(800) 478-7232  
FAX (907) 274-9524

STATE OF ALASKA

INVESTMENT ACCOUNTS

PERMANENT FUND	13.0	BYW
TREASURY DIVISION		
13 FUNDS	8.2	BYW
ALASKA HOUSING FINANCE CORP	3.0	?
AK INDUSTRIAL DEVELOPMENT		
EXPORT AUTHORITY	0.3	?
POSTSECONDARY EDUCATION COMM.	0.3	?
UNIVERSITY OF ALASKA	<u>0.7</u>	?
	25.0	BYW

---

Cost System - Const. dollars  
Legis.

NOTE: IMPACT ON CITIES, BOROUGHS,  
SCHOOL DISTRICTS, ETC.

# J & S SERVICE CO.

800 McGrath Road  
Fairbanks, Alaska 99712  
(907) 457-3850  
FAX (907) 457-7895

Date 3/24/94

TO: JOSIA FINN

Company ALASKA LEG. OFF.

FAX Number 14653755

From Jim Simko / J&S Service Company

FAX: 1-(907)-457-7895

Number pages 3

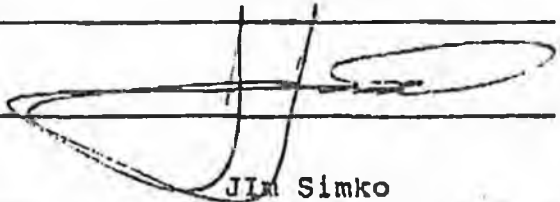
Including cover sheet

Message: LETTER & GRAPH

RE: UOA PURCHASE

INFO.

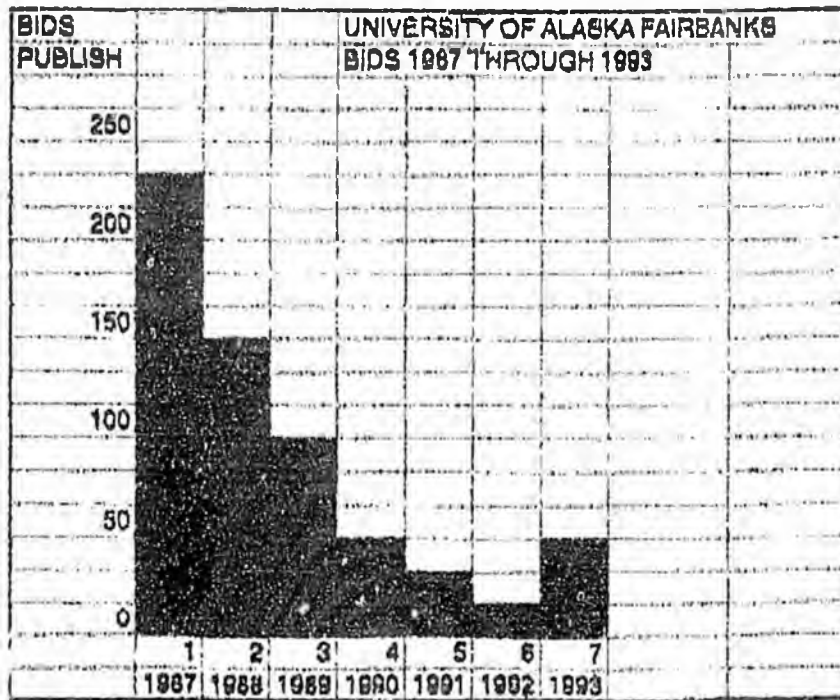
Thank You



JIM Simko

*Chuck Hill - Stabwork UA Purchasing Chief*

474-6562



**J & S SERVICE CO.**

800 McGrath Road  
Fairbanks, Alaska 99712  
(907) 457-3850  
FAX (907) 457-7895

TO: Senator Tim Kelley

3/24/94

Att: Josh Fink

Re: Bill #212

Dear Mr. Fink:

It has come to my attention that the honorable Senator is the chair person for this bill and as such may be interested in this information.

My company is a local company that supplies the University Of Alaska. We do this by responding to their bid requests as they are published. As in any bid situation if you meet their specifications and are the low bidder than the award or purchase order goes to your company.

This procedure is fine and as long as its open and public is the best way to insure competitive pricing.

As you can see by our enclosed graph this is how it was initially, however this has changed drastically as indicated, with a with an extreme low in 1992.

Keep in mind that these are the number of bids published so the first question is where is the business going?

I am aware of changes in the procurement regulations that raised the minimum amount for bid from \$5,000 to \$25,000 which accounts for some of the decline.

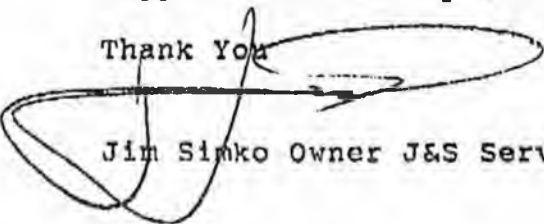
The other area that seems to be responsible is the use of sole source procurement letters.

This procedure allows the buyer to go directly to a manufacturer that he determines can provide the needed item whatever it may be. This procedure is carried out without competition and with no public notice.

Unfortunately as almost all of the manufacturers are located outside the local in state companies almost never see it.

As the graph indicates and as a company with much experience in this area I would greatly appreciate any changes your bill may make in reversing the direction of these procurement regulations, and will support with all my ability.

Thank You



Jim Simko Owner J&S Service Company

**JOINT SENATE LABOR & COMMERCE COMMITTEE  
AND SENATE ECONOMIC TASK FORCE  
HEARING**

**NOVEMBER 17TH, 1993**

**AGENDA**

**I. Overview of SB 212: "Buy Alaska" Legislation  
(Committee Staff, Josh Fink)**

Terri Bannister, with Leg. Legal, is available in Juneau

**A. General Comments**

1. Dave Choquette (in Juneau) ?
2. Mary Rucker - "Buy Alaska" Program
3. Steve Rouse - "Make-It-Alaskan" Program
4. Other Public Comments

**II. Financial Services**

**A. Dave Martin & Diane Wilke, Principals  
McKinley Capital Management**

**B. Alan Johnston, Manager  
Wedbush Morgan Securities**

**C. Fred Koken, Sr. Vice President (Available after 2:00)  
Smith Barney Shearson, Inc. - In Juneau**

**D. Other Public Comments**

**E. Bill Scott with the Permanent Fund Corporation**

**Nov. 17th Agenda**

**L&C and Economic Task Force Hearing**

**Page 2**

**III. Pilot Bonus System within DOT/PF**

- A. Chris Gates, Director/Division of Economic Development  
DCED**
- B. Loren Rasmussen, Chief/Design Construction Standards  
DOT/PF**

**IV. State Publications/Printing Policy**

- A. Charles Gray, Publisher  
Fairbank's Daily Newsminer**
- B. Wayne Clark, Owner  
Graphic North - Fairbanks**
- C. Paul Gauthier or David Thoene, Owners  
Norstar Color - Anchorage**
- D. Bob Pavitt, President  
Capital Copy, Ltd. - Juneau**
- E. Ken Wray, Owner  
Ken Wray Printing - Anchorage**

**Proposed Provisions for Committee Substitute  
for Senate Bill 212**

1. Section 9 of Senate Bill 212 should be amended to include Alaska Industrial Development Authority.
2. Each state agency or fund named in Section 9 shall, by not later than January 1, 1995, create, fund and place in operation an "Emerging Alaskan Money Manager's" Program. Funds dedicated to the program shall be allocated for fixed income investments, equities and other exchange traded securities and contracts in which the agency is authorized by law to invest in the same proportion as the asset allocation model of the particular agency.
3. The criteria for the selection of money managers authorized to participate in the Emerging Alaskan Money Manager's Program shall include:
  - a. Sole or principal office located in Alaska.
  - b. Majority of the firm's employees and its principal investment decision-maker to be residents of Alaska with residence to be determined by the tests applicable to permanent fund dividend entitlement.
  - c. Achievement and maintenance of levels of performance by the Emerging Alaskan Money Manager, which are not less than those required by the agency for the performance of their other money managers with respect to the same or similar type of security.
  - d. Possession of all necessary licenses and registrations from governmental authorities to offer the discretionary money management services with respect to the equities, fixed income instruments, exchange traded securities or contracts proposed to be managed.
  - e. Such other criteria as may be established by the agency consistent with the goal of establishment of the Emerging Alaskan Money Manager's Program.
4. All criteria to qualify for participation in the Emerging Alaskan Money Manager's Program and the process for applying those criteria to the selection process for final participation in the Emerging Alaskan Money Manager's Program shall be published, and the screening process shall take place in Alaska either by personnel of the agency involved or by contract with persons or firms resident in the State of Alaska.
5. Each agency involved in this program shall commit not more than two percent or less than one-half of one percent of the funds allocated by it to fixed income investments