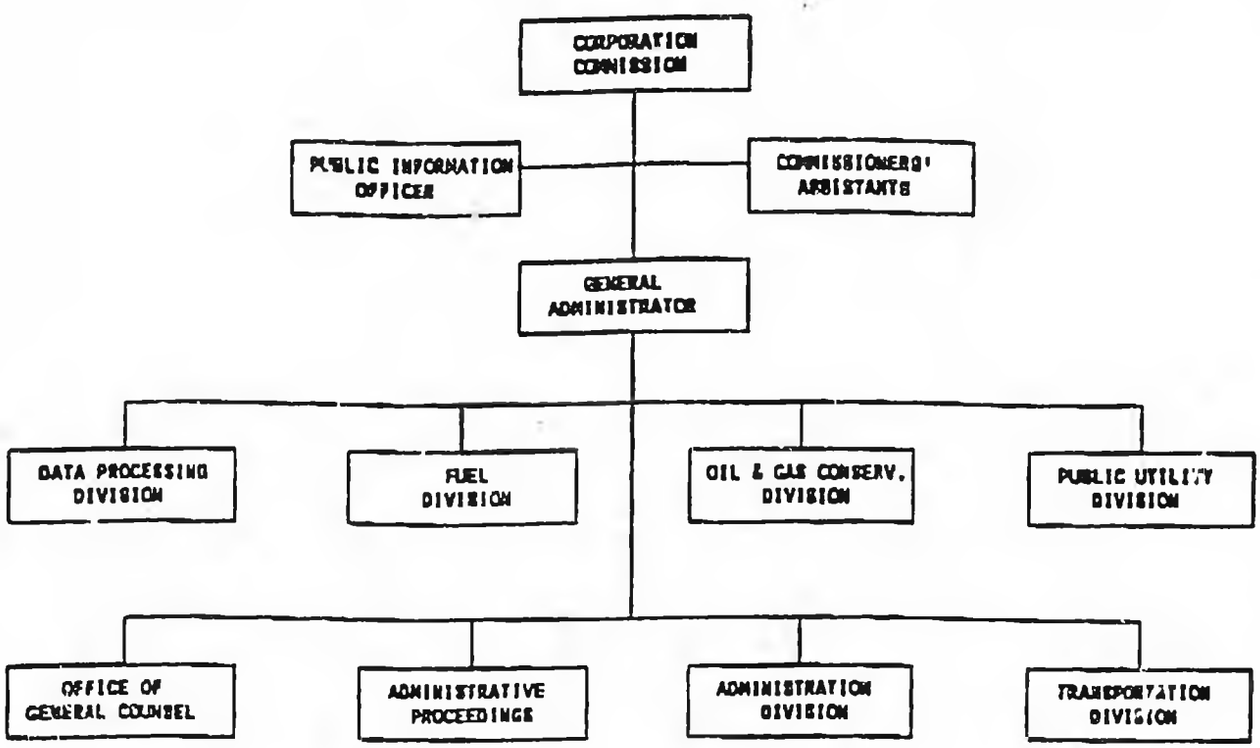
ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
8401 SENATE LABOR & COMMERCE

OKLAHOMA CORPORATION COMMISSION
(Continued)

ORGANIZATION CHART



Alaska State Legislature

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

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

716 W. 4TH, SUITE 400
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8180
FAX: (907) 258-4524

SENATE LABOR AND COMMERCE COMMITTEE

Proposed Amendments for SB 213: Extend the A.P.U.C. & R.C.C.

1. **Replace "the powers of the commission shall be liberally construed to accomplish its stated purpose" in AS 42.05.141(a)(1) with "the powers of the commission shall be those specifically conferred by the legislature or necessarily implied from those specific grants of authority".** (Proposed by ARECA & Senator Sharp/ Supported by ATA/ Opposed by GCI & APUC)

   The current "liberally construed" language was passed with the original act in 1970.

2. **Adjust the allocation of the Regulatory Cost Charge (RCC) (AS 42.05.253):** (Proposed by Auditor & ARECA/ Opposed by APUC and ATA)

   The APUC should periodically adjust the RCC factors to reflect workload on an industry by industry basis utilizing a timekeeping system. (Proposed by Auditor)

   Adjust the gross electric revenues by deleting the cost of power for electric utilities before the RCC is calculated. (Proposed by ARECA)

3. **Delete automatic repeal of RCC.** (Proposed by Auditor/ Supported by APUC)

   Auditor and APUC assert the Commission's sunset review is adequate to address any problems that arise from the RCC.

4. **To prevent RCC over-collection, amend AS 42.05.253 and 42.06.285 to ensure that over-collection does not lapse into the general fund, but rather would apply to the subsequent year thus reducing that year's RCC rate.** (Proposed by APUC/ Supported by ARECA)

   While such language is already in the governor's proposed budget, the APUC would like permanent language in their statute.

5. **Amend AS 42.05.711 to make it easier for utility consumers to opt in or opt out of economic regulation.** (Proposed by Auditor)

AS 42.05.711 exempts electric and telephone utilities with revenues less than $50,000 and refuse utilities with revenues under $200,000. Customers can obtain economic regulation by petitioning APUC with a petition signed by 25% of the utilities subscribers. The auditor thinks this is too great an obstacle to overcome and recommends that petition and election requirements be modeled after AS 42.05.712. These procedures call for an election if the petition is signed by 10% of the first 5,000 subscribers and 3% of the subscribers in excess of 5,000.

Further, AS 42.05.711 also allows deregulation elections to be held for electric and telephone utilities with revenues of less than $325,000 and other utilities with revenues under $100,000. The auditor believes more consumers should be given the option to deregulate by substantially raising the cut-off amount.

The APUC informed the committee that an increase in the cut-off for electric utilities from $325,000 to $500,000 would allow the members of nine additional electric utilities to vote to deregulate. The cut-off for local exchange telephone companies would have to be increased from $325,000 to $850,000 in order for any other utility to qualify for the option of voting to deregulate.

6. **Stagger the terms of the APUC member's term.** Commissioners are appointed for a six year term. (Proposed by Auditor/ Supported by APUC & ARECA)

Currently, the terms are scheduled to end as follows:

Consumer seat (1)	October 31, 1993
Engineering seat	October 31, 1993
Legal seat	October 31, 1994
Consumer seat (2)	October 31, 1996
Finance seat	October 31, 1998

6. (Continued from last page.)

The auditor proposes staggering be implemented by modifying the term of the engineering seat with the following language:

"The term of the Alaska Public Utilities Commission Engineering seat, which is scheduled to begin on November 1, 1993, shall end on October 31, 1995. This adjustment to the normal six-year term, as established under AS 42.05.020(a), is necessary to appropriately stagger commission membership."

7. Amend the procurement code, AS 42.015.141, to provide an exemption for the APUC when procuring expert witnesses for cases. (Proposed by APUC/ Supported by ATA)

8. Provide a waiver for the APUC from the state's hiring practices. (Proposed by ATA)

The Alaska Telephone Association asserted that given the tremendous changes in technology within the telephone industry, the APUC doesn't have the ability to train their staff on a timely basis for such specialized knowledge, while waiting on a list of people to be hired within the State.

AS 42.05.431(a) should be amended as follows: (addition underlined)

Sec. 42.05.431. Power of commission to fix rates. (a) When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged or collected by a public utility for a service subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order.

(b) A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds, and rates set by the commission must be adequate to meet those covenants. However, the commission is not required to set rates for services regulated by the commission to recover the allocated costs and coverage requirements of services that are not regulated by the commission. Bonds or other debt issued to finance unregulated, competitive ventures by a municipally owned utility shall not be incurred in a manner that would permit a creditor, on default, to have recourse to the assets of the basic regulated utility business.

(c) The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are also valid and enforceable, and rates set by the commission must be adequate to meet those covenants. However, a cooperative utility that is negotiating to enter a mortgage or other debt instrument that provides for a times-interest-earned ratio (TIER) greater than the ratio the commission most recently approved for that cooperative shall submit the mortgage or debt instrument to the commission before the instrument takes effect. The commission may disapprove the instrument within 60 days after its submission. If the commission has not acted within 60 days, the instrument is considered to be approved.

[The remaining subsections of AS 42.05.431 would be re-lettered but not substantively amended.]

COMPUTATION OF REGULATORY COST CHARGE (RCC)
WITH PROPOSED ELECTRIC EXCLUSION (3/5/93 WORKDRAFT J)
COST OF POWER = FUEL + PURCHASED POWER
JULY 1, 1993 - JUNE 30, 1994

LINE UTILITY GROSS REVENUES

	SECTOR	1992 Revenue (Actual)	Percent RCC (1.21)	Estimated RCC
1	Electric	$226,276,158	0.538%	$1,216,670
2	Gas	114,199,505	0.538%	$614,042
3	Refuse	20,656,122	0.538%	$111,066
4	Wastewater	20,594,329	0.538%	$110,734
5	Local Exchange Telephone	78,835,789	0.538%	$423,894
6	Interexchange Telephone	92,130,745	0.538%	$495,380
7	Cable	502,500	0.538%	$2,702
8	Water	24,097,453	0.538%	$129,570
9	Pipeline	111,838,906	0.538%	$601,350
10	TOTAL	$689,131,507		$3,705,410

FORMULA FOR COMPUTING RCC: RCC = (B - E + X)/GR

11	B = APUC Budget		$3,624,200	
12	E = Estimated Actual Cost Charges ($100,000) + First		(100,000)	
13	Quarter Estimated Collections			
14	X = Allowance for Uncollectibles = 5% x APUC Budget		181,210	
15	TOTAL TO BE RECOVERED		$3,705,410	
16	GR = Utility Gross Receipts		0.5377%	NEW RCC RATE
17	Full Year (l. 10)	$689,131,507	0.538%	New (Rounded)
18			0.455%	Old RCC Rate
			0.083%	Difference
19	FY94 Estimated Revenue Base	689,131,507	18.2%	% Change
20	RCC Percent (l.15 / l.19)	0.537693%		
21	RCC PERCENT ROUNDED	0.538%		
			$1,643,270	RCC Electric Share for FY 94
	COMPUTATION PER ELECTRIC kWh		1,216,670	Revised RCC Electric Share
			$426,600	Difference
22	1992 Electric Gross Retail Revenue (l.1)	$226,276,158	192,416	Less Legislative Audit Computation of Electric Overpayment
23				(Sunset Audit, page 8)
24	TIMES: RCC (l.21)	0.538%	$234,184	Difference
25	Amount Derived from Electric (l.23 x l.24)	$226,276,158		
26	1992 Electric Retail kWh	3,644,576,595		
27				
28	Rate per kWh (l.25 / l.27)	$0.000274		

AS 29.47.240 is amended by adding a new paragraph (c):

(c) If the proceeds of revenue bonds are used to finance any capital or other cost of a public utility service which is not rate regulated by the Alaska Public Utilities Commission, the revenue bonds may be secured only by the revenue of the service which is not rate regulated. Revenue from rate regulated services may not secure payment of interest or principal of revenue bonds used to finance capital or other costs of public utility services which are not rate regulated by the Alaska Public Utilities Commission.

AS 29.47.250 is amended to read:

Sec. 29.47.250. No election required. An election is not required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance, except that revenue bonds used to finance any capital or other cost of a public utility service which is not rate regulated by the Alaska Public Utilities Commission may be issued and sold only after a bond authorization ordinance is approved by a majority vote at an election.

AS 42.05.431(a) should be amended as follows: (addition underlined)

Sec. 42.05.431. Power of commission to fix rates. (a) When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged or collected by a public utility for a service subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order. A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds. However, a municipality or municipally owned utility subject to this chapter that is negotiating to issue bonds or other debt instruments other than general obligation bonds to finance, in whole or in part, the provision of services that are not rate regulated by the commission shall submit the bond or debt instrument to the commission before the instrument takes effect. The commission shall have a period of 90 days within which it may disapprove the instrument and the Commission may, based on a preliminary finding that issuance of the instrument would be contrary to the public interest, extend the period for an additional 90 days. The financial covenants contained in mortgages and other debt instruments of cooperative utilities organized under AS 10.25 are also valid and enforceable, and rates set by the commission must be adequate to meet those covenants.

However, a cooperative utility that is negotiating to enter a mortgage or other debt instrument that provides for a times-interest-earned ratio (TIER) greater than the ratio the commission most recently approved for that cooperative shall submit the mortgage or debt instrument to the commission before the instrument takes effect. The commission may disapprove the instrument within 60 days after its submission. If the commission has not acted within 60 days, the instrument is considered to be approved.

Proposed Amendment to AS 42.05.431(a)

Alaska law now provides utilities that are owned by municipalities and cooperatives with a guarantee of rates that is not available to other utilities. Specifically, the Alaska Public Utilities Commission is required to set rates so as to assure that bond covenants of municipal and cooperative utilities are met. (AS 42.05.431(a); APUC v. Municipality of Anchorage, 555 P2d. 262 (Alaska 1976))

This protection for municipally owned utilities has existed since before 1976. It was extended to cooperatives more recently, in 1986. When it was extended to cooperatives, however, the Legislature included a provision which allows the APUC to disapprove new bonds of cooperatives under certain circumstances. No such provision was added for municipal utilities, but it is necessary to do so at this time.

In general, it may be appropriate to provide municipally owned utilities with protections that are not available to other utilities. However, municipally owned utilities (particularly ATU) are now entering new business that are not rate regulated by the APUC and that are in competition with other businesses. Such utilities could place its regulated ratepayers at great risk by issuing bonds to finance the provision of new services. Current law requires the APUC to set rates to ensure that bond covenants are met, therefore the APUC would be required to set rates for local regulated services to cover losses of the utility in businesses that the APUC does not regulate.

For example, ATU has announced its intentions to invest over $100 million to provide "video dialtone" service and to compete in the interstate long distance market. Although the APUC cannot regulate either video dialtone service or interstate toll service, the APUC would be required to set local regulated rates high enough to meet bond covenants and cover losses in these businesses it does not regulate.

The proposed amendment does not entirely remedy this problem; that could be accomplished only by eliminating the

provision protecting municipally owned utilities. However, the amendment does provide the APUC an opportunity to review new bond issues (or other debt instruments) by municipally owned utilities that are issued to provide financing for businesses that the APUC does not rate-regulate. In that manner, the APUC can either disapprove bonds that place regulated ratepayers at unreasonable risk or, alternatively, the APUC could require the utility to structure the bond instrument in a way that does not place local regulated services at risk. This is comparable to the existing provision for review of new debt instruments of cooperatives.

Bill
For APUC bill

Proposed Amendment to AS 42.05.431(a)

Alaska law now provides utilities that are owned by municipalities and cooperatives with a guarantee of rates that is not available to other utilities. Specifically, the Alaska Public Utilities Commission is required to set rates so as to assure that bond covenants of municipal and cooperative utilities are met. (AS 42.05.431(a); APUC v. Municipality of Anchorage, 555 P2d. 262 (Alaska 1976))

In general, it may be appropriate to provide municipally owned utilities with protections that are not available to other utilities. However, municipally owned utilities (particularly ATU) are now entering new business that are not rate regulated by the APUC and that are in competition with other businesses. Such utilities could place its regulated ratepayers at great risk by issuing bonds to finance the provision of new services. Current law requires the APUC to set rates to ensure that bond covenants are met, therefore the APUC would be required to set rates for local regulated services to cover losses of the utility in businesses that the APUC does not regulate.

SENATE FINANCE COMMITTEE
Amendment Number: (2)
Bill Number: SB 213
Sponsor: ____ Date: 3/15/94
Logged In By: ____

For example, ATU has announced its intentions to invest over $100 million to provide "video dialtone" service and to compete in the interstate long distance market. Although the APUC cannot regulate either video dialtone service or interstate toll service, the APUC would be required to set local regulated rates high enough to meet bond covenants and cover losses in these businesses it does not regulate.

The proposed amendment provides that the Commission is not required to set regulated rates to cover the allocated costs and debt coverage requirements of services it does not regulate. Thus, although the Commission would still be required to set rates to recover all the costs and associated debt coverage requirements of the services it regulates, it would not be required to set rates to recover shortfalls incurred in services it does not regulate.

Additionally, the proposed amendment requires that debt issued to provide unregulated, competitive ventures be structured so

that, upon default, creditors would not have recourse to the assets of the basic regulated utility. This provision protects the assets of the regulated utility, and thus the utility's ability to provide basic utility services to ratepayer, from the very real possibility that the utiltiiy may incur substantial losses in competitive activities.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 213

Revision Date: 2/4/93
Title: Extending the Alaska Public Utilities Commission and the regulatory cost charge
Sponsor: Senator Kelly
Requestor: Senate Labor & Commerce

Department Affected: Commerce and Economic Development
BRU: Alaska Public Utilities Commission
Component:

COMPONENT SERIAL NO.

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0
FUND SOURCE						
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) cost: $ 0

POSITIONS						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0.	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Bob Lohr, Executive Director
Division: Alaska Public Utilities Commission
Phone: 276-6222
Date:

Approved by Commissioner: Paul Fuhs for CL Eskeed
Agency: Commerce and Economic Development
Date: 2-7-94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

Rev 11/93
WMdgt284fn.wm

FISCAL NOTE

8-LS1115\J
Cramer
3/5/94

CS FOR SENATE BILL NO. 213(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act extending the Alaska Public Utilities Commission; and relating to regulation of public utilities and to regulatory cost charges."

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

*** Section 1.** AS 39.25.120(c)(6) is amended to read:

(6) the executive director, deputy director, hearing officers, **section heads,** and administrative law judges of the Alaska Public Utilities Commission;

*** Sec. 2.** AS 42.05.253(a) is amended to read:

(a) A regulated public utility operating in the state shall pay to the commission an annual regulatory cost charge in an amount not to exceed **.8** [.61] percent of gross revenue derived from operations in the state, as modified under (c) of this section if appropriate. An exempt utility shall pay the actual cost of services provided to it by the commission.

*** Sec. 3.** AS 42.05.253(c) is amended to read:

(c) In determining the amount of the regulatory cost charge imposed under (a)

of this section,

(1) a utility selling utility services at wholesale shall modify its gross revenue by deducting payments it receives for wholesale sales;

(2) a local exchange telephone utility shall modify its gross revenue by deducting payments received from other carriers for settlements or access charges;

(3) an electric utility shall reduce its gross revenue by subtracting the cost of power; in this paragraph, "cost of power" means the variable costs of fuel and purchased power.

* Sec. 4. AS 42.05.253(e) is amended to read:

(e) The commission shall administer the charge imposed under this section. The Department of Revenue shall collect and enforce the charge imposed under this section. **The Department of Revenue shall identify the amount of the operating budget of the commission that lapses into the general fund each year. The legislature may appropriate an amount equal to the lapsed amount to the commission for its operating costs for the next fiscal year. If the legislature does so, the commission shall reduce the total regulatory cost charge collected for that fiscal year by a comparable amount.**

* Sec. 5. AS 42.05.711(e) is amended to read:

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross $50,000 annually is exempt from regulation under this chapter unless [25 PERCENT OF] the subscribers petition the commission for regulation **under AS 42.05.712(h)**.

* Sec. 6. AS 42.05.711(f) is amended to read:

(f) Notwithstanding any other provisions of this chapter, an electric or telephone utility that does not gross **$500.000** [$325,000] annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under the procedure described in AS 42.05.712.

* Sec. 7. AS 42.05.711(g) is amended to read:

(g) A utility, other than a telephone or electric utility, that does not gross **$150,000** [$100,000] annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 under the procedure described in

AS 42.05.712.

* **Sec. 8.** AS 42.05.711(i) is amended to read:

(i) A utility **that** [WHICH] furnishes collection and disposal service of garbage, refuse, trash, or other waste material and has annual gross revenues of **$300,000** [$200,000] or less is exempt from the provisions of this chapter, other than the certification provisions of AS 42.05.221 - 42.05.281, unless [25 PERCENT OF] the subscribers [OR SUBSCRIBERS REPRESENTING 25 PERCENT OF THE GROSS REVENUE OF THE UTILITY] petition the commission for regulation **under AS 42.05.712(h)**.

* **Sec. 9.** AS 42.05.711(k) is amended to read:

(k) A utility **that** [WHICH] furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221 - 42.05.281 [,] unless [25 PERCENT OF] the subscribers petition the commission for regulation **under AS 42.05.712(h)**.

* **Sec. 10.** AS 42.05.712(h) is amended to read:

(h) A utility or cooperative that is already exempt from regulation under this section **or that is exempt from regulation under AS 42.05.711(e), (i), or (k)** may elect to terminate its exemption in the same manner.

* **Sec. 11.** AS 42.06.285(a) is amended to read:

(a) A pipeline carrier operating in the state shall pay to the commission an annual regulatory cost charge in an amount not to exceed **.8** [.61] percent of gross revenue derived from operations in the state. A regulatory cost charge may not be assessed on pipeline carrier operations unless the operations are within the jurisdiction of the commission.

* **Sec. 12.** AS 42.06.285(c) is amended to read:

(c) The commission shall administer the charge imposed under this section. The Department of Revenue shall collect and enforce the charge imposed under this section. **The Department of Revenue shall identify the amount of the operating budget of the commission that lapses into the general fund each year. The legislature may appropriate an amount equal to the lapsed amount to the commission for its operating costs for the next fiscal year. If the legislature does**

so, the commission shall reduce the total regulatory cost charge collected for that fiscal year by a comparable amount.

* **Sec. 13.** AS 44.66.010(a)(4) is amended to read:

(4) Alaska Public Utilities Commission (AS 42.05.010) -- June 30, **1998** [1994];

* **Sec. 14.** REPEAL OF SUNSET OF REGULATORY COST CHARGES. Sections 22, 26, 36, and 38, ch. 2, FSSLA 1992, are repealed.

* **Sec. 15.** APUC STAGGERED TERMS. Notwithstanding AS 42.05.030(a), after the expiration in 1999 of the term of the member of the Alaska Public Utilities Commission with a major in engineering, the vacancy shall next be filled for a term of four years in order to adjust the staggering of the terms of the members of the commission so that no more than one commission member's term expires each year.

SENATE BILL NO. 213

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 5/7/93
Referred: L&C, JUD, FIN

A BILL

FOR AN ACT ENTITLED

"An Act extending the Alaska Public Utilities Commission and the regulatory cost charge."

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

* **Section 1.** AS 44.66.010(4) is amended to read:

(4) Alaska Public Utilities Commission (AS 42.05.010) - June 30, 1998 [1993].

PUBLIC UTILITY RCC

* Sec. 2. Section 36, ch. 2, FSSLA 1992 is amended to read:

Sec. 36. AS 42.05.253, enacted by sec. 20 of this Act, and AS 42.06.285, enacted by sec. 24 of this Act, are repealed December 31, 1998 [1994].

PIPELINE CARRIER RCC

* Sec. 3. Section 38, ch. 2, FSSLA 1992, is amended to read:

Sec. 38. Sections 22 and 26 of this Act take effect December 31, 1998 [1994].

* Sec. 4. AS 44.66.010(c) does not apply to sec. 1 of this Act.

CAN BE DELETED

42.05.651(a) Expenses of Investigation or Hearing of Public Utilities

42.06.610(a) Expenses of Investigation or Hearing of Pipeline Carrier

[DELETED TEXT BRACKETED]

MARKED-UP BILL - CITES IDENTIFIED

8-LS1115\X.1
Cramer
4/16/94

AMENDMENT

OFFERED IN THE SENATE BY SENATOR KELLY

TO: CSSB 213(JUD)

Page 4, lines 4 - 5:

Delete "**may elect to be** [IS]"

Insert "is"

Page 4, line 5, after "42.05.281":

Insert "[,] unless [25 PERCENT OF] the subscribers petition the commission for regulation"

Page 4, lines 6 - 7:

Delete "[, UNLESS 25 PERCENT OF THE SUBSCRIBERS PETITION THE COMMISSION FOR REGULATION]"

8-LS1115N.1
Cramer
4/28/94

AMENDMENT

OFFERED IN THE SENATE BY SENATOR KELLY

TO: CSSB 213(FIN)

Page 4, line 6:

Delete "Rates"

Insert "For telephone utilities, rates"

Page 4, line 8, after "for":

Insert "telephone"

Page 4, line 11, after "owned":

Insert "telephone"

Page 4, line 12, after "regulated":

Insert "telephone"

SB 218

Alaska State Legislature

During Interim:
3111 C Street, Suite 150
Anchorage, AK 99503-3925
(907) 561-2038
Fax (907) 561-4194

During Session:
State Capitol
Juneau, AK 99801-1182
(907) 465-4993
Fax (907) 465-3872

Senator Drue Pearce
District F

To: Senator Tim Kelly, Chair
Senate Labor & Commerce Committee

From: Senator Drue Pearce, Co-Chair
Senate Finance Committee

Date: January 18, 1994

Re: Scheduling a hearing for Senate Bill 218.

Please consider scheduling Senate Bill 218, the Campaign Reform Act of 1993, at your earliest opportunity. This bill prohibits the direct or indirect contribution of pull-tab or bingo proceeds to political candidates or their campaigns.

The original intent of Alaska's charitable gaming law was to help finance worthwhile charities as state budget support began to fall as revenues began their decline.

In 1976, during a special session and over Governor Hammond's veto, the legislature added political entities to the list of organizations eligible for charitable gaming permits. The Alaska Public Offices Commission reports for 1990, 1991, and 1992 identify slightly over $1 million dollars going to campaigns in Alaska from gaming sources. It is unlikely that the public would condone this diversion of funds if it were widely known.

All nonprofits, including political parties and labor organizations, would still be allowed to hold permits and use their proceeds for administrative or other charitable expenses. They could also use raffles and other permitted games to earn money which could then be used for direct contributions to candidates.

SB

227

National Bank of Alaska

Mr. C.B. Toh
Vice President
Direct: (907) 265-2078
Fax: (907) 265-2141

Corporate Headquarters P.O. Box 100600 Anchorage, Alaska 99510-0600 (907) 276-1132
301 W. Northern Lights Blvd., Anchorage, AK 99503.

October 21, 1993

Alaska State Senator Jay Kerttula
P.O. Box 1009
Palmer, AK 99645

Attention: Bill Kelder, Esquire

Re: TRAC Vehicle Leasing in Alaska

Dear Senator Kerttula:

I am writing you on behalf of National Bank of Alaska. Earlier this year, the Alaska Legislature enacted a set of amendments to UCC 1-201(37), sharpening the state law distinction between a "lease" and a "security interest" in transactions involving equipment and motor vehicles. While this new law is helpful in many situations, it is silent about our long-standing business practice of leasing fleets of motor vehicles to commercial business lessees under agreements with terminal rental adjustment clauses (TRACs). We seek your help in enacting legislation that would clarify the status of TRAC motor vehicle leases as true leases under Alaska state law.

Two national trade associations -- the American Automotive Leasing Association (AALA) and the Equipment Leasing Association (ELA) -- wrote you earlier about the need for TRAC/state legislation in Alaska. We agree with AALA and ELA.

What AALA, ELA and National Bank of Alaska are seeking is the enactment of legislation adding the following new section 28.10.375 to the Alaska Statutes:

> Sec. 28.10.375. TERMINAL RENTAL ADJUSTMENT CLAUSES: VEHICLE LEASES THAT ARE NOT SALES OR SECURITY INTERESTS.
>
> In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

This is non-controversial, public interest legislation that will help put TRAC vehicle leases on a level playing field with other kinds of leases for state law and bankruptcy law purposes. If enacted in Alaska, this legislation will treat TRAC vehicle leases like all other leases, with the result that TRAC vehicle lessors' risks and costs will be lowered, lessees' rental rates will be reduced, and both interstate commerce and commerce within the state of Alaska will be facilitated.

[redacted]

– LTRS OF SUPPORT

Thank you very much for your consideration. I look forward to your earliest favorable response.

Sincerely,
NATIONAL BANK OF ALASKA

C.B. Toh
Vice President

VOLPE, BOSKEY AND LYONS
WORLD CENTER BUILDING
918 16TH STREET, N. W.
WASHINGTON, D. C. 20006

JOSEPH VOLPE, JR.
BENNETT BOSKEY
ELLIS LYONS
EDWARD A. GROOBERT
D. BIARD MACGUINEAS
EDWIN E. HUDDLESON, III

EVA F. SHERMAN
MORRIS KLEIN

(202) 737-6580
FAX: (202) 737-6966

FAX TRANSMITTAL SHEET

VOLPE, BOSKEY AND LYONS - Telephone Number: 202/737-6580
Telecopier Number: 202/737-6966

TO: Bill Kelder, Esquire — FAX: (907) 376-0315
Chambers of Senator Kertula — Tel: (907) 376-2675

FROM: Ed Huddleson

DATE: October 4, 1993

REMARKS: Re: TRAC vehicle leasing in Alaska

To follow up our telephone conversation today, I am writing on behalf of the National Bank of Alaska, as well as the American Automotive Leasing Association and the Equipment Leasing Association. We are asking for Senator Kertula's help. What we seek is a non-controversial, public interest bill adding the following new section 28.10.375 to the Alaska Statutes:

> Sec. 28.10.375. TERMINAL RENTAL ADJUSTMENT CLAUSES: VEHICLE LEASES THAT ARE NOT SALES OR SECURITY INTERESTS
>
> In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

You will see from the enclosed explanatory material that at least twenty (20) other jurisdictions have enacted this model TRAC/ state law or its equivalent. TRAC vehicle lessors in Alaska ask for your assistance in making this law a reality in Alaska.

Thank you for talking to me today about this matter.

TOTAL NUMBER OF PAGES: 25 (INCLUDING COVER SHEET)

VOLPE, BOSKEY AND LYONS
WORLD CENTER BUILDING
918 16TH STREET N W
WASHINGTON D C 20006

JOSEPH VOLPE JR
BENNETT BOSKEY
ELLIS LYONS
EDWARD A GROOBERT
D BIARD MACGUINEAS
EDWIN E HUDDLESON III

EVA F SHERMAN
MORRIS KLEIN

(202) 737-6580
FAX (202) 737-6966

September 9, 1993

Alaska State Senator Jay Kertula
P.O. Box 1009
Palmer, Alaska 99645

Attention: Bill Kelder, Esquire

Re: TRAC vehicle leasing in Alaska

Dear Senator Kertula:

Our firm represents both the American Automotive Leasing Association (AALA) and the Equipment Leasing Association of America (ELA). I am writing on behalf of both AALA and ELA to ask your help in enacting Alaska state legislation to safeguard our member companies' wide-spread practice of leasing fleets of motor vehicles to commercial business lessees under lease agreements with terminal rental adjustment clauses (TRACs).

What we are seeking is a separate stand-alone bill on TRAC vehicle leasing, adding the following new section 28.10.-375 to the Alaska Statutes, Title 28 ("Motor Vehicles"), Chapter 10 ("Vehicle Registration and Title"), Article 4 ("Filing DFocuments Evidencing Liens or Encumbrances"):

> Sec. 28.10.375. TERMINAL RENTAL ADJUSTMENT CLAUSES: VEHICLE LEASES THAT ARE NOT SALES OR SECURITY INTERESTS
>
> In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

The origin, purposes and effect of this provision are explained in detail in the enclosures. See New Developments: Article 2A Leases of Goods, 1993 Commercial Law Annual at pp.124-130 (enclosed). This is non-controversial, public interest legislation that, if enacted, will enhance both interstate commerce and commerce within the State of Alaska.

Twenty (20) jurisdictions have now adopted our model TRAC/state law or its functional equivalent: Alabama, District of Columbia, Florida, Illinois, Louisiana, Michigan, Minnesota, Missouri, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Texas, Vermont, Virginia, Washington, and Wisconsin. We sincerely hope Alaska will follow suit.

Our specific request is this: If you agree with us that this is meritorious legislation, would you pre-file a TRAC/= state law bill in 1993 for consideration by the Alaska legislature at the earliest possible time in 1994?

Thank you for considering our views on this important public interest measure.

Yours very truly,

Edwin E. Huddleson

Edwin E. Huddleson, III

Enclosures

cc: (w. enclosures)

Chairman Bill Hudson
Alaska House Labor and Commerce Committee

Mr. James L. Cloud
Vice President
National Bank of Alaska Tel: (907) 265-2816
P.O. Box 100600
Anchorage, Alaska 99503

Arthur H. Peterson, Esquire
One Sealaska Plaza (Suite #202)
Juneau, Alaska 99801

ELA

Equipment
Leasing
Association
of America

April 9, 1993

Honorable Bill Hudson
Chairman
House Labor and Commerce Committee
State Capitol Building
Juneau, Alaska 99801
VIA FAX: (907) 465-6790 Call Back: (907) 465-3744

Attention: Linda Giguere, Esquire

Re: UCC Article 2A-Leases and TRAC vehicle leasing in Alaska-- Senate Bill #112

Dear Representative Hudson:

Over the past several years, the Equipment Leasing Association of America (ELA)[1] has carefully studied UCC Article 2A-Leases, the new uniform state law governing leasing of equipment and motor vehicles. We support this legislation, which is now before the Alaska legislature in Senate Bill #112. We also support the model state law on TRAC vehicle leasing, which was described in earlier correspondence to you from the American Automotive Leasing Association.

1. UCC Article 2A-Leases. UCC Article 2A-Leases is a meritorious and desirable piece of legislation. Traditional common law principles-- a classic benchmark of common sense and gut equity-- are used to define a lease and the distinction between a lease and a "security interest." UCC filings (or notice) are not required for leases, though precautionary filings are still permitted. Within wide limits, the general principle of freedom of contract is preserved for lessors and lessees. The statute creates the opportunity to create a

---

[1] ELA is the major national trade association in the multi-billion dollar equipment leasing industry. The membership of ELA consists of about 900 member companies, including National Bank of Alaska, that engage in all aspects of equipment leasing, involving every sort of equipment and lease agreement, including operating leases, leveraged leases and finance leases.

1300 North 17th Street · Suite 1010 · Arlington, Virginia 22209 · 703/527-8655 · Fax 703/527-2649

statutory finance lease (§2A-103(1)(g)), as well as a contractual finance lease. The state law of lease warranties and remedies is clarified and improved, with the new statutory standard on liquidated damages (§2A-504) being a particularly welcome feature of 2A. The old vendor-in-possession doctrine for sale-leasebacks is essentially abolished. These are all significant improvements over existing law, which warrant enactment of UCC Article 2A-Leases.

We are advised that Alaska Senate Bill #112 contains the 1990 uniform amendments to UCC Article 2A-leases. ELA supports these 1990 amendments. They come to grips with secured creditors' concerns about §2A-303 (assignments) and §2A-307 (priorities: rights of the lessor's secured creditors vis a vis the lessee); they clarify and refine the statutory remedies scheme of 2A; and they make it easier to qualify a transaction as a statutory finance lease under §2A-103(1)(g).

UCC Article 2A-Leases, in its new improved uniform form, merits your support and enactment. The statute brings together in one place the state commercial law of equipment leasing, which previously was scattered partly in real estate law, partly in the law of sales (UCC Article 2) and secured transactions (UCC Article 9), and partly in the old common law on "bailments for hire." The impact of this legislation will be to enhance interstate commerce, in the public interest, by unifying and improving the state commercial law of equipment leasing.

2. TRAC/state law. ELA also supports the model state law on TRAC vehicle leasing that was described in earlier correspondence to you from the American Automotive Leasing Association (AALA). In our view, the scope of TRAC leasing is properly defined by commercial custom so that it is acceptable for automobiles and other closely-related equipment within the scope of the federal tax Code/TRAC provision, 26 U.S.C. §7701(h), though it would be objectionable if applied to leasing for railroad rolling stock, aircraft, or any other kinds of equipment.

TRAC vehicle leasing is conducted by a significant number of ELA's member companies, including National Bank of Alaska in Anchorage, Alaska. These member companies, their commercial customers, and the public interest in enhancing interest commerce, would all benefit from enactment of the model TRAC/state law, which is limited to vehicle leasing. The impact of the model TRAC/state law would simply bring state commercial law into agreement with federal tax law.

We therefore support enactment of the model TRAC/state law in Alaska. This objective could be accomplished, as

explained in earlier correspondence to you from AALA, by adding the following new section 28.10.375 to the Alaska Statutes:

> Sec. 28.10.375. TERMINAL RENTAL ADJUSTMENT CLAUSES: VEHICLE LEASES THAT ARE NOT SALES OR SECURITY INTERESTS.
>
> In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

TRAC/state legislation has been enacted in at least sixteen (16) States so far: Alabama, the District of Columbia, Florida, Illinois, Michigan, Minnesota, Missouri, New Jersey, New York, North Dakota, Ohio, Oklahoma, Rhode Island, Texas, Virginia, and Wisconsin. The Commissioners on Uniform State Laws have examined the model TRAC/state law proposal in detail, and at length, and they have no problem with it. See attached letter from the Commissioners.

We support the enactment of UCC Article 2A-Leases (Senate Bill #112) in Alaska. ELA also supports the proposal of AALA to enact the model TRAC/state law in Alaska.

Thank you for considering our views on this important legislation.

Yours very truly,

Edwin E. Huddleson

Edwin E. Huddleson, III

Volpe, Boskey and Lyons
Counsel for ELA

cc: Mr. James L. Cloud
Vice President
National Bank of Alaska
P.O. Box 100600
Anchorage, Alaska 99502
FAX: (907) 265-2141
Tel: (907) 265-2816

April 7, 1993

Honorable Bill Hudson
Chairman
House Labor and Commerce Committee
State Capitol Building
Juneau, Alaska 99801
VIA FAX: (907) 465-6790 Call Back: (907) 465-3744

Attention: Linda Giguere, Esquire

Re: TRAC vehicle leasing and UCC Article 2A-Leases in Alaska-- Senate Bill #112

Dear Representative Hudson:

I'm writing to you on behalf of the American Automotive Leasing Association (AALA)[1] to ask your help in obtaining Alaska state legislation. We are concerned about our members' decades-old practice of leasing fleets of motor vehicles to commercial business lessees under lease agreements with terminal rental adjustment clauses (TRACs).

UCC Article 2A-Leases, the new uniform state law governing leasing of motor vehicles and equipment, is silent (or neutral) on the status under state commercial law of TRAC vehicle leases that are widely used in our industry, with the specific approval and endorsement of the federal tax laws. We have no quarrel with UCC 2A. Yet with the clarification of many other aspects of state leasing law in UCC 2A, we submit that the Alaska Vehicle Code should now be amended to make it

---

[1] AALA is a national trade association of companies engaged in leasing motor vehicles, primarily to commercial and industrial users. The vehicles are generally leased in fleets, ranging in size from a few automobiles to large fleets of hundreds or thousands of automobiles, for periods of a year or more. The member companies of AALA lease and manage the majority of sales and service vehicles used by businesses throughout our country, a market exceeding three and a half million vehicles. Vehicles leased by AALA members operate in all the States, including Alaska.

clear that TRAC vehicle leases are valid "leases"-- not "sales" or "security interests"-- under state commercial law.

1. Background

Terminal rental adjustment clauses (TRACs) have been widely used throughout the motor vehicle leasing industry for well over thirty (30) years. A TRAC clause permits (or requires) an upward or downward adjustment of rent to make up for any difference between the projected value of a vehicle and the actual value upon lease termination. The objective of TRAC vehicle leases is to provide a financial incentive for the lessee/user, who is the party to the transaction best able to control the maintenance of the vehicle, to keep the vehicle in good repair.

Over the years, TRAC vehicle leasing has been increasingly accepted in the law. The federal tax laws were amended in 1983 to codify industry practice and specifically recognize TRAC motor vehicle leases to commercial lessees as true leases. See 26 U.S.C. §7701(h) (1986).[2] Tax law at the state level also generally follows federal tax law in recognizing that TRAC vehicle leases to commercial lessees are true leases for state tax purposes. And today many varieties of TRAC vehicle leases are recognized as true leases for accounting purposes.

TRAC vehicle leases also have been recognized as true leases for state commercial law purposes by some state courts. See Old Wine in New Bottles: UCC Article 2A-Leases, 39 U.Alabama L.Rev. 615, 638-641 (1988) (discussing case law). But other courts have disagreed. See id. There appears to be no Alaska court decision on point.[3] Whether TRAC vehicle leases are true leases under state commercial law remains unsettled.

This is troublesome for TRAC vehicle lessors, since the state commercial law validity of TRAC vehicle leases (their

---

[2] TRAC vehicle leasing is confined, by virtue of federal tax law, to a commercial business setting. It does not involve leasing to consumers.

[3] TRAC vehicle leasing was not involved in Dischner v. United Bank Alaska, 631 P.2d 107 (Alaska S.Ct. 1981). The vehicle lease in Dischner contained a "nominal" option of the kind that destroys true lease status under newly amended UCC 1-201(37). It was a "bailment lease" that was stipulated to be a secured sale (not a true lease). See 631 P.2d at 108 n.2. By contrast, TRAC vehicle leases do not involve "nominal" options, and newly amended UCC 1-201(37) is deliberately silent as to whether TRAC vehicle leases are, or are not, true leases. See Old Wine in New Bottles, 39 Alabama L.Rev. 615, 639 (1988).

status as "true leases" and not "sales" or "security interests") is important to the lessor in cases where the lessee is in bankruptcy. When this occurs, a TRAC vehicle lessor is entitled to receive full current rental payments or (on appropriate motion) to repossess the vehicles, if the TRAC lease is viewed as a true "lease". By contrast, if the TRAC lease is viewed as a "perfected security interest", then the TRAC lessor in this situation will have the right to receive payments representing only the depreciation on the leased equipment (about 50% to 80% of full rentals, in the recent experience of TRAC vehicle lessors). And if the TRAC vehicle lease is viewed as an "unperfected security interest", the trustee in bankruptcy may be able to keep the vehicles, without making current payments of any kind, and sell them. See id. (citing bankruptcy cases); In re Tulsa Port Warehouse Co., 690 F.2d 809 (10th Cir. 1982). True lessors of vehicles and equipment are thus better off than holders of "perfected security interests" who, in turn, are better off than holders of "unperfected security interests", when the lessee is in bankruptcy. See generally In re Pacific Express, Inc., 780 F.2d 1482 (9th Cir. 1986) (opinion spelling out difference between a true lease and a security interest, where lessee/borrower is in bankruptcy).

Typically, federal bankruptcy courts look to state commercial law to determine whether a transaction is a "lease" or a "sale" or a "security interest". See id. We therefore seek Alaska state legislation clarifying the status of TRAC motor vehicle leases, in major part because of its impact on federal bankruptcy cases. Moreover, the status of TRAC vehicle leases as true leases for tax, accounting and all other purposes would be buttressed, if Alaska state commercial law also clearly recognized the true lease status of TRAC vehicle leases.

To date, sixteen (16) States have enacted our model TRAC/state law: Alabama, the District of Columbia, Florida, Illinois, Michigan, Minnesota, Missouri, New Jersey, New York, North Dakota, Ohio, Oklahoma, Rhode Island, Texas, Virginia, and Wisconsin. Other States including Connecticut, Oregon, New Hampshire, Vermont, and Washington, are actively considering our TRAC proposal, which is being raised in most of the States throughout the country. We think Alaska should follow suit.

The original sponsors of UCC Article 2A-leases-- the Commissioners on Uniform State Laws-- have been advised of our proposed TRAC vehicle amendment and they have no problem with it. See attached letter from the Commissioners on Uniform State Laws' national office on TRAC vehicle leases. Indeed, we do not know of anyone -- in Alaska or anywhere else --who opposes our amendment.

TRAC vehicle leasing is a well-established form of business that is here to stay. It is a good business. It lowers lease rental rates. It serves the public interest. There is no warrant for imposing any state law or bankruptcy law "penalty" on TRAC vehicle lessors for simply using TRAC leases that federal tax law specifically recognizes and encourages. This is only common sense and simple justice.

2. Validating TRAC vehicle leases in Alaska's Vehicle Code

To be very specific, we respectfully suggest that the following new section be added to Senate Bill §112, seeking to enact UCC Article 2A-Leases in Alaska, adding the following new section 28.10.375 to the Alaska Statutes, Title 28 ("Motor Vehicles"), Chapter 10 ("Vehicle Registration and Title"), Article 4 ("Filing Documents Evidencing Liens or Encumbrances"):

> Sec. 28.10.375. TERMINAL RENTAL ADJUSTMENT CLAUSES; VEHICLE LEASES THAT ARE NOT SALES OR SECURITY INTERESTS
>
> In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

This special provision would not be at odds with UCC 2A. Our understanding is that UCC 2A is silent (or neutral) -- not hostile-- towards TRAC vehicle leases. We respectfully ask for your assistance in enacting legislation that supports the public interest by making it clear that TRAC vehicle leases are true "leases"-- not "sales" or "security interests" --under Alaska state commercial law.

Other industry groups support AALA's proposal. Years ago, when TRAC vehicle leasing was discussed by the Commissioners on Uniform State Laws, both AALA and the Equipment Leasing Association of America (ELA) supported validating motor vehicle TRAC leases as true leases under state law. In the view of ELA, the scope of TRAC leasing was properly defined by commercial custom so that it was acceptable for automobiles and other closely-related equipment within the scope of the tax Code/TRAC provision, 26 U.S.C. §7701(h) (1986), though it would be objectionable if applied to leasing for railroad rolling stock, aircraft, or any other kinds of equipment. This accomodation between AALA and ELA reflects an acceptance of the

different commercial customs and traditions that prevail in different industries.

The impact of the provision we urge would simply bring state commercial law into agreement with federal tax law.

3. Conclusion

TRAC vehicle leases deserve your support on their merits. Our proposed TRAC amendment serves the public interest. It will benefit both lessors and lessees in Alaska. Our AALA members, engaged in leasing vehicles to commercial business lessees in Alaska and other states, strongly support the TRAC amendment we seek. We ask you to support our TRAC vehicle amendment in the public interest.

Thank you very much for considering our views.

Yours very truly,

Edwin E. Huddleson, III

Volpe Boskey and Lyons
Counsel for AALA

Attachment

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 January 20, 1994

SUBJECT: Sectional Summary of SB 227 (Work Order No. 8-LS1332\A)

TO: Senator Jalmar Kerttula
Attn: Carol

FROM: Theresa L. Bannister
Legislative Counsel

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

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Prevents certain motor vehicle and trailer transactions from being considered sales or security interests just because they provide that the rental price is permitted or required to be adjusted by reference to the amount realized from the sale or other disposition of the motor vehicle or trailer.

Section 2. States that sec. 1 doesn't apply to transactions that are entered into before the effective date of the Act.

TLB:gc
94-043.glc

– SECTIONAL –

Alaska State Legislature
SENATE

Official Business

State Capitol
Juneau, AK 99801-1182

February 22, 1994

MEMORANDUM

To: Senator Tim Kelly, Chair
Senate Labor and Commerce Committee

From: Senator Jay Kerttula

Re: S.B. 227 Relating to Motor Vehicle Rental Terms

Please schedule the above bill at your earliest convenience. Attached you will find a sectional analysis and a sponsor statement. I have also included selected back-up for your information.

Thank you in advance for your assistance in this matter.

New Developments: Article 2A Leases of Goods

By Edwin E. Huddleson, III

Reprinted from

Commercial Law Annual

1993

Louis F. Del Duca
Patrick Del Duca
Editors

CBC

CLARK
BOARDMAN
CALLAGHAN™

DEERFIELD, IL • NEW YORK, NY • ROCHESTER, NY

Customer Service: 1-800-323-1336

Part II. Leases—Article 2A

NEW DEVELOPMENTS: ARTICLE 2A LEASES OF GOODS

By Edwin E. Huddleson, III[*]

I. INTRODUCTION

Thirty-one states have now enacted Uniform Commercial Code (UCC) Article 2A—Leases.[1] With the 1990 uniform

---

[*] Copyright © 1992 by Edwin E. Huddleson, III, B.S. 1967, Stanford University; J.D. 1970, University of Chicago; member of the California and District of Columbia bars; engaged in private practice in Washington, D.C.

The author would like to thank Brock J. Austin, Professor Neil B. Cohen, and Roy S. Powell, Jr., for their helpful comments on an earlier draft of this article.

[1] The original 1987 uniform version of the statute was enacted in Florida, Oregon, South Dakota, and Utah. With some minor variations from state to state, new improved UCC Article 2A (with its 1990 uniform amendments) has been enacted in Alabama, Arizona, California, Colorado, Delaware, the District of Columbia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine,

amendments to the statute now in place, its eventual enactment in all the states seems assured. This short article briefly surveys the 1990 amendments, the major court decisions interpreting Article 2A, and some other recent developments about terminal rental adjustment clause (TRAC) vehicle leases and the long-term impact of UCC Article 2A that have attracted attention as state legislatures, courts, and the practicing bar come to grips with the new statute.

The major issues addressed by the 1990 amendments to Article 2A are:

(1) secured lenders' concerns about Sections 2A-303 (assignments) and 2A-307 (priorities: rights of lessor's secured creditors vis à vis the lessee);
(2) statutory remedies; and
(3) statutory 'finance leases' under 2A-103(1)(g).

But the single most important 'new development' may be an increased appreciation within the practicing bar of what the Article 2A statute really says. Over the years since Article 2A's initial promulgation in 1985, the bar has raised a variety of concerns about the statute. Some concerns were unfounded.[2] Other concerns were more substantial. Yet these concerns now

---

Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Virginia, Wisconsin, and Wyoming. UCC Article 2A is pending in several other states as of this writing in mid 1992.

Texas and Louisiana enacted newly amended UCC § 1-201(37), sharpening the distinction between a lease and a security interest, effective September 1, 1989 (Texas) and January 1, 1990 (Louisiana).

[2] Early critics complained, for example, that UCC Article 2A failed to define 'unconscionability'—the major limit on freedom of contract in Article 2A. But Article 2A's incorporation by reference principle (see Comment to UCC § 2A-101) means that the concept of 'unconscionability' in UCC § 2A-108 is given specific meaning by the comparable provision in the old sales article (UCC § 2-302), its official comments, and case law developed under UCC § 2-302. Ordinarily, both 'substantive' and 'procedural' unconscionability are required before a court will strike down a lease provision as unconscionable. See, e.g., John Deere Leasing v. Strubinger, 686 F Supp 1569, 1574-1575 (D Kan 1988). The courts rarely find 'unconscionability' in commercial (as opposed to consumer) lease transactions. See, e.g., Pacific American Leasing Corp. v. SPS Building Systems, Inc., 152 Ariz 90, 730 P2d 273, 279 (Ariz App 1986). Cf. UCC Series (Huddleson) Special Release 2

seem to have been laid to rest, particularly by the clarifications in the 1990 uniform amendments. At least, Article 2A now seems to be accepted as a workable and desirable part of the UCC that, like the other parts of the UCC, should be speedily enacted throughout the country.

II. TRUE LEASES OF GOODS DISTINGUISHED FROM 'SALES' AND 'SECURITY INTERESTS'

A. IN GENERAL

Why do we care whether a transaction is characterized as a true lease or a secured sale? True leases long have been distinguished from sales for many purposes, including the commercial law of remedies,[3] whether UCC filings are required and third-party rights, whether a transaction is covered by state usury laws,[4] and a lessor's rights under § 365 of the Bankruptcy Code when the lessee goes into bankruptcy.[5] The scope of Article 2A

(1991) § 2A-91 (canvassing cases and authorities defining 'unconscionability' in the context of lease transactions).

[3] Where a purported 'lease' is found to be a disguised security interest, the 'lessor' (secured party) may be barred from obtaining a deficiency judgment against a defaulting 'lessee' (debtor) if it failed to give notice to the debtor as required by UCC § 9-504(3). See, e.g., Fleming v. Carroll Pub. Co., 581 A2d 1219 (DC App 1990) (decided under old version of UCC § 1-201(37)). Cf. Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 641-657 (1988).

[4] True leases, as opposed to disguised loans or 'forbearances' of money, may be exempt from state usury laws. See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 625 & n 20 (1988) (collecting cases); Kinard v. Colonial Leasing Co., 800 SW2d 187 (Tex 1990) (court recharacterized 'lease' transaction with nominal purchase option as a loan and secured sale, and imposed penalties for usury on the 'lessor').

[5] True lessors of equipment are better off than holders of 'perfected security interests' who, in turn, are better off than holders of 'unperfected security interests,' when the lessee is in bankruptcy. See generally In re Pacific Exp., Inc., 780 F2d 1482 (CA9 1986) (opinion spelling out the difference between a true lease and a security interest, where lessee/borrower is in bankruptcy). Thus, true lessors generally are entitled to receive full current rental payments or (on appropriate motion) to repossess their equipment, under 11 USC § 365, if the 'lease' transaction is viewed as a true lease. See, e.g., In re Curry Printers, Inc., 135 BR 664 (BC ND Ind 1991); In re Fred Sanders Co., 9 BCD 677, 22 BR 902, 7 CBC2d 421 (BC ED Mich 1982) ('objective approach' taken by the majority of courts when lessee is in bankruptcy reorganization.

is limited to apply to "any transaction, regardless of form, that creates a lease" of goods.[6]

The impact of amended Section 1-201(37) has generally improved the quality of court decisions that characterize a transaction as a lease, or sale, or security interest.[7] What the amended statute makes clear is the importance of the lessor's meaningful economic interest in the residual, or what one commentator calls the lessor's "reversionary interest,"[8] as the central touchstone in the definition of a true lease.

---

lessor's administrative rent claim is measured by the "reasonable rental value" of the equipment—presumptively the rent specified in the lease agreement—regardless of the amount of lessee's actual use of the equipment). Compare In re Lease-A-Fleet, Inc., No. 91-129965 (BC ED Pa May 7, 1992) and In re Grant Broadcasting, 71 BR 891, 13 CBC 2d 1116 (BC ED Pa 1987) ("subjective approach": when lessee is in bankruptcy reorganization, lessor's administrative rent claim is measured based on the lessee's actual use of the leased property, and not on the rental rate specified in the lease agreement). By contrast, if a "lease" is viewed as a "perfected security interest" and not a true lease, then the "lessor" in this situation will have the right to receive payments representing only the depreciation on the leased equipment (about 50% to 60% of full rentals, in the recent experience of some equipment lessors). And if the "lease" is viewed as an "unperfected security interest," the trustee in bankruptcy may be able to keep the equipment, without making current payments of any kind, and sell it. See In re Tulsa Port Warehouse Co., Inc., 890 F2d 309 (CA10 1989).

There is no federal statutory definition of a lease, and federal bankruptcy law generally has looked to state commercial law to define the difference between a true lease and a security interest. See discussion of In re Pan Am Corp., 21 BCD 757, 124 BR 960 (BC SD NY 1991).

[6] UCC § 2A-102.

[7] "A lease involves payment for the temporary possession, use and enjoyment of goods, with the expectation that the goods will be returned to the owner with some expected residual interest of value remaining at the end of the lease term. In contrast, a sale involves an unconditional transfer of absolute title to goods, while a security interest is only an inchoate interest contingent on default and limited to the remaining secured debt." 1A White & Summers, Uniform Commercial Code: Article 2A Leases of Goods ch 2, at 5, n 1 (3rd ed 1991).

[8] See id. at 7-10.

contract a 'condition to the effectiveness of the lease contract.' Two other options are added by the 1990 amendments: furnishing the lessee with a complete statement of the warranties covering the goods (as well as any limitations or disclaimers) made by the supplier, the manufacturer, or anyone else or, in a nonconsumer lease, telling the lessee in writing who the supplier is, that the lessee may invoke the lessor's rights against the supplier, and that the lessee can obtain a complete statement of the promises and warranties covering the goods from the supplier.

The comments to Section 2A-103(1)(g) were amended in 1990 to state that a statutory finance lessor is not required to disclose the price (or any amended price) of the goods to the lessee in order to qualify for statutory finance lease status. This seems reasonable. The objective of the statute is to ensure that the lessee knows about any warranties covering the goods, not to provide the lessee with improved knowledge to enable him or her to 'bargain down' the lessor's proposed schedule of rents. The statutory finance lessee can look to competition among lessors and sellers in the marketplace to obtain a reasonable price.

Other 1990 amendments make it clear that, if the statutory finance lessor and supplier modify the supply contract effectively against the lessee, then the lessor must take over and assume the supplier's promises that were modified.[87]

C. TRAC VEHICLE LEASES

Terminal rental adjustment clause (TRAC) motor vehicle leases are an anomaly. While specific transactions vary,[88] in general a TRAC clause permits (or requires) an upward or downward adjustment of rent to make up for any difference between the projected value of a vehicle and the actual value

---

[87] See UCC § 2A-209(3).

[88] See, e.g., Kedziora v. Citicorp Nat. Services, Inc., 780 F Supp 516 (ND Ill 1991) (court upholds validity of 'early termination'/TRAC clause in a Citicorp auto lease, as reasonable under the Consumer Leasing Act, 15 USC §§ 1667-1667e, where the clause applied only if the lessee terminated or defaulted before end of the full lease term. The opinion states that the clause 'is a reasonable means of compensating Citicorp for the defeat of its basic expectation that the lessee will fulfill the entire lease.').

upon lease termination. The objective of TRAC vehicle leases is to provide a financial incentive for the lessee/user, who is the party to the transaction best able to control the maintenance of the vehicle, to keep the vehicle in good repair.

TRAC vehicle leasing became increasingly popular after the end of World War II so that, today, most fleets of leased vehicles in America are covered by the TRAC form of lease. There are hundreds of thousands (if not millions) of leased vehicles now on the roads operating under TRAC leases. TRAC vehicle *lessees* want this form of lease because of its potential for cost savings. They create the continuing demand for TRAC motor vehicle leasing in the marketplace.

The importance of the state commercial law validity of TRAC motor vehicle leases (their status as true "leases" and not "sales" or "security interests") is apparent to the lessor in cases where the lessee goes into bankruptcy, in usury law cases, and in other situations as well.[28] Tax law accords true lease status to commercial (nonconsumer) TRAC vehicle leases.[29] Accounting

---

[28] See notes 3–5, supra; UCC Series (Huddleson) Special Release 2 (1991) § 2A.07, at 35.

[29] Tax law confines TRAC vehicle leasing to a commercial context involving business lessees. See 26 USC § 7701(h). Were a TRAC lease to be made to a consumer lessee, it would not qualify as a true lease for tax purposes and the TRAC lessor could not legitimately claim the tax benefits of ownership. This would suggest that, as a practical matter, no TRAC leases would be written with consumer lessees today. Yet, apparently, "early termination"/TRAC clauses are sometimes inserted in vehicle leases to consumers. See Redfern v. Citicorp Nat. Services, Inc., 780 F Supp 616 (ND Ill 1991). This sort of TRAC clause, limited to the calculation of damages for breach, may not affect the lessor's meaningful residual interest in the ordinary case where there is no breach of the lease agreement.

There are federal consumer protection laws that protect consumer lessees in TRAC vehicle leases. See 780 F Supp at 619 (Consumer Leasing Act, 15 USC § 1667b(b) requires early termination charges to be "reasonable in light of the anticipated or actual harm"); 15 USC § 1667b (where TRAC payment by lessee "on expiration of a consumer lease" exceeds three times the average monthly rental, and there was no physical damage to the property beyond reasonable wear and tear, a "rebuttable presumption" exists that the amount is unreasonable); Regulation M in 12 CFR § 213.4(g)(15) (same). Cf. Huddleson, Old Wine in New Bottles, 39 Ala L Rev 515, 668 & n 178 (1988). The overwhelming use of TRACs, in any event, is in vehicle leases between commercial business entities, outside the consumer context.

principles are in accord.[31] But whether commercial TRAC vehicle leases are true leases under state commercial law is a question that has divided the courts.[32] UCC Article 2A—Leases is deliberately silent (or neutral) on the thorny question of whether TRAC vehicle leases are true leases.[33] At present, the courts are continuing to grapple with the TRAC vehicle lease issue on a case-by-case basis.

Three new bankruptcy decisions in 1991 continue the split in case authority over whether TRAC vehicle leases are true leases or disguised security interests.

The United States District Court in Oklahoma held in In re Otasco[34] that TRAC vehicle leases were true leases, not disguised security interests, in a case involving the lessee's bankruptcy. Typical TRAC leases were involved, with an initial lease term of 12 months ("much less than the fifty month economic life the parties expected"), and a series of options to renew. The lessee was under no obligation to exercise any of the renewal options. And the lessee was expressly prohibited from purchasing the leased vehicles. Title was retained by the lessor, who 'guaranteed' (i.e., took the risk for) a significant part (20 percent to 30 percent) of the fair market value of the vehicles, measured at the outset of the lease or at the outset of any option renewal. This guaranteed amount was not subject to alteration by the TRAC clause. The court found that the TRAC clause was "not designed to create an equity interest in the lessee, but rather to protect the lessor from untoward abuse of its vehicle

---

[31] To qualify as "operating leases" under accounting standards, the TRAC vehicle lessor often maintains a minimum 'at risk' investment (not subject to variation by the TRAC clause) throughout the term of the lease. See Huddleson, 39 Ala L Rev, at 639–640.

[32] The older case law on whether TRAC vehicle leases are true leases or disguised security interests is discussed in Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 638–641 (1988). Compare In re Tulsa Port Warehouse Co., 690 F2d 809 (CA10 1982) (open-end vehicle leases held to be leases "intended as security," not true leases, in bankruptcy) with Security Life Ins. Co. v. Executive Car Leasing Co., 433 SW2d 916 (Tex Civ App 1968) (open-end vehicle lease held a true lease and not subject to state usury laws).

[33] See Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 639–641 (1988).

[34] In re Otasco, Case No. 90-C-309-E (ND Okla 1991), overruling 111 BR 975, 11 UCC Rep Serv 2d 1282 (BC ND Okla 1990).

during the lease term, and any resultant loss in *its* equity, upon reversion of a vehicle. Such a provision seems economically prudent in leasing property easily damaged, destroyed, overused, or abused, such as a motor vehicle.' The court distinguished earlier cases like In re Tulsa Port Warehouse Co.,[34] partly on the ground that they were decided before the new amendments to Section 1-201(37).[35] Weighing all these circumstances, the court found the TRAC vehicle lease was a true lease.

TRAC vehicle leases were also held to be true leases in Basic Leasing, Inc. v. Paccar, Inc.[37] There the United States District Court for New Jersey ruled in a case involving the lessee's bankruptcy that neither the TRAC provision, nor an option for the lessee to purchase the leased trucks, nor a lease term for less than the economic life of the vehicles was inconsistent with true lease status. Relying on amended Section 1-201(37), the court also ruled that true lease status was not destroyed by typical 'net lease' provisions:

> 'It makes sense that a lessee would provide insurance on the property while in possession of it under a lease; it seems perfectly reasonable for a lessee to agree to undertake some of the risks of loss or damage while the lessee enjoys possession and use of the property. The same holds true for taxes and maintenance.'

The court ruled that as a matter of law, the TRAC truck vehicle leases at issue were true leases, not sales with disguised security interests, under the criteria of old Section 1-201(37), the common law, or amended Section 1-201(37).

The same TRAC vehicle lessor fared less well in In re Zerkle Trucking Co.,[38] where the Bankruptcy Court denied its motion to compel the lessee/debtor to assume or reject some unexpired TRAC truck leases. This Court reasoned that TRAC

---

[34] In re Tulsa Port Warehouse Co., 690 F2d 809 (CA10 1982).

[35] The court, in In re Tulsa Port Warehouse, 690 F2d 809, 811-812 (CA10 1982), relied on the presence of 'net lease' provisions to support its conclusion that the 'open-end' leases there were disguised security interests and not true leases. Amended UCC § 1-201(37) rejects this reasoning and makes it clear that the presence of 'net lease' provisions does *not* destroy the true lease status of a transaction.

[37] Basic Leasing, Inc. v. Paccar, Inc., 1991 WL 117412 (D NJ 1991).

[38] In re Zerkle Trucking Co., 1991 WL 203785 (BC SD W Va 1991).

provisions have the same 'practical effect' as a nominal purchase option:

> 'While the plain language of the lease requires the equipment to be returned to [the TRAC lessor] at the end of the term, a sale occurring to a third party at the end of a term is in the nature of a sale by [the lessee], since [the lessee] is required to guarantee to [the TRAC lessor] the purchase price of the equipment. [The lessee] reaps the benefit or suffers the loss if the property sells for more or less than the pre-established residual value which [the lessee] has guaranteed.'

The Court rejected the argument that a TRAC clause simply protects the lessor against excessive wear and tear, noting that the lessee 'also risks the loss or reaps the benefit if technological improvements, competition from alternate forms of transportation, strikes in the trucking industry, economic recession, increased demand or a multitude of other market factors cause the equipment to sell for more or less than the estimated residual value at the end of the lease term.' The impact was the same as if the lessee had acquired equity in the vehicles. Reciting amended Section 1-201(37) and its implicit emphasis on 'whether the lessor retains a meaningful residual interest,' the Court held that the TRAC truck leases at issue were security agreements instead of true leases.

None of these cases set out a fully comprehensive analysis of TRAC vehicle leases and whether they should be accorded true lease status.[44]

As of mid-1992, 15 states have enacted statutes stating that the mere presence of a TRAC clause in a motor vehicle lease will not destroy the true lease character of the transaction.[45] Typical

---

[44] Compare Graf, The Trouble With TRACs: Dealing With UTA§60, 9 Journal of Equipment Lease Financing 18 (1991); Huddleson, Old Wine in New Bottles, 39 Ala L Rev 615, 639–640 (1988).

See also 1A White & Summers, Uniform Commercial Code, Article 2A Leases of Goods ch 6, at 54 (3rd ed 1991) ('Would a lease contract be unconscionable that simply obliged the lessee to purchase the property at its expected residual value at the end of the lease? The answer seems clearly no and we do not understand why a liquidated damage clause that would have the same effect should be different.').

[45] See Minn Vehicle Code § 168A.17 (effective May 15, 1989); Tex Motor Vehicle Code § 319.271 (effective Jan. 1, 1991); Va Vehicle Code § 46.2-616a

of these statutes is Illinois Vehicle Code § 3-201.1 (effective Jan. 1, 1992) on TRAC vehicle leasing:

> 'Terminal rent adjustment clause leases. In the case of motor vehicles or trailers, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.'

Vehicle lessors are seeking similar legislation in the majority of the states. The Commissioners do not oppose this result.

Enactment of special TRAC/state legislation seems appropriate as a practical solution to a practical commercial law problem. Outside the specific context of motor vehicle leasing, equipment lessors oppose according true lease status to TRAC leases, which undercut the importance of the lessor's residual interest. There are important policy reasons why, as a general proposition, the common law should preserve the importance of the lessor's meaningful residual interest as the touchstone of the definition of a true lease.[41]

Yet, TRAC leasing developed spontaneously, years ago, in the specialized field of vehicle leasing, where residual values are relatively predictable and certain. TRAC leasing lowers lease rental rates. Today, TRAC leasing is the predominant form of vehicle leasing to commercial business lessees in America. There seems to be no good reason to disrupt this well-established way of doing business in the field of vehicle leasing.

Were state commercial law to conclude that TRAC vehicle leases are not true leases, it would simply raise the transaction costs of such leases—increasing the TRAC lessor's risks and

---

(effective Jan. 1, 1992); ND Century Code, ch 39-05 (effective July 1, 1993); 47 Okla Stat § 1110 F (effective Jan. 1, 1992); Tex Rev Civ Stat Ann art 6687-1 (c) (effective Sept. 1, 1991); Mo Vehicle Code ch 301 (effective Jan. 1, 1992); Ala Vehicle Code 32-8-60.1 (effective July 29, 1991); RI Vehicle Code § 31-3.1-27 (effective July 1, 1991); Ill Vehicle Code § 3-201.1 (effective Jan. 1, 1992); NJ Vehicle Code § 39:10-6 (effective June 28, 1992); Wis Stat § 342.03 (effective July 1, 1992); NY Veh and Traf Law § 317-b, Chs 787, 788 (effective Aug. 7, 1992); MCL § 440.2310 (effective Sept. 30, 1992); Ohio Rev Code Ann § 4505.15(c) (effective Nov. 6, 1992).

[41] See Huddleson, Old Wine in New Bottles, 29 Ala L Rev 616, 632 (1968).

costs when the lessee is in bankruptcy and in other situations as well,[42] and increasing lessees' rental rates. But given the federal tax laws and the continuing lessee demand for such leases, it would not make TRAC vehicle leasing disappear. Interstate commerce would be impeded. But no one would benefit.

The original, central purpose of the UCC is to facilitate interstate commerce in the public interest. The special TRAC/state legislation seems consistent with this purpose. There seems to be no warrant for imposing any state law or bankruptcy law 'penalty' on TRAC vehicle lessors for simply using TRAC leases that federal tax law specifically recognizes and encourages. This is only common sense and simple justice, say the proponents of special TRAC/state legislation.

D. IMPLICATIONS FOR THE FUTURE

The implications of amended Section 1-201(37) for bankruptcy cases have now been generally recognized by the practicing bar. This is particularly true after the widely followed Pan Am bankruptcy litigation, where the parties considered and ultimately rejected other standards (e.g., accounting principles, FAA regulations) for defining a true lease in the context of bankruptcy cases. Initially it may seem odd that state law should control the application of federal bankruptcy law. But the Uniform Commercial Code is the common law. And it is only sensible to look to the common-law definition of a true lease, in amended Section 1-201(37), in any context where the definition of a true lease is at issue.

Tax law may also be affected by amended Section 1-201(37). The impact may be felt initially in tax law assessments of transactions involving fixed price purchase options.[43]

---

[42] See notes 3-5, supra.

[43] Cf. Mixon & Umbrecht, Tax Aspects of Equipment Leasing, ch 3, at 377-378 in 1 Equipment Leasing-Leveraged Leasing (3rd ed 1989) (PLI, Fritch, Reisman & Shrank eds.) ("In recent years, for a variety of reasons, the leveraged leasing industry has become more willing to follow the lead of prior case law (and uninterrupted practice in many nonleveraged leases) and employ fixed price purchase options in cases where their presence appears clearly compatible (or not incompatible) with true lease analysis and authority. Specifically, many recent leveraged lease transactions have featured lessee purchase options exercisable at a fixed (or capped) price equal to or in excess

SPONSOR STATEMENT S.B. 227

TERMINAL RENTAL ADJUSTMENT CLAUSES

FOR MOTOR VEHICLES AND TRAILERS

SENATOR JAY KERTTULA

S. B. 227 WOULD CLARIFY IN LAW THE STATUS OF LEASES WHEN THEY INCLUDE A TERMINAL RENTAL ADJUSTMENT CLAUSE. A TERMINAL RENTAL ADJUSTMENT CLAUSE (TRAC) IS A SORT OF INSURANCE POLICY FOR THE LESSOR. IT PROVIDES FOR AN INCREASE OR DECREASE IN THE COST OF THE LEASE DEPENDING ON THE VALUE OF THE VEHICLE AT THE END OF THE LEASE. IF THE VEHICLE HAS BEEN WELL MAINTAINED THEN THE COST TO THE LESSEE WILL BE LESS. IF THE VEHICLE HAS HAD MORE THAN REASONABLE WEAR AND TEAR, THEN THE COST TO THE LESSEE WILL BE GREATER THAN THAT NEGOTIATED AT THE BEGINNING OF THE LEASE. THIS TRAC IS WRITTEN INTO A LEASE IN ORDER TO PROTECT THE VALUE OF THE ASSET OF THE LESSOR AT TERMINATION OF THE LEASE.

THIS SECTION WOULD MAKE EXPLICIT IN LAW THAT A TRAC DOES NOT IN AND OF ITSELF AFFECT THE NATURE OF A LEASE IN MOTOR VEHICLES OR TRAILERS--THESE LEASES CAN STILL BE "TRUE"

LEASES. (A TRUE LEASE IS ONE IN WHICH THE LESSOR HAS TITLE AND RETAINS OWNERSHIP IN THE ASSET DURING AND AFTER THE LEASE.)

THIS IS IMPORTANT ESPECIALLY IN BANKRUPTCY CASES WHERE THE LESSOR OF A TRUE LEASE IS ABLE TO RECOVER THE VEHICLES FROM THE LESSEE WITHOUT FEAR OF THE COURT TYING THE ASSETS UP. FOR EXAMPLE, IF THERE WAS A QUESTION AS TO WHETHER THE LESSEE HAD A PROPRIETARY INTEREST IN THE ASSET, THEN THE BANKRUPTCY COURT COULD PREVENT THE LESSOR FROM RECOVERING THE VEHICLES IMMEDIATELY AND COULD, WORSE CASE, SELL THE VEHICLES AND PAY ANY NUMBER OF THE LESSEE'S DEBTS.

THIS MAKES IT VERY IMPORTANT FOR THE LAW TO BE CLEAR ON WHETHER OR NOT A TRAC AFFECTS THE NATURE OF A LEASE. THIS SECTION WILL CLARIFY IN LAW THAT TRACS CAN BE IN TRUE LEASES WITHOUT CHANGING THE NATURE OF THAT LEASE.

SENATE COMMITTEE REPORT

DATE: 2/18/94 FURTHER: Transportation

DATE TURNED INTO OFFICE: 3/11/94

L&C Committee considered SENATE BILL NO. 227

"An Act relating to terminal rental adjustment clauses for motor vehicles and trailers."

and recommends:

[ ] replace with _____ CS _____(_____)
or [ ] adopt previous_____ CS _____(_____)
[ ] attaches amendment(s)

[ ] same title
[ ] new title
[ ] technical title change (HB only)

[ ] adopts _____Letter of Intent
[ ] further referral to the _____

[ ] do pass
[ ] do not pass
[ ] no recommendation
[X] individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal
Dept. Public Safety	2/18/94	✓	
Sen. State Affairs	2/16/94	✓	

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal

[ ] Appropriation No Fiscal Note

DO PASS:

OTHER RECOMMENDATIONS:

Steve - Nay No Recommendation
Ben Adams No-Rec
Judy Salb No Rec
NR

Tim Kelly - Do Pass

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA — BILL NO: SB 227

1994 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety

Title: An Act relating to terminal rental adjustment clauses for motor vehicles and trailers. BRU: Motor Vehicles

Component: Administration

Sponsor: Senator Kerttula

Requestor: Sen. L&C COMPONENT SERIAL NO. 501

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( ) REVENUE CODE						

FUNDING: (THOUSANDS OF DOLLARS)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF						
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

ESTIMATE OF CURRENT YEAR (FY 94) IMPACT: $ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY.)
FISCAL IMPACT IS NOT ANTICIPATED WITH THIS BILL.

PREPARED BY: JUANITA M. HENSLEY PHONE: 465-2650

DIVISION: MOTOR VEHICLES DATE: 2/18/94

APPROVED BY COMMISSIONER: [signature] DATE: 2/22/94

AGENCY: RICHARD L. BURTON, DEPT. OF PUBLIC SAFETY

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

FOR FURTHER DISTRIBUTION INFORMATION CALL THE GOVERNOR'S LEGISLATIVE OFFICE

Rev 01/94 PAGE OF

— FISCAL NOTES —

FISCAL NOTE

No. 1

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 227
(S) Publish Date: 2-18-94

Revision Date: February 16, 1994
Dept. Affected: None
Title: "An Act relating to terminal rental adjustments clauses for motor vehicles and trailers"
BRU: n/a
Component: n/a
Sponsor: Senator Kerttula
Requestor: Senate Committee on State Affairs
COMPONENT SERIAL NO. ---

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ( )	-0-	-0-	-0-	-0-	-0-	-0-

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of any current year (FY94) cost: $ ---

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Portia Babcock, Committee Aide
Phone: 465-4522
Division: Senate State Affairs Committee
Date: February 16, 1994
Approved by: Commissioner: Senator Loren Leman, Chairman
Date: February 16, 1994
Agency: Senate State Affairs Committee

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

(Rev 10/93) 94fisno_bs/OBR

SB 244

#6

Alaska Permanent
Capital Management Company

900 West Fifth Avenue, Suite 701
Anchorage, Alaska, 99501

Phone: (907) 272-7575 Fax: (907) 272-7574

February 2, 1994

Mr. Carl Brady, Jr.
Board Member
Alaska Permanent Fund Corporation

VIA COURIER

Dear Carl:

Thank you for providing a copy of the Permanent Fund Trustees' Resolution 93-12 which sets in motion a legislative request to authorize Alternative Investment Strategies. Thank you, also, for a copy of the proposed legislation and the analysis thereof.

At the outset, allow me to comment that this proposal appears to have been well thought out. The Trustees started with the broad concept of Alternative Investments (which could have involved everything from investments in timber, agricultural land, and venture capital) and quickly narrowed it down to investments in corporate stock.

Having established that focus, certain important investment parameters were wisely established:

1. **Other institutional co-investors are required** This insures that additional participants—institutional investor peers— scrutinize each transaction.

2. **A significant level of other institutional participation is established.** When the Fund started real estate investing, it used the same approach and it provided for the important useful exchange of information between large funds. It also provided a needed comfort and confidence level and "eased" us into investments and relationships over time. This gave us an opportunity to expand our knowledge, increase our returns and revise and establish policy over a long protracted period.

3. **A cap is placed on the amount of such investment.** This is wise as it controls the amount of non-diversification which could occur and restricts the Fund to activity in the small and medium capitalization company field. You won't be able to join in the Paramount takeover under this legislation; and you shouldn't!!

[redacted]

-LTR. FROM DAVE ROSE-

4. An effort is made to specifically exclude companies in the oil and gas sectors who may operate in Alaska. This, too, is prudent in that it would be wise to avoid even the appearance of involvement in this sector in an oil and gas state.

I think that you and the Trustees have done a fine job and that the request for the legislation is reasonable and well thought out. You are to be commended on reaching for the opportunity to increase bottom line yield and the passage of the legislation will permit that.

Finally, allow me to observe that the current legislative draft is adequate and will permit you to do the job. It is not as artfully written as I would have preferred because it appears to be preoccupied with the business form of how a transaction might be put together rather than the investment itself. Each transaction is different and it could be a limited partnership, a joint venture, a corporation, etc. Each venture might use a financial adviser, a consultant, a brokerage merger and acquisition team, etc. If I had a chance to rewrite the legislation, I would dwell on the investment, not who pulls the deal together and how it is organized.

I have taken the liberty of enclosing my view of more focused legislative verbiage.

As always, thanks for giving me an opportunity to comment. I enjoy being "kept in the loop" and hope that I have been constructive.

Please give my regards to the other Trustees.

Sincerely,

David A, Rose
Chairman

Alaska Permanent Fund Corporation
P.O. Box 25500 Juneau, Alaska 99802-5500
(907) 465-2047

MEMORANDUM

DATE: April 12, 1994

TO: Senator Loren Leman
Chairman, Senate State Affairs Committee

FROM: William H. Scott
Executive Director

SUBJECT: **Senate Bill 244**

Senate Bill 244, introduced at the request by the Board of Trustees, would amend current law with respect to equity investing. Specifically, it would allow the Permanent Fund to purchase – under certain conditions – more than five percent of the stock of a corporation.

The bill sets out general policies and guidelines for alternative asset investing. The purpose of the alternative asset investment program is to prudently employ a modest percentage of Permanent Fund assets to alternative investments to produce a well-diversified, profitable portfolio which will enhance the Fund's total return. The goals of the program are: (1) to achieve superior total returns compared to traditional asset classes; and (2) to diversify away from traditional capital market risks.

Even though alternative investments as an asset class are employed by hundreds of public and private corporations and institutions around the country, including universities and state retirement systems, they would represent a new type of investment for the Permanent Fund. As such, it is understood that a significant amount of education will be required both within the Corporation and within the legislature before such investments would be initiated, even on a limited basis.

To begin the educational process, I am enclosing the following six attachments:

Attachment #1 is draft language for a proposed committee substitute for SB 244. This language, rather than focusing on the transaction mechanics of the new investments, more properly addresses alternative investments as simply a new asset class to be made available to your Fund managers for investment under the very stringent guidelines set forth by the Prudent Investor Rule. It is important to recognize that the particular selection criteria for each of these investments will most likely evolve and be adjusted over time as a result of the interaction between the staff, the Board and our consultants.

Attachment #2 is the Board of Trustees resolution dated December 6, 1993 in support of the original legislation. The Trustees adopted this resolution by a vote of five to one.

Attachment #3 contains excerpts from the minutes of the December 6 Board meeting in which Trustee Brady made the case for the proposed change.

Attachment #4 is the Executive Summary from the "1992 Survey of Alternative Investments by Pension Funds, Endowments and Foundations." This document indicates that investment by our peers in the asset class of alternative investments is widespread, significant and growing. For example, the top 200 funds in the U.S. and Canada currently have $36 billion invested; this represents 3.6 percent of the assets of those funds that allocate dollars to alternative investments.

Attachment #5 is a reprint from the Spring 1994 issue of *The Journal of Investing*. The headline of the featured article is "Alternative Investments Grow Rapidly at Tax-Exempt Funds." Interestingly, this article indicates that it is the largest funds which are most the active in alternative investing. In fact, of the 33 $10 billion-plus funds surveyed, more than 80 percent participate in at least one alternative investment asset.

Attachment #6 is a copy of a letter from Dave Rose, the Fund's previous executive director, stating his support for the legislation and his reasoning, as well as some thoughts about the specific prohibitions included in the proposed committee substitute.

The bottom line is that the Board wishes to have the authority contained in this amendment because we are convinced it will help us to do a better job protecting and enhancing the Permanent Fund. I would ask for your support and stand ready to provide additional information at any time.

Attachment #2

RESOLUTION OF THE BOARD OF TRUSTEES
OF THE ALASKA PERMANENT FUND CORPORATION
PERTAINING TO LEGISLATIVE CHANGES IN THE ALASKA STATUTES
RELATING TO ALTERNATIVE INVESTMENTS BY THE
ALASKA PERMANENT FUND CORPORATION

RESOLUTION 93-12

BE IT RESOLVED, THAT the Board of Trustees directs staff to seek legislative changes to provide that, notwithstanding any other provision of law, but subject to the prudent investor provisions, the Alaska Permanent Fund Corporation may invest in the category of "Alternative Investment Strategies."

PASSED AND APPROVED by the Board of Trustees of the Alaska Permanent Fund Corporation, this 6th day of December, 1993.

Chairman, Board of Trustees
Alaska Permanent Fund Corporation

ATTEST:

Corporate Secretary

#5

THE JOURNAL OF INVESTING

A PUBLICATION OF INSTITUTIONAL INVESTOR, INC.

VOLUME 3 NUMBER 1 SPRING 1994

ALTERNATIVE INVESTMENTS GROW RAPIDLY AT TAX-EXEMPT FUNDS

[redacted] Spring 1994 issue of The Journal of Investing

JOURNAL OF INVESTING : Alternative Investments ....

Alternative Investments Grow Rapidly at Tax-Exempt Funds

THOMAS J. HEALEY

is head of the Pension Services Group at Goldman, Sachs & Co. in New York. He joined Goldman in 1985 in charge of real estate capital markets and became a partner in 1988. Mr. Healey was previously the assistant secretary for domestic finance at the U.S. Treasury Department in Washington. He holds an A.B. degree from Georgetown University and an M.B.A. from Harvard.

DONALD J. HARDY

is the director of Private Investment Services at the Frank Russell Company in Tacoma, Washington. He has been with Frank Russell since 1977. Mr. Hardy has more than twenty-five years of investment experience, and has previously been a fund manager, a securities analyst, and a trust officer. He holds a B.S. from Boston University and an M.B.A. from the University of San Francisco.

When interest rates on U.S. Treasury bills dipped below 3% last summer to their lowest level in thirty years, investors and the public alike were caught by surprise.

But no one was more alert to this drop than pension fund managers. These specialists knew that the continuation of this trend could make it difficult to match the high investment returns of the 1980s.

One look at the figures illustrates the problem: between the end of 1991 and the end of 1992, total returns on equities dropped from 33.0% to 9.0%; on cash, from 5.75% to 3.61%; and on fixed-income investments, from 16.1% to 7.6%.[1]

NEW ASSET CLASSES IN SPOTLIGHT

Tax-exempt funds, appropriately, are exploring new ways to increase returns. One result is greater interest in categories like alternative investments, which have a strong potential for higher returns.

A number of studies have shown that private U.S. equities produced returns of 18% or 19% during the latter part of the 1980s, while some leveraged buyout funds did considerably better.

Of course, the illiquidity of these private investments makes them subject to greater due diligence and oversight. But the results can be worth it, especially when other potentially high-yielding asset classes like real estate are still under water.

Additionally, with traditional sources of capital like insurance companies and banks facing major constraints, tax-exempt funds find themselves in a new role — providing a much more active source of capital. They are offered a much wider range of private investment opportunities at extremely attractive returns.

Yet this asset category still suffers from one major problem, along with its potential cyclicality and relative youth: Very little systematic data are available. Funds traditionally have been secretive about their most successful alternative investments, and the variety of strategies involved has made it hard to develop useful benchmarks.

To start building a more accurate picture,

Goldman, Sachs & Co. and the Frank Russell Company joined forces last summer to launch the first truly comprehensive study of this investment category. The study requested data on alternative investment participation from the 228 largest tax-exempt funds in the U.S. and Canada (assets ranging from $500 million to $68 billion).

194 (85%) of the 228 funds contacted responded, a remarkably high response rate (Exhibit 1). The results of the study, entitled "1992 Survey of Alternative Investments by Pension Funds, Endowments and Foundations," were released in the fall of 1992.

STRONG PARTICIPATION IN ALTERNATIVE INVESTMENTS

This article discusses the findings of the survey, using the terms tax-exempt fund and investor interchangeably to refer to respondents. Percentages are rounded in the text and shown to the nearest tenth of a percentage point in the exhibits.

The survey defines alternative investments (AI) as illiquid private investments that have not been registered with the Securities and Exchange Commission. It focuses on eight different types of strategies within the asset class, strategies typically grouped together under the rubric of "alternative investments."[2]

These strategies are buyout funds, venture capital, mezzanine financing, oil and gas programs, distressed companies, targeted investments, timberland (and/or farmland), and other. All strategies involve an equity or equity-like component (Exhibit 2).

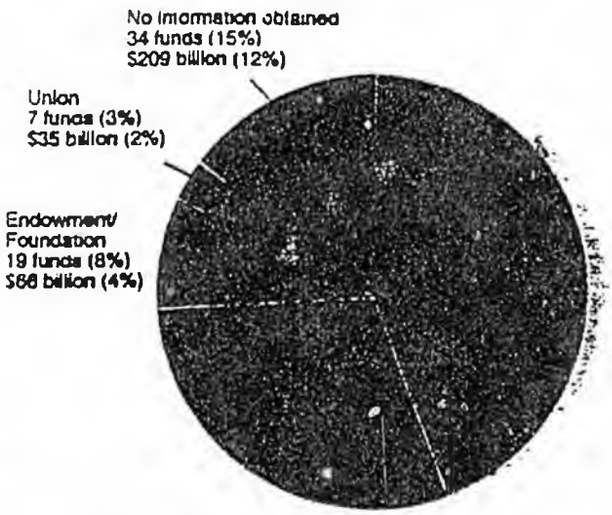
LARGEST FUNDS MOST ACTIVE IN THIS MARKET

One of the most impressive findings of the survey is the fast growth rate of this asset class. The assets held by tax-exempt funds have tripled over the past six years.

More specifically, in 1986 about one-third of the respondents in the survey held $12 billion in this investment category (Exhibit 3). Today over half (54%) have invested a total of $36 billion in alternative investments. This is a compound annual growth rate of 20%.

The survey reveals that the largest funds are most active in alternative investing (Exhibit 4). These investors dominate the asset category. By and large, they are the ones that have committed professional staff and developed consistent strategies within this investment category.

EXHIBIT 1
SURVEY PARTICIPATION: BREAKDOWN OF FUNDS SURVEYED

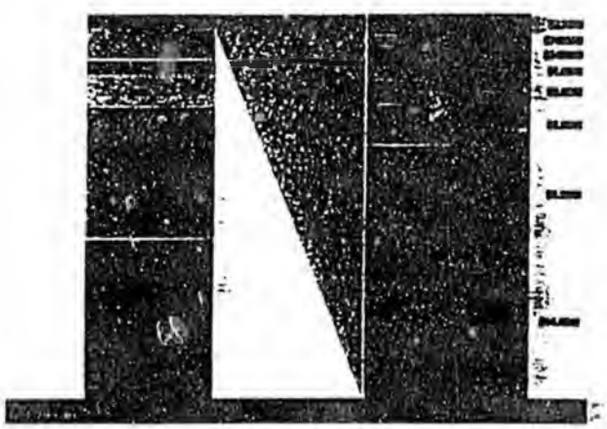


Total Funds Surveyed = 228, representing $1.7 trillion assets
Total Funds Responding = 194, representing $1.5 trillion assets

Over 80% of investors with assets of $10 billion or more participate in at least one alternative investment asset. Put another way, thirty-three funds with assets of $10 billion or more account for 69%, or $24.6 billion of all alternative investment assets.

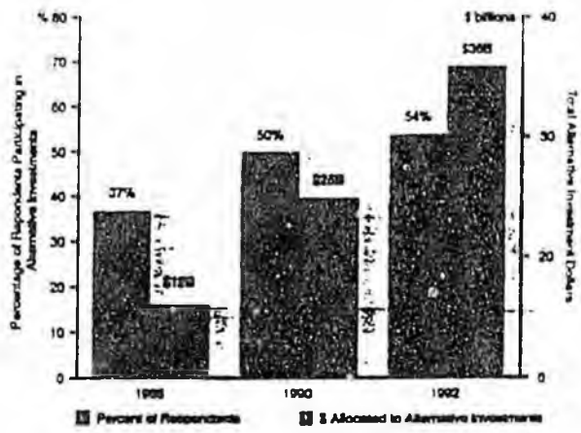
Among the remaining funds, those with assets from $5 billion to $9.9 billion account for only

EXHIBIT 2
ASSET ALLOCATION



Sources: *Pensions & Investments*, Goldman Sachs/Frank Russell 1992 Survey.

EXHIBIT 3
Estimated Growth of Alternative Investments



17.9%, or $6.4 billion, while funds with under $5 billion have 13%, or $4.8 billion, in AI assets.

The largest funds certainly have significantly greater resources to investigate opportunities in this market. They also have the potential to obtain better returns and gain more control than smaller players. Furthermore, large funds can make significant investments in private equity without exceeding their asset allocation guidelines.

For example, funds with over $10 billion in assets commit, on average, $750 million to AI assets, versus a mere $106 million for funds under $4 billion (Exhibit 5). Yet alternative investments comprise only 3% of total assets for these giants, compared to 5% for the funds with under $4 billion in assets.

EXHIBIT 4
Participation in Alternative Investments by Fund Size

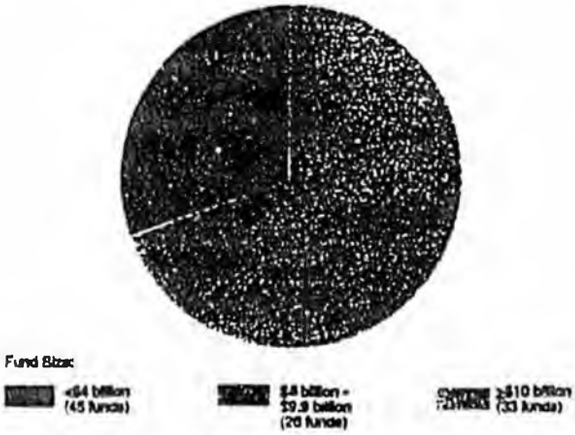
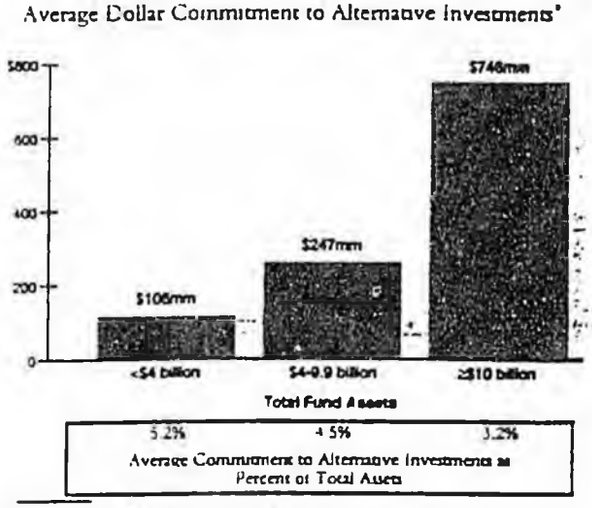


EXHIBIT 5
Average Allocation to Alternative Investments by Fund Size



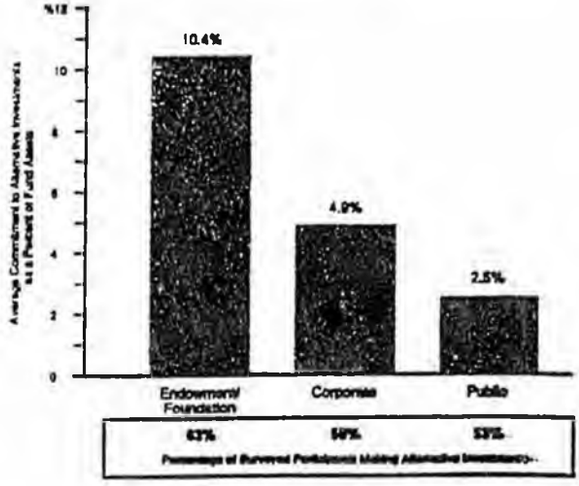
*Includes all funds committed whether drawn down or not.

This does not mean that smaller funds cannot invest efficiently in alternative investments. It just means that when they do, the investment usually involves a larger portion of their asset allocation. And it usually means that they invest more heavily in certain types of AI investment than do their larger peers.

BEHAVIOR DIFFERS BY FUND TYPE

The historical behavior of tax-exempt funds differs not only by fund size, but also by fund type (Exhibit 6). Endowments and foundations were the

EXHIBIT 6
Alternative Investments by Fund Type



first to enter this market, investing steadily in the 1970s and 1980s. This early involvement probably stemmed from the long-range thinking of their boards, as well as a shorter chain of command. Even today, these funds are the most committed to alternative investing, keeping 10% of their assets in AI funds versus only 5% for corporate funds and 3% for public funds. Despite their smaller size, endowments and foundations continue to commit a greater portion of their assets to alternative investments than corporate or public funds.

Corporate and public funds did not start participating heavily in this market until 1982. Today their total investment in this asset class far surpasses the others. This fact is probably more a function of their size than a greater commitment.

In fact, corporate funds today lead their public fund peers, although the public funds appear to be catching up. With the possible exception of targeted investments (assets with a special component such as a social or geographic imperative), union pension funds that flirted briefly with the idea of alternative investing seem to be sitting on the sidelines. This may be the result of membership constraints.

THE EIGHT MAJOR INVESTMENT STRATEGIES

Our study breaks alternative investments into eight different investment strategies (Exhibit 2). Some of these, like venture capital and oil and gas programs, have been around for years, and thus have solid track records.

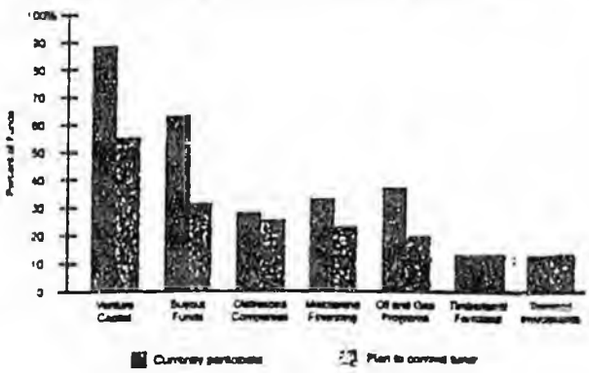
But others came of age in the 1980s. These include several corporate finance-related strategies such as leveraged buyout equity funds (LBOs), mezzanine financing (subordinated debt), and distressed companies (restructuring or bankruptcy funds). The remaining strategies include farmland and/or timberland and "targeted investments."

The alternative investment assets of respondents that did not provide a detailed breakdown were assigned to the "other" category. Coinvestments and project financings are likely to be among the investments in this category.

Inclusion of these newer strategies dramatically expands the AI category. This expansion has given AI assets more importance in the overall asset mix and is probably the reason why alternative assets are considered such an important, newly recognized asset class today.

EXHIBIT 7
FUND PARTICIPATION BY INVESTMENT STRATEGY

Percent of Funds that Participate in Each Investment Strategy and Plan to Commit Initial/Additional Funds



FUNDS DIFFER IN THEIR INVESTMENT MIX

When tax-exempt funds first consider AI investing, they usually start with venture capital, complementing it with one or two other strategies. Within this structure, most investors do not seem to have one preferred plan for AI asset allocation.

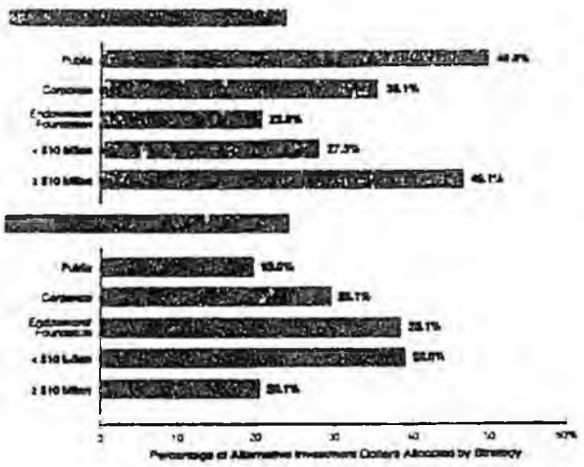
Given this pattern, it is no surprise that venture capital is the most popular asset on a participation basis (Exhibit 7). Almost 90% of the funds with alternative investments have allocated some dollars to this strategy. Investors also report that they are more interested in investing in venture capital in the future than in any other investment strategy.

Even though venture capital attracts more participants, however, it attracts far fewer dollars than leveraged buyouts (Exhibit 2). Investors have invested $9 billion in venture capital versus $14 billion in buyout funds.

LBOs represent 41% of all AI assets, which makes them the largest AI investment component (Exhibit 2). Venture capital comprises 26% of all AI assets, while mezzanine financing accounts for 10%. These top three strategies represent 77% of all AI assets. Of the remaining 23%, investors have put 7% in oil and gas programs, perhaps because these have been around the longest, 4% in distressed companies, 3% in targeted investments, 2% in timberland or farmland, and 6% in "other."

The popularity of LBOs is related to the size of each investment. Despite the attraction of venture capital, it is difficult for investors to commit large amounts of assets to these deals because of the small

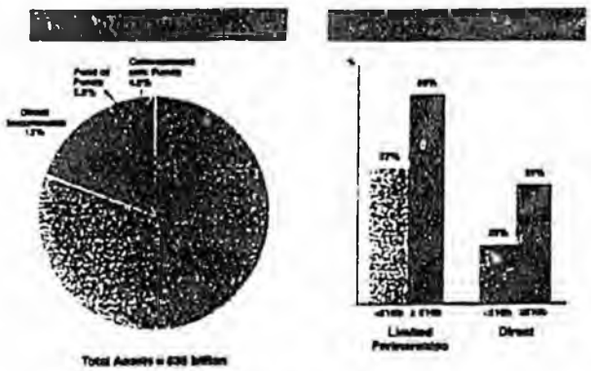
EXHIBIT 8
LEADING STRATEGIES: INVESTOR PROFILES



size of individual venture investments.

Leveraged buyouts, however, give equity investors an opportunity to commit large dollar amounts in far fewer deals. In doing this, the investor usually purchases significant control of a company. Given the asymmetry between the two most popular AI strategies, it is not surprising that large investors and public funds, in particular, gravitate toward buyout funds, while smaller investors, endowments, and foundations focus on venture capital (Exhibit 8).

EXHIBIT 9
INVESTMENT PROCESS — VEHICLES*



*Limited partnerships and other commingled vehicles.

Coinvestment/Add-on Investment with Funds: The investor invests in parallel with or in different securities from the Limited Partnership.
Fund of Funds: A multiple-manager vehicle with investments in more than one fund.
Direct Investments: The investor does not use an intermediary such as a Limited Partnership or Fund of Funds.

The largest funds keep 46% of their AI assets in buyout funds, while public funds keep 50%. On the other hand, smaller funds have 39% of their assets in venture capital, while the largest invest only 20% in that strategy.

REASONS FOR INVESTING IN THIS ASSET CLASS

The study examines the main reasons funds invest in alternative investments. Predictably, 63% said they were looking for superior returns. But another 33% said their main motive was diversification. This is understandable because the volatility of this asset class has a low correlation with other asset classes. Of the remaining participants, 2% said they are looking for an inflation hedge, while 2% believe these assets enhance their reputation.

The lack of information about alternative investing has made it difficult to understand the investment process itself. To clarify this, the study looks at three different aspects of the process: the choice of investment vehicle; organization and decision-making; and monitoring and measurement.

THE POPULARITY OF LIMITED PARTNERSHIPS

Limited partnerships are by far the most popular investment vehicle, accounting for 80% of all alternative investment dollars (Exhibit 9). Direct investment accounts for 13%, while coinvestment with funds represents 4% and fund of funds are 3%.

With limited partnerships, investors can rely on outside experts for assistance in making their investment decisions. This is particularly helpful for smaller investors with limited staff.

Although many investors reported seeking out coinvestment opportunities with general partners, only the largest funds have been able to do this on a consistent basis. To date, coinvestment attracts approximately $1.6 billion.

The study shows that limited partnerships have been, and will likely continue to be, the primary vehicle for alternative investing (Exhibit 9). But it also reveals that certain pressures are changing the typical partnership structure. As pension funds gain more experience in alternative investing, they want to take a more active role.

For instance, investors rank negotiating terms and conditions as the most important contractual issue. Additionally, investors are putting pressure on

partnerships to establish priority returns and to reduce the carry from the traditional 20%.

While some investors do not emphasize these cost issues, they do search for general partners that put their own capital at risk rather than relying solely on investors' capital. Overall, the bottom line seems to be a trend toward selecting a general partner with whom the investor can forge long-term partnerships.

Although direct investment is the second favorite investment vehicle, with 13% of alternative investment dollars, it is difficult to gauge whether more funds are going to move toward this vehicle in the future. There is no consensus on the subject.

Clearly, the largest and most experienced funds are those that do the most direct investing. They are also the ones that plan to do the most direct investing in the future (Exhibit 9). For example, 50% of the investors with over $10 billion in assets plan to commit additional funds through direct investing, compared to only 25% of the smaller funds.

Direct investing allows the larger funds to avoid the fees charged by general partners. Many smaller funds say they would like to do more direct investing, but they simply do not have the resources, time, or staff to do the necessary groundwork.

DECISION-MAKING

Participation in alternative investments brings with it a unique set of risks and rewards. As private investments, these assets are much less liquid than traditional stocks and bonds. Thus the due diligence process is different, more complex, subjective, and more judgmental. In addition, investments must be held longer than many others to yield the expected results.

To determine whether investors handle this category differently, the study looks at who is responsible for the decision-making process, including the initial decision to participate in alternative investments; allocation by strategy; and, finally, selection of individual investments.

The study shows that top-level management exercises unusually strong control over this entire three-tier process. The investment committee or board of directors maintains total control over the first two decisions virtually 100% of the time. They maintain control over the selection of individual investments about two-thirds of the time. When they do give up control, the board or investment committee delegate the third tier of decisions to the chief investment officer or other professional staff 29% of the time and to an outside consultant 6% of the time.

Nearly half (49%) of the investors use outside consultants to help evaluate or manage this asset category. The study defines consultants as external advisors who provide either non-discretionary advice or handle selection and oversight of investments on a discretionary basis.

Looking at the specific functions performed by these advisors, survey respondents said they use consultants in an advisory capacity (22%), to handle due diligence (18%), to take on the entire decision-making process (6%), and as Qualified Plan Asset Managers (QPAMs) (3%).

MONITORING AND MEASUREMENT

There is no consensus among respondents about how to measure performance in this asset category. Although 52% report using a benchmark, there appears to be little consistency. Many funds consider their benchmarks to be proprietary information.

When it comes to measuring actual performance, most investors report turning this task over to the internal staff or the trustee bank. The respondents are split on measurement methods. 53% use internal rate of return as their primary method; 48% use time-weighted rate of return; and 16% use cash on cash.

A large majority of respondents (84%) say they would welcome development of generally accepted performance measurement standards for this asset class.

THE FUTURE OF ALTERNATIVE INVESTMENTS

Looking toward the future, 71% of the funds say they intend to expand their alternative investment assets in the future. This answer suggests a strong appetite for these investments. More specifically, the funds selected four strategies as most popular going forward: venture capital, buyout funds, distressed companies, and mezzanine financing.

Investors were also asked which *single* investment strategy they would favor if they were just starting out. The three top choices were venture capital (39%), buyout funds (16%), and mezzanine financing (8%), in that order.

However, when asked to select *three* investment strategies, investors still rank venture capital first (81%), but mezzanine financing is second

(56%) and buyout funds third (52%). This suggests that venture capital and mezzanine financing may be the leading alternative investment strategies in the future.

GREATER OPPORTUNITIES FOR INVESTORS

The timing seems right. Today, the economy has started to expand. Yet many traditional lenders are still relegated to the sidelines until they solve their own capital adequacy and loan problems.

In the meantime, pension funds, endowments, and foundations are filling this gap. These tax-exempt investors have suddenly become a much more important source of capital to the economy as a whole. Thus, they receive a much larger flow of more sophisticated transactions to evaluate and select from. And many of these transactions fall into the alternative investment category.

To evaluate and track these transactions may take more expertise than other investments. But with the potential for double-digit returns, clearly the rewards justify the extra effort.

It is clear today that alternative investments offer investors an unusual opportunity. By investing in these strategies, tax-exempt funds may achieve both the higher returns and the diversification they will need in the 1990s to succeed in the new, lower-return investment environment.

ENDNOTES

The authors wish to thank for their assistance with the research and preparation of this article: W. Blair Garff, Matthew A. Bernstein, and Jill Byatt of Goldman, Sachs & Co.; Sharon L. Hammel, Holly F. D'Annunzio, Heide L. Bottger, and Sandra M. Sullivan of The Frank Russell Company; and April W. Klimley of Klimley Communications.

[1]Sources for these figures: equities, the Russell 1000 index; cash, ninety-day Treasury bills; fixed-income, the Lehman Brothers Long-Term High Quality Government/Corporate Bond Index.

[2]Following is how the study defines the eight strategies commonly considered alternative investments:

Venture capital: Equity investments in companies that have undeveloped or developing products or revenue.

Buyout funds: Equity investments in public or private companies that result in the purchase of a significant portion or majority control of the company.

Distressed companies: Investments made through the purchase of debt or trade claims in companies that are in financial distress, restructuring, or bankruptcy.

Mezzanine financing: Investment in the subordinated debt of privately owned companies. The debtholder participates in equity appreciation through conversion features such as rights, warrants, or options.

Oil and gas programs: Investment in the exploration for oil and/or gas reserves or in the development of proven reserves.

Timberland or farmland: Investment in land to harvest timber or farm commodities.

Targeted investments: Investments that have a special component, usually related to geographical, economic, or social issues. These investments are sometimes referred to as "ETIs," or "economically targeted investments," and include investment in minority-owned businesses and state-financed housing.

Other: This category is a catchall that includes assets that respondents did not break down into individual strategies. Coinvestments and project financings may be among the investments in this category.

CHAIR SEEKINS: Yes, Mr. Brady.

MR. BRADY: I'm going to follow our senior Trustee's example of trying take the floor for a while and stand up here and talk to you about this subject. No offense, Mr. Freeman. I think Mr. Surz's presentation highlighted an opportunity here that wasn't presented necessarily by his presentation, but presented to you in the fashion of understanding of something that sounds to be very complicated and possibly even beyond the grasp of most of the activities we do, in your mind.

I probably am the one responsible for all of this today and it has to do with a number of things. Firstly, we've all concluded one way or another, I believe, that the strategy of diversification through asset allocation is the primary key to our success. As a matter of fact, I don't know how many of you saw this article in Forbes Magazine recently, with which I don't agree, but which basically asks why spend a lot of money with money managers because, if you just bought into S&Ps and saved all that money, you'd end up with approximately the same results? I don't concur that, over a long period of time, this is true.

If we're going to continue to grow in profit in the style and manner at which we've set our objectives, this horizontal development of asset allocation, I think, is very important to all of us. If we don't, that pyramid in the middle, our bonds, keeps getting bigger and bigger and we have a shallower horizontal allocation. I think that, to continue to diversify, we've got to continue to do this. We're in alternative investment strategy right now. That's all real estate is. We're betting on Pete and Llewellyn and others to find the deals that make the most sense. That's an alternative investment strategy. I don't want to confuse this with venture capital or with the other investment funds that the State of Alaska does. This is not building a water pipeline to California or buying into a gold mine. I think we're looking at here a strategy that would allow us to do some of the things that we're currently prohibited from doing.

For example, we're limited to the extent of 5% on any publicly traded equity. This summer, when all this started, I met some very bright fellows. We've heard over and over and over that the key to a lot of this is the people you find for your partners. I think that's true in any successful entrepreneurial enterprise. These guys and gals have rates of return that are phenomenal. They're doing partnerships with people like ourselves. If we had an alternative investment strategy of 5%, whether we fund it or not, by resolution we can restrict it however we wish. Let's say we don't want to do timber, although that's been very successful recently, we don't want to do dairy farms, we don't want to do gold mining, and we don't want to even get into

— MINUTES FROM PF CORP. BOARD MEETING

some of the IPOs or some of the other things that are happening. But, let's say that we wanted to partnership with some people who buy what they feel are undervalued small-cap, publicly traded companies, for whatever reasons. They can either influence the board or put themselves on the board or do things to maximize their rates of return that otherwise aren't happening. It may be that there's one senior shareholder that's got a large percentage of it and you can recapitalize, do all the things that need to be done to fix the company, and get the rates of return that company is likely to get being fixed, if you will.

Bill Scott and I met with these folks. These kinds of people are real interesting. I think this is something we ought to do. I don't think we should take 1% and throw it out there for a home run, but I think we should take some percentage as we broaden our diversification and look at opportunities with people and companies that are successful at making a lot of money.

By the way, although I know this doesn't carry a lot of weight with you, Mr. Freeman, almost everybody else is doing this. It is not just the swingers, the universities, and the colleges, but the public entities, the states, and the corporations are in this category. I got a sampling of this myself and over 100 entities similar to ourselves have an alternative investment strategy. That doesn't mean we take 5% of our money and throw it at the wall and say, "Do deals, whatever they are, and we just trust you." That's not the suggestion I have here. The suggestion I have here is that we pass a resolution that allows us to incorporate, in our legislative package, the ability to invest in alternative categories. Then, through our own means and devices, such as limitations as we talked about with real estate, we control through resolutions what it is we want and wish to do. I don't have anybody in mind. There's not many Duracell deals floating around. Those come around once in a while. There are, however, a lot of small-cap companies and other situations that come along that are good. The rates of return some of these people are generating are really good. As our oil revenues go down and other things take place, you could create a scenario that we ought to have other opportunities and ways to make money around here.

Having said that, the example that I tried to lay out here to do this is prohibited because, in many instances, we may find ourselves in a partnership wherein we would own more than 5% of a specific stock. We can't do that. But, if we had an alternative investment category and we invested with partners and it was understood that these investments, made from time to time, in most cases, we would find ourselves in a situation where we would have 20% to 30% of this partnership that would own 30% to 50% of a publicly traded company.

We just flipped over the edge. What I want to do is convince you, as best I can, that through our asset allocation and diversification, we should have this category. Once we have this category and the authority to do these sorts of things, then we come back and we look at the opportunities through presentations to learn the history, the track records, the benchmarks, and all the things we talked about earlier that we need and want to have to feel comfortable about this. Then, if we choose to do this, we can do it. Mr. Surz said it and Mr. Stone said it. Not just because everybody else is doing it. I do believe it's a missed opportunity, if we don t have ourselves positioned so that we can take advantage of these kinds of opportunities as they continue to come along.

With $80 million to $120 million a month coming in, the pyramid keeps getting bigger and we re shallower on our diversification. That s why I feel, after having learned a little bit about this from reading stacks of information and discussing those with Commissioner Rexwinkel, it s something we should be doing. The other board Commissioner Rexwinkel sits on is going to do it. We're not throwing something at the wall, closing our eyes, and looking out the corner to see what's going to happen. This is something that's got some premeditated thought to it and some pre-examination. I feel very strongly that this is something we should have in a resolution to be able to incorporate. I've got a copy of the New York statute, if anybody wants to see what they did. They just authorized up to "X" percent of their allocation for that category.

That doesn't force us into any position to have to do anything. It would just allow, if the timing is such that we can convince the Legislature we're right about this, the passage of legislation to authorize us to engage in these different opportunities, as they come along. Thank you.

CHAIR SEEKINS: Are there any comments? Mr. Freeman.

MR. FREEMAN: I would assume from your remarks, Mr. Brady, that a change in legislative authorization would be necessary for what you want to do?

MR. BRADY: I think so, only as respects, from what I understand, the potential of intentionally going out and having an indirect, but real, ownership in more than 5% of a publicly traded company. That's where the Legislature would have to come into play.

MR. SCOTT: If you can't do that, then you can't accomplish the types of private buy-outs involved here. If you can't own more than 5%, then you can't effectively operate in this arena.

It's interesting to me, and it may be just of incidental help, that it's been demonstrated over the years that higher tax rates dry up entrepreneurial capital. The only reason I make that point is that we're going into a period of higher tax rates, unless Congress and Clinton change their minds, and we're going to see a drying up of entrepreneurial capital and it may very well be that also demonstrates an opportunity for the institutional investor to take the place of some of that.

CHAIR SEEKINS: Commissioner Usera.

COMMISSIONER USERA: I'm wondering what is your experience in terms of the necessity of having staff involved. Did you feel that the Washington and Oregon funds felt it was necessary to staff up to do oversight of this process?

MR. STONE: It was interesting that, at the time we got involved, staff did it all. There was no outside expertise. To be honest with you, I don t think they increased their staff at all with respect to what they were doing. That's not true. In Washington, they added one person who was specifically involved in alternative investments.

COMMISSIONER USERA: The impression I get is that you do have to know what you're doing. You have to be tuned into it and not, like with passive investments, say that you'll check back in six months or a couple of years. Certainly, it requires close monitoring and having a sound communication system between the funds, as well as the gatekeeper and the company that's going to be a parent. If I'm hearing you right, what they're doing is saying they're in agreement and they collectively, as partners, are going to insure the success of this company by using these very best and brightest people who are going to go in and add value to the investment.

MR. STONE: That is true, to a certain degree. Let me add this. John was mentioning Paul Saylor earlier with respect to real estate. He is very well know and very good. Surprisingly, in this area there are some very good people. We found some excellent, if you will, Paul Saylor types who could monitor this and have done a very good job for Washington and Oregon.

COMMISSIONER USERA: They were on a contract basis?

MR. STONE: Yes. I'm not recommending adding staff. This guy talked earlier about smart people. There is some real talent out there in terms of companies who are overseeing this as consultants and advisors who do a wonderful job.

COMMISSIONER USERA: Mr. Chairman, could I ask just one other question? What is the competition for the good deals?

MR. STONE: What we found to happen is, in the 1980s, this asset category got flooded with money. I think that is one of the reasons you've got so many problems. What has happened now is a lot of that money has pulled back. That's in the form of insurance companies. Banks can't do it any more because the regulations have changed and they can no longer be involved in this type of asset category. So, the number of good deals have increased dramatically with the available dollar that's out there. The funds are having potential deals go across their table that are very attractive.

COMMISSIONER USERA: Do the deals come to you or do you go out and look for the deals?

MR. STONE: They come to the fund.

COMMISSIONER REXWINKEL: Mr. Chairman, I have a question. Do we have legislative authority to do some of these that Mr. Surz pointed out on page 2 of his presentation, which include hedged funds, market neutral, and managed futures?

MR. BRADY: No.

COMMISSIONER REXWINKEL: None of them?

MR. SCOTT: We can hedge individual positions, but not on a speculative basis.

CHAIR SEEKINS: Mr. Freeman.

MR. FREEMAN: I suspect that my feelings and position on this and my lack of enthusiasm doesn't come as a surprise to Mr. Brady. I don't want to make a long-winded pitch on the merits of it. I'll be a little more practical than that. I asked the question whether you thought this was going to require legislative approval and a change in the statute and I'm sure that it will. From a practical standpoint, how do I put that? One of the lessons I learned in politics is, once in a while, you try to do something you think should be done, but it's very unpopular politically. Even though something is unpopular, if you can get it done, it's a lose/win situation, as far as politics is concerned. But anytime you tackle something that's very unpopular and don't get the job done, all you've done is diminish your credibility, harmed your reputation politically, and haven't accomplished anything other than that.

From a practical standpoint, 1994 is an election year and you know, as well as I do, the concern that our politicians have for reaction from the public as far as tampering with the Permanent Fund. The chances of accomplishing the changes in the law that you need are just about nil. If you're not going to accomplish that and can't get the job done, I think it's harmful to the Permanent Fund with regard to the feelings of the public as far as the Permanent Fund Board of Trustees is concerned to attempt it, if you can't get the job done. You can do as you wish, but whether this is good or bad, there are a lot of people in the Legislature today that I served with years ago and were there when the Permanent Fund was created. They are well aware of the background, the history, and the philosophy all along the line and most of those people have enough seniority that they're in positions of reasonable influence today. When I have serious thoughts about the Permanent Fund, I don't hesitate to talk to them and I have a pretty good idea what are some of their feelings. Regardless of the merit of what you're trying to do, it's not going to happen. My suggestion would be to discuss it and whatever you want to do, but I wouldn't put my foot on the line to get it done. That's just my opinion.

MR. BRADY: Mr. Chairman.

CHAIR SEEKINS: Mr. Brady.

MR. BRADY: Mr. Freeman, I respectfully disagree. You know better than I the evolution of the investment strategy of this Fund. At one time, we didn't have a real estate portfolio. At one time, we didn't invest in stocks. We simply started with some bonds and some cash. I think that the Fund was late in making the proper decisions in those investment strategies. The results will bear that out.

Having said that, I don't think this is an attempt to hoodwink the Legislature. I'm attempting to, as convincing as I can be, go back to our asset allocation strategy and I think we can make awfully good sense to all of our legislators that the success in our Fund has been largely due to that, to date. I think we need to continue to broaden that. I don't know what's going to be coming next. You said $10 billion and I think it's more than that. Whatever it is, there are hedging opportunities through diversification that we're foolish to ignore. I believe this is one we should give very serious consideration and we should move forward in a continued asset allocation through diversification, if you will. What we end up purchasing, at the end of the day, remains to be seen. The fact is, the timing is here. As I spoke at the last Fund meeting when I said I wanted to bring this up, I said I wanted to bring in somebody who could try to explain that

this isn't something that is novel, new, or unique to one or two private investors, but this is something that's going on in lots of ways with lots of funds with lots of money.

The interesting thing is that this concentration of money is not in the traditional risk-takers. I say traditional risk-takers are typically colleges and universities. I guess they figure, if they lose some money, they can go back and get some more and have it replaced. They do swing more than the state retirement funds. Having said that, it's not just the colleges and universities, it's universal. I'm sorry that maybe we haven't had a work session prior to this to go through and exemplify some of the activities with proven results. I've had the opportunity of having done that and have seen those results. I see the future here and it's very clear to me that we're amiss, if we don't do this. If it's a gamble at this point in time because of politicians going off and being re-elected, I'm prepared to take that gamble because I feel that it's important to this Fund to be able to have this diversification. Then we can sit down and decide where it makes the most sense to go forward.

CHAIR SEEKINS: Mr. Brady, if you perhaps want to bring some action, you might want to do that during New Business.

MR. BRADY: I intend to do so.

CHAIR SEEKINS: Thank you very much. We are one-half hour behind on our agenda.

MR. SCOTT: Mr. Chairman, because we are one-half hour behind, could I intercede here? I have checked with Mr. O'Leary and he could switch to a point later on in the agenda. We do have Capital Guardian here to address you and one part of their presentation is going to be a conference telephone hook-up. Those people are ready and waiting and, if it's all right with you, I think we should go on to that one next.

CHAIR SEEKINS: We would like to then go ahead with **Capital Guardian**, who is right on time.

MS. YORBA: They had to go out and place a quick telephone call.

CHAIR SEEKINS: So, we will have two new items under New Business. One will be a real estate resolution and one will be dealing with alternative investments.

Mr. Scott, would you introduce the next presenters on the agenda, please?

No. 1

Bill Version: SB 244

(S) P .blish Date: 4-14-94

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL N

Revision Date:

Dept. Affected: Department of Revenue

Title: "An Act relating to investments of the permanent fund in certain limited partnerships each of who principal purpose is investment in securities of public or private companies: and providing for an effective date."

BRU: APFC

Component: APFC

Sponsor: Senate Rules Committee by Request.

Requestor: SenateState Affairs.

COMPONENT SERIAL NO. 109

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	200.0	206.0	215.0	223.0	232.0	240.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	200.0	206.0	215.0	223.0	232.0	240.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (Corporation Receipts - 1022)	200.0	206.0	215.0	223.0	232.0	240.0
TOTAL	200.0	206.0	215.0	223.0	232.0	240.0

POSITIONS:

FULL-TIME			
PART-TIME			
TEMPORARY			

Estimate of current year (FY94) Impact: $ -0-

Changes in CSSB 244 (STA) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

4/13/94 date — Comte Aide (initial)

ANALYSIS: (Attach a separate page if necessary) The Corporation intends to begin expending money for due diligence relating to these investments on July 1, 1994. These costs will include a "gatekeeper" fee similar to current real estate advisory fees; and will increase annually at the 3.75% inflation rate.

Prepared by: William H. Scott, Executive Director — Phone: (907) 465-2047

Division: Alaska Permanent Fund Corporation — Date: April 12, 1994

Approved by Commissioner: Darrel J. Rexwinkel, Commissioner — Date:

Agency: Department of Revenue

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

(Rev 11/92) 93fisno.xls/DBR

FISCAL NOTE

CS FOR SENATE BILL NO. 244(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/14/94
Referred: L&C, JUD, FIN

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE

limits debt liability to partnership or collective investment vehicle only, where debt is non-recourse

A BILL

FOR AN ACT ENTITLED

"An Act relating to equity investments of the permanent fund; and providing for an effective date."

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

* **Section 1.** AS 37.13.120(g) is amended by adding a new paragraph to read:

(21) notwithstanding AS 37.13.120(i), equity investments may comprise more than five percent of the stock of a corporation if the investments in excess of five percent consist of an interest in a non-recourse partnership or ownership in a non-recourse collective investment vehicle, and only under the following conditions:

Roger suggested amendment

(A) the fund may not own more than a 60 percent interest in a partnership or collective investment vehicle;

(B) the aggregate investment of the fund under this paragraph may not exceed five percent of the total investments of the fund;

(C) at no time may the fund own, directly or indirectly, through a corporation, partnership, or collective investment vehicle, more than five

New Text Underlined [DELETED TEXT BRACKETED]

COMMITTEE COPY

Rieger (Zimmerle & Kelly unsure)

Bradley fine w/ all 4

percent of any entity that has substantial [oil and gas] operations in the state;

(D) appropriate policies and procedures for investments under this paragraph shall be reviewed and approved annually by the board.

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

at least (Rieger, Zimmerle)

delete letter l
← Sen. Rieger

part that says all things being equal, shall invest in AK