

**ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672**

**8858 SENATE HEALTH EDUCATION & SOCIAL SERVICES**

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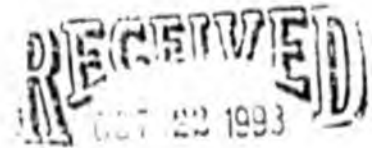
DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

P.O. BOX 110200  
JUNEAU ALASKA 99811-0200  
PHONE (907) 465-2200  
FAX (907) 465-2496

October 22, 1993

Mr. Randy Welker, CPA  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300



LEGISLATIVE AUDIT

Dear Mr. Welker:

Thank you for the opportunity to respond to your recommendations concerning the sunset review of the Citizen's Review Panel for Permanency Planning. We appreciate the thorough review by your staff.

Recommendation No. 1

The legislature should extend the Citizens' review Panel for Permanency Planning's (the panel's) termination date to June 30, 1997, with the provision that sufficient funds be appropriated to allow the pilot project in Anchorage to perform reviews that can be used to evaluate the economic feasibility and rate of success for citizens' reviews.

Response:

External reviews of children in foster care are scheduled to begin under the project the first week of December. While the expectation is that many reviews can be accomplished, that will not be known until the panel members are assembled and a time commitment can be obtained. We agree that there should eventually be no duplication of reviews by DFYS and the external review panels and federal funding should be available to the agency completing the review. This department recommends the continuation of the model project for an additional year. This will provide the opportunity for multiple reviews of some of the same children and given better data for evaluation of the model project for broader implementation, if warranted.

Randy Welker

-2-

October 22, 1993

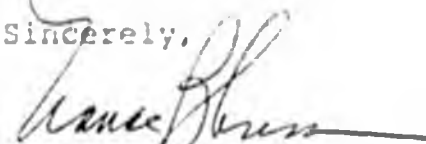
Recommendation No. 2

DOA and DEYS should work together to create a reliable database and software program that provides management reports that can be used to track individual cases in an efficient manner and be used to determine the effectiveness of case reviews for permanency planning.

Response:

DOA agrees that tracking outcomes is very important.

Sincerely,



Nancy Bear Usura  
Commissioner

NBU/nl

cc: Dr. Theodore Mala  
Commissioner  
Department of Health & Social Services

Roberley Waldron  
Deputy Commissioner  
Department of Administration

WALTER J. HICKEL, GOVERNOR

THEODORE A. MALA, COMMISSIONER

**DEPT. OF HEALTH AND SOCIAL SERVICES**

**DIVISION OF ADMINISTRATIVE SERVICES**

P.O. BOX 110650  
JUNEAU, ALASKA 99811-0650  
PHONE: (907) 465-3082

October 15, 1993

Randy S. Welker  
Legislative Auditor  
Division of Legislative Audit  
Legislative Budget and Audit Committee  
P.O. Box 113300  
Juneau, Alaska 99811-3300

**RECEIVED**  
OCT 21 1993

LEGISLATIVE AUDIT

Dear Mr. Welker:

Thank you for your letter of September 21, 1993, requesting this department's response to your preliminary audit report on:

**Department of Administration, Citizens' Review Panel for  
Permanency Planning, September 1, 1993.**

This department takes no position regarding your recommendations concerning the Citizen Review Panels within the Department of Administration. However, I do welcome the opportunity to comment on inaccuracies and offer opinions in response to some of the information and recommendations regarding the Division of Family and Youth Services (DFYS).

We agree that the DFYS internal reviews do not fulfill the entire objectives of the State's statutes since they do not utilize a "citizen review process". DFYS reviews were established only to meet the intent and requirements of federal law.

While the federal law only requires that at least one person on the panel cannot be involved in provision of specific case service, all DFYS offices attempt to involve one citizen on each review panel. The Anchorage office conducts these reviews 3.5 to 4 days per week every week at the rate of 7 each day for a total of over 1,200 per year. This large number of reviews makes it difficult to recruit enough volunteers to have a community member at each review. In fact, having a community member present in 71% of the reviews is a sizeable accomplishment.

It is true that the case reviews conducted in Anchorage are, unfortunately, limited in the amount of time allotted to each one. Given the large number cases which must be reviewed each month, DFYS has not been able to schedule more time for each review. The reality is that DFYS has been scheduling and conducting reviews to meet federal requirements without the addition of any additional resources.

Randy S. Welker  
October 15, 1993  
Page two

We will not dispute your discovery that most of the reviews did not project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship. DFYS will issue a policy clarification and provide training to correct that oversight.

It is unfortunate that your staff did not discuss the capabilities of the division's data system with any of the key staff most knowledgeable about that system. The division's primary management information system, PROBER, does in fact track out-of-home care by individual child by care type. Time or duration in out-of-home care is available from the current system and various management reports that describe out-of-home care are published monthly. In addition, management information and reports are under development that will measure a number of parameters that will provide feedback as we implement a family centered focus. Reports are used at the local office level and provide social workers and supervisors with upcoming case review dates and placement history.

Your report suggests that DFYS alter its current data system to collect information for the current pilot project. The pilot project suggested will require a research approach to data collection if the questions posed are intended to be answered. If time in out-of-home care is one of the effectiveness parameters chosen and the intent is to show a statistical difference between "status quo" and the proposed review panel approach, there will need to be a structured, well-defined research effort implemented. It is from a research project perspective that the most appropriate choice for a database system will be defined. It is, therefore, premature to suggest that changing DFYS's current system is a likely alternative. The division's complex system was carefully developed, and is just as carefully adjusted, to meet a wide variety of needs, including federal reporting requirements. To suggest a costly change in that system to meet the needs of a demonstration project is incomprehensible. A more plausible scenario is the development of a specific information system (database), with linkages to DFYS's information system, that addresses not only the data needs of the research project but the management information needs of the program coordinator as well as the review panel itself.

The research you propose must also take care to account for gains already made by the division's internal review system. The attached chart indicates that foster care has been decreasing as subsidized adoptions and guardianships have increased. In short, the division has already improved efforts at permanency planning, and any research project must adequately account for programs and efforts already in place.

Randy S. Welker  
October 15, 1993  
Page three

Our major concern, should this project proceed, is one of funding. \$100,000 of the \$125,000 funded for the pilot project was transferred by the legislature from the Division of Family and Youth Services. [REDACTED]

[REDACTED]. As I stated above, DFYS has established and been refining the internal review system with no additional funds but as an additional responsibility of existing staff. Those reviews must continue for compliance with federal law while the Department of Administration undertakes this project. The division simply can not incur the loss of any more funds to this project.

Sincerely,



Theodore A. Mala, MD, MPH  
Commissioner

**SB**

**18**



**SENATOR FRED F. ZHAROFF**  
**ALASKA STATE LEGISLATURE**

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 480-5250 (FAX ALSO)

DURING SESSION:

STATE CAPITOL, JUNEAU, ALASKA 99801-1102 • (907) 405-3473 • FAX: (907) 403-3043

DISTRICT C

KODIAK ISLAND • RURAL SOUTHEAST • SOUTH KENAI PENINSULA

**MEMORANDUM**

TO: Senator Lyda Green, Chair  
Senate HESS Committee

FROM: Senator Fred F. Zharoff 

DATE: April 12, 1995

SUBJ: Scheduling of SB 18

I would like to request that SB 18, "An Act relating to an advisory vote during regional educational attendance area school board elections; and providing for an effective date." be scheduled for a hearing before the Senate HESS Committee at your earliest convenience.

This bill was passed by the Senate during the Eighteenth Alaska Legislature and died in the House Rules Committee in the final moments of the session last year.

I have attached a sponsor statement for the bill as well as a zero fiscal note from the Department of Education. A fiscal note has been requested from the Division of Elections.

Thank you for your attention to this request.

Attachments



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99015 (907) 486-5259 (FAX ALSO)

DURING SESSION:

STATE CAPITOL, JUNEAU, ALASKA 99801-1102 • (907) 405-3473 • FAX: (907) 463-3043

---

#### DISTRICT C

KODIAK ISLAND • BUIAL SOUTHEAST • SOUTH KENAI PENINSULA

## SPONSOR STATEMENT

### SB 18

This bill adds a provision in statute which would allow communities in Regional Education Attendance Area (REAA) school districts to be able to voice their positions on education related issues of concern to them via an advisory vote on the regular school ballot. REAA school sites are typically spread over a large area and it is often difficult for members of the community to attend school board meetings and make their feelings known. This bill allows the school board to adopt a resolution requesting that an advisory question be placed on the next ballot. They then get a certified count from the communities regarding the issue.

This bill passed the Senate and died in the House Rules Committee during the Eighteenth Alaska Legislature.

APR-25-95 TUE 8:39  
APR-25-95 TUE 9:15

AK DIVISION OF ELECTIONS  
REG II DIV OF ELECTIONS

FAX NO. 9074653203  
FAX NO. 5221482

P. 01/02  
P. 05

FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 18

Revision Date: \_\_\_\_\_  
Title: REAA Advisory Vote

Department Affected: Office of the Governor  
BRU: Division of Elections  
Component: Operations

Sponsor: Senator Zharoff  
Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 21

EXPENDITURES/REVENUES:

OPERATING	FY 98	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0.7	*	*	*	*	*
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND &	0	0	0	0	0	0
GRANTS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL	0.7	*	*	*	*	*

CAPITAL	0	0	0	0	0	0
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REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0.7	*	*	*	*	*
1005 GF/Program	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0.7	*	*	*	*	*

POSITIONS:

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

Estimate of current year (FY05) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: David Kolvencmi, Acting Director Phone: 465-4611  
Division: Division of Elections Date: 4-25-95

Approved by Commissioner: Fran Ulmer, Lieutenant Governor  
Agency: Office of the Governor Date: \_\_\_\_\_

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APR-25-95 TUE 8:40  
APR-25-95 TUE 8:15

AK DIVISION OF ELECTIONS  
REG II DIV OF ELECTIONS

FAX NO. 9074653203  
FAX NO. 5221482

P. 02/02  
P. 06

page 2 of 2

**FISCAL NOTE**

**STATE OF ALASKA  
1995 LEGISLATIVE SESSION**

**BILL NO. SB 18**

This figure includes printing an additional ballot card for one REAA election. \*Unable to project costs in subsequent years, as printing charges will depend upon the actual number of advisory questions for each REAA.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 18

Revision Date: \_\_\_\_\_

Department Affected: Department of Education

Title: REAA Advisory Vote

BRU: Executive Administration

Component: Commissioner's Office

Sponsor: Senator Zharoff

Requestor: Senator Zharoff

COMPONENT SERIAL NO. 185

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

REVENUE FUND SOURCE:						
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**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)

Passage of this legislation will have no fiscal effect on the Department of Education.

Prepared by: Sheila Peterson, Special Assistant

Phone: 465-2803

Division: Commissioner's Office

Date: January 19, 1995

Approved by Commissioner: [Signature]

Jerry Covey

Agency: Education

Date: January 19, 1995

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**SB**

**22**



# ALASKA COUNCIL OF SCHOOL ADMINISTRATORS

126 Fourth St. Suite 304 Juneau, AK 99801-1101 • (907) 586-9702 • (800) 478-9702 • FAX (907) 586-5879

## POSITION STATEMENT

### SENATE BILL 22

"An Act making appropriations to the Department of Education for support of kindergarten, primary, and secondary education and community schools programs and for school construction debt retirement; and providing for an effective date."

The Alaska Council of School Administrators supports funding for school districts that reflect the true cost of education in school districts. While early funding is desirable, the funding level is the factor which allows school districts to budget for reasonable class size, and materials which facilitate the learning of the students in our public schools.

School districts across Alaska remain deeply concerned with the current level of funding under the foundation formula from the state and their ability to maintain many of the quality programs they are operating in the schools today. Without some increase in the foundation program, many of these very worthwhile programs will have to go by the wayside in order for the districts meet the level of funding from the state and local level.

School districts have been reducing their administrative and teaching staff for the past several years. It is becoming common place that when a teacher or administrator resigns, the position is not replaced. In many instances this means a loss of program. The local districts have reached the maximum they are allowed to contribute. This increase contribution has been just to meet continuing escalation of expenses due to inflation.

Alaska cannot afford to allow the hemorrhaging that is occurring in education throughout the State. The needs of our children are not being met and are growing more critical. Programs which have taken years to develop are being decimated. If Alaska is going to be ready for the future, we must make every effort to assure that our children are not shortchanged. Every effort must be made to assure that Alaska's children receive the best education possible.

While many of the aspects of SB 22 are desirable and at funding levels we can support. The Alaska Council of School Administrators support the increase to the Foundation Formula reflecting a \$68,000 instruction unit.

Stephen T. McPhetres  
Executive Director

AMENDMENT #1

OFFERED IN THE SENATE

BY SENATOR HALFORD

TO: SB 22

- 1 Page 1, line 10:
- 2 Delete "\$631,989,148"
- 3 Insert "\$640,043,648"
  
- 4 Page 1, lines 11 - 12:
- 5 Delete all material.

✓ adopted  
unanimous  
consent



Lawrence A. Wiget, Ed.D.  
Director, Government Relations/Legislative Liaison  
Anchorage School District  
4600 Debarr Road  
Anchorage, Alaska 99519-6614  
(W) 907 269-2255 (FAX) 907 269-2107

---

TO: SENATE HESS COMMITTEE  
SUBJECT: POSITION STATEMENT: SENATE BILL 22  
DATE: FEBRUARY 2, 1995

**"An Act making appropriations to the Department of Education for support of kindergarten, primary, and secondary education and community schools programs and for school construction debt retirement; and providing for an effective date"**

The Anchorage School Districts supports full and early funding for education at an amount not below the \$64,000 unit value under the current School Foundation Program.

The School Foundation Program has remained at the \$61,000 Instructional Unit level since 1992, when it was increased from the 1991 level of \$60,000. The Consumer Price Index (CPI) for Anchorage, however, has increased 8.9% from July 1991 to July 1994, and 5.5% from July 1992 to July 1994. To keep pace with the CPI increase from July 1991 to July 1994, the Instructional Unit would need to have been increased to \$65,353 for FY 94-95.

The District is requesting an increase to \$64,000 to meet the instructional program and service needs of its students. This is below the current and anticipated inflationary rate for FY 94-95.

The District strongly urges the legislature and the governor to work together in achieving this goal.

## SENATE BILL NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATORS HALFORD, Torgerson

Introduced: 1/16/95

Referred: HES, FIN

Funding Information:	General Fund	\$743,288,912
	Other Funds	<u>53,290,800</u>
		\$796,679,712

A BILL

FOR AN ACT ENTITLED

1 "An Act making appropriations to the Department of Education for support of  
2 kindergarten, primary, and secondary education and community schools programs  
3 and for school construction debt retirement; and providing for an effective date."

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

5 \* Section 1. The sum of \$693,334,448 is appropriated from the general fund and from  
6 other funds in the amounts listed to the Department of Education for the purposes expressed  
7 and allocated in the amounts listed for operating expenditures for the fiscal year ending  
8 June 30, 1996:

9	FUND SOURCE	AMOUNT
10	General fund	\$631,989,148
11	<del>General-fund-mental health trust settlement income</del>	
12	<del>account (AS 37.14.036)</del>	<del>8,054,500</del>
13	Public school trust fund (AS 37.14.110)	6,816,600
14	School fund (AS 43.50.140)	2,068,100

via  
↓ Student  
load  
increase

640,043,648

## Chairman's Basic Script

\*\*\* Three Members is a Quorum to do business in HESS Committee \*\*\*

1. Gavel meeting to order

"The Senate HESS Committee will now come to order"

2. Announce those members that are present

"In attendance are Senators ... and the Chairman, Senator Green"

3. Announce first bill to be heard by the committee

"The first bill to come before the committee today will be Senate Bill or House Bill, Resolution . . ."

(( \*\* You may take the bills up in any order YOU want, and can change that order at any time -- BUT you CANNOT take up a bill that has not been properly noticed to be heard by the Committee))

4. "Will the Sponsor of the legislation, or their representative, please come to the table"

5. "For the record, please state your name and the organization or office that you represent"

6. After testimony is complete . . . .

"Are there any questions from committee members?"

7. Recognize those who wish to speak . . .

"Senator . . .(so and so) "

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 698

Central Microfilm Services  
Department of Education  
State of Alaska

## SENATE BILL NO. 22

## IN THE LEGISLATURE OF THE STATE OF ALASKA

## NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATORS HALFORD, Torgerson

Introduced: 1/16/95

Referred: HES, FIN

Funding Information:	General Fund	\$743,388,912
	Other Funds	<u>53,290,800</u>
		\$796,679,712

## A BILL

## FOR AN ACT ENTITLED

1 "An Act making appropriations to the Department of Education for support of  
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 7 and allocated in the amounts listed for operating expenditures for the fiscal year ending  
 8 June 30, 1996:

9	FUND SOURCE	AMOUNT
10	General fund	\$631,989,148
11	<del>General fund/mental health trust settlement income</del>	
12	<del>account (AS 37.14.036)</del>	8,054,500
13	Public school trust fund (AS 37.14.110)	6,816,600
14	School fund (AS 43.50.140)	2,668,100

*via Student  
 load  
 increase  
 \* 640,013,648*

1	Federal receipts - P.L. 81-874	21,806,100
2	Federal receipts - other than P.L. 81-874	22,000,000
3	PURPOSE	ALLOCATION AMOUNT
4	Foundation program	\$629,938,000
5	Child nutrition/student lunch program	22,000,000
6	Cigarette tax distribution	2,668,100
7	Tuition students	1,887,600
8	Boarding home grants	355,000
9	Youth in detention	800,000
10	Pupil transportation	31,638,148
11	Schools for the handicapped	3,447,600
12	Community schools	600,000
13	* Sec. 2. (a) The sum of \$103,345,264 is appropriated from the general fund to the Alaska	
14	debt retirement fund (AS 37.15.011).	
15	(b) The sum of \$103,345,264 is appropriated from the Alaska debt retirement fund	
16	(AS 37.15.011) to the Department of Education for state aid for costs of school construction	
17	under AS 14.11.100.	
18	* Sec. 3. This Act takes effect July 1, 1995.	

## Chairman's Basic Script

\*\*\* Three Members is a Quorum to do business in HESS Committee \*\*\*

1. Gavel meeting to order

"The Senate HESS Committee will now come to order"

2. Announce those members that are present

"In attendance are Senators ... and the Chairman, Senator Green"

3. Announce first bill to be heard by the committee

"The first bill to come before the committee today will be Senate Bill or House Bill, Resolution . . . "

(( \*\* You may take the bills up in any order YOU want, and can change that order at any time -- BUT you CANNOT take up a bill that has not been properly noticed to be heard by the Committee))

4. "Will the Sponsor of the legislation, or their representative, please come to the table"

5. "For the record, please state your name and the organization or office that you represent"

6. After testimony is complete . . . .

"Are there any questions from committee members?"

7. Recognize those who wish to speak . . .

"Senator . . .(so and so) "

Committee Script  
Page 2

8. Look at the sign-in sheet for the bill that is being heard and call those to the table who are listed to testify. EACH new person must be asked to state their name, etc... for the record.

9. When all on the sign-in sheet have testified . . . ASK:

"Is there anyone else in the audience who wishes to testify on Senate Bill . . . "

10. If amendments have been submitted: announce the amendment and number. Ask the sponsor of the amendment to testify about the amendment and why it should be adopted.

11. Debate on the amendment? Recognize committee members who wish to be heard.

Ask if there is anyone in the audience who wishes to testify on the amendment.

12. Ask for a role call by the Committee Secretary on the amendment.

"Will the secretary please call the roll on amendment # "

Secretary will take the roll. Announce the result.

(( \* NOTE -- you may take a brief "at ease" any time you want. Just announce: "the committee will stand at ease for a moment." In case you want to ask staff something or check on something.))

13. "Is there additional debate?"

Committee Script  
Page 3

((You may hold the bill over if you wish or if you want a motion to move the bill from committee, ask your Vice Chairman for a motion))

14. Chairman asks: "What is the will of the Committee?"

15. Vice Chairman responds:

"I move we discharge Senate Bill . . . . from Committee with individual recommendations"

16. If there is no objection to the motion, Chairman states:

"Senate Bill . . . . has moved from the Senate HESS Committee"

\* If there IS objection, and you have the votes to move the bill, take a roll call vote, IF there is objection and you DON'T have the votes, hold the bill over for the next hearing.

\* NEVER take up an amendment unless YOU have the votes for the outcome that YOU want. You can hold over motions or bills until you have all the votes in the room or simply take an "at ease" in order to round up your majority members.

Never take a vote unless you know the result and it's the result that YOU want.

**\*\* NOTE \*\*** Make sure Mike and Loren know what your agenda is and if you want anything from them - motions, amendments, etc . . . . Don't assume they know what you want.

Committee Script  
Page 4

If things start to get out of hand and you're not sure of what to do, take an "at ease" and talk with Mike and Loren. If there is disagreement and you need time to work things out, hold the bill over, and remember, you can always adjourn the meeting and take it up later.

17. After all votes and bills have been taken care of, then announce the next meeting and what will be on the agenda.
18. Then adjourn the meeting

"The Senate HESS Committee is adjourned"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR HALFORD

TO: SB 22

- 1 Page 1, line 10:
- 2 Delete "\$631,989,148"
- 3 Insert "\$640,043,648"
  
- 4 Page 1, lines 11 - 12:
- 5 Delete all material.

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Finance



P.O. Box 113200  
Juneau, AK 99811-3200  
(907) 465-3795  
FAX (907) 463-4885

DATE: February 2, 1995

TO: Senator Rick Halford, Co-Chair  
Senate Finance Committee

ATTN: Kelly C. Goode  
Staff to Senator Halford

FROM: Susan M. Taylor *Susan M Taylor*  
Fiscal Analyst

RE: FY96 Costs to fully fund Education

Attached for your consideration is a schedule comparing the amounts and allocations in Senate Bill 22: "An Act making appropriations to the Department of Education for support of kindergarten, primary, and secondary education and community schools programs and for school construction debt retirement; and providing for an effective date" and the same amounts to fully fund education in FY96.

If you have any questions or require additional information, please call me at 465-5410.

**Funding and Allocation Amounts in Senate Bill 22 compared to  
Funding and Allocations Amounts Needed to fully fund Education in FY96**

Funding and Allocation Amounts			
Fund Source	From Senate Bill 22	Amount to fully fund Education	Incr. <Decr.>
General fund	631,989,148	651,772,900	19,783,752
1 General fund/mental health trust settlement income account (AS 37.14.01)	8,054,500		
2 General fund/mental health		8,073,600	
Public school trust fund (AS 37.14.110)	6,816,600	5,394,700	-1,421,900
School fund (AS 43.50.140)	2,668,100	2,655,000	-13,100
Federal receipts - P.L. 81-874	21,806,100	20,791,000	-1,015,100
Federal receipts - other than P.L. 81-874	22,000,000	22,000,000	0
<b>Purpose</b>			
3 Foundation program	629,938,000	643,401,860	13,463,860
Child nutrition/student lunch program	22,000,000	22,000,000	0
Cigarette tax distribution	2,668,100	2,655,000	-13,100
Tuition students	1,887,600	1,731,200	-156,400
4 Boarding home grants	355,000	185,894	-169,106
Youth in detention	800,000	800,000	0
5 Pupil transportation	31,638,148	32,842,200	1,204,052
6 Non-public pupil transportation		3,000,046	3,000,046
7 Schools for the handicapped	3,447,600	3,471,000	23,400
Community schools	600,000	600,000	0
<b>Other</b>			
8 School Debt Reimbursement	103,345,264	80,322,400	-23,022,864

**Notes**

- 1 Chapter 5, F.SSLA 1994 repealed the Mental Health Trust Income Account (MHTIA) on its effective date, June 24, 1994. Chapter 1, SSLA 1994 reinstated the MHTIA to provide a valid funding source for appropriations from that source. The funding source for existing appropriations will come from the general fund. After FY95, no additional appropriations will be made from the MHTIA. Chapter 5, FSSLA 1994, section 16 (AS 37.14.039 and AS 37.14.041) defines the administration and use of the Mental Health Trust Settlement Income Account.
- 2 One of the benefits the plaintiffs in the Weiss v. State of Alaska received upon the dismissal of the case is a separate appropriations process outlined in Chapter 5, FSSLA 1994, section 27. The funding source for the State's integrated comprehensive mental health program is the general fund. Therefore, funding that was previously MHTIA should be General Fund/Mental Health, rather than from the Mental Health Trust Settlement Income Account.
- 3 The instructional unit value is in Alaska Statute 14.17.056. The amount is \$61,000. The increase in funding is based on projections from school districts of FY96 foundation entitlements.
- 4 Based on estimate of children participating in boarding homes
- 5 Increase is based on approved routes
- 6 Provide reimbursement for non-public pupil transportation in response to recent court case
- 7 Special Education Service Agency (SESA) provides outreach services to school districts that serve low incidence severely disabled students. The amount going to this program is tied to the foundation formula
- 8 The school debt reimbursement is based upon outstanding debt

Note: The amount to fully fund Education for FY96 is approximately \$6,500,000 less than the amount requested in the Governor FY96 budget request book (December 1994 Version). This is because the Department of Education was still in the process of verifying the instructional unit when these numbers were compiled. The numbers on this schedule are the current and best estimates.

**SB**

**27**



**SENATOR DAVE DONLEY**  
ALASKA STATE LEGISLATURE

**MEMORANDUM**

DATE: March 1, 1995  
TO: Senator Lyda Green  
Chair, Senate HESS Committee  
FROM: Senator Dave Donley *DB*  
RE: SB 27

Thank you for your support of SB 27 (Grandparent Visitation Rights). I appreciate your committee's swift action on this legislation.

I look forward to working with you and your committee on other issues this session.

DD/jja

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SSSB 27

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: An Act relating to child visitation rights BRU: Trial Courts  
of grandparents and other persons Components: \_\_\_\_\_  
 Sponsor: Sons. Donley, Ellis, Lincoln  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

**EXPENDITURES/REVENUES** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

**ANALYSIS:** (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 284-8223  
 Agency: Alaska Court System Date: 02/21/95

Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 02/21/95  
 Agency: Alaska Court System

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# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

## SB 27 GRANDPARENT VISITATION RIGHTS SPONSOR STATEMENT (February 27, 1995)

SB 27 would allow grandparents to petition the court for an order establishing reasonable visitation rights with their grandchildren. The visitation rights would only be granted if the Court deemed it was in the best interest of the child. Alaska is the only state that does not allow grandparents to make such petitions.

Currently AS 25.24.150 only allows the court to grant grandparent visitation rights in cases where a parent has died and in divorce and separation proceedings. SB 27 would give grandparents the standing to petition the court for reasonable visitation rights. Additionally, SB 27 would not place specific limitations on when these petitions can be made.

SB 27 is pro-family legislation intended to strengthen the Alaskan families through greater grandparent participation in child development when it is in the best interest of the child.

A similar version of this bill (SB 21) passed the Senate last year by a vote of 19-1 before it died in the House during the final days of session.

For additional information regarding SB 27 contact James Armstrong at 465-3892.

DD/jja

**C A R T A**  
**CENTRAL ALASKA RETIRED TEACHERS**

PO Box 93610  
Anchorage, Ak 99509-93610

**FEBRUARY 23, 1995**

The Honorable Dave Conley  
State Capitol Offices  
Juneau, AK 99801-1152

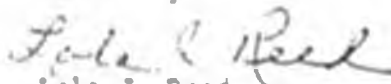
Dear Senator Conley:

As in the past members of Central Alaska Retired Teachers' Association (CARTA) strongly support all efforts to assure that grandparents have reasonable visitation rights with their grandchildren. We believe SB17, "An act relating to child visitation rights of grandparents and other persons who are not parents of the child." is a bill which would assure these rights.

As former teachers and as parents and grandparents we have witnessed the pain a child suffers when parents separate and/or divorce. Even in stable homes and especially in homes torn by the dissension of divorce parents cannot provide all the support and nurturing needed for a child to develop into a secure and stable adult. Children need the support of the wider "community" which is provided by grandparents, other relatives and, in some cases, non-relatives.

At our February meeting the CARTA membership voted unanimously to give full support to SENATE Bill 17. We were sorry to see that last year's bill on this issue did not make it through the HOUSE. We urge immediate action on this one.

Sincerely,

  
Lola J. Reed  
President



# Grandparents And Grandchildren Need Each Other

By Kathleen M. Tonn

I don't have a mile, because they are not far away. I would enjoy them if I could," says a Florida grandmother of her four Alaskan grandchildren. Josephine Reinbold declares, "I try to communicate with the children through letters, but it's not the same as holding their hand and feeling a hand along the neck. Maybe they'll remember me as the person who held their neck when they were young, sometimes only, sometimes several years."

Grandparents across the United States struggle to develop intimate relationships with their grandchildren, but many never do. Physical distance undermines the natural bond that draws grandparents and grandchildren together. Grandparents whose grandchildren live in Alaska experience perhaps a more detached relationship due to the state's geographical remoteness.

The sense of loss, on the part of the grandparent, can be profound when they are unable to grandparent. Studies demonstrate the birth of a grandchild represents immortality and the ability to continue one's genealogy. To sustain the feelings generated by the birth of a grandchild, grandparents need to interact with the child regularly.

Phillip Baker, an Anchorage psychologist, believes families are negatively affected when distance separates them. Baker comments, "Here in Anchorage, all of us suffer to some extent, but children probably suffer more. The impact on grandparents when they are unable to grandparent is they can feel depressed. This can lead them to feel disconnected with their own offspring."

When grandparents are able to develop a closeness with their grandchildren their generations thrive. Generally, the grandparent's overall health improves. The vitality of the young motivates seniors to stay physically and mentally active. As members they are contributing not only to the child's sense of well-being, but to society as a whole.

Anchorage's Foster Grandparent coordinator, Sharon Stassny, believes the interaction between senior citizens and children is important. Stassny observes, "Seniors that are contributing in the community while being paired with children live longer and are happier." Although Foster Grandparent seniors deal with children who are not related to them, the factors that contribute to emotional and physical health stress headlines.

Children benefit enormously from a loving relationship with a grandparent. Grandparents have a positive influence on child development. They help to boost a child's self-esteem through a constant kindness. Grandparents are mentors who don't have to deal with the same issues as parents. They are in a position to provide objectivity.

Children also gain a sense of family history from grandparents. The stories grandparents share about their own lives or their children's lives help children learn the interconnectedness of families. Similarly, a loving relationship with a grandparent allows children to develop positive feelings about the elderly in society.

Despite the great distance that separates Alaskan grandchildren from their grandparents, there are ways families can encourage close, long-distance relationships. Before taking steps to create a climate in which the grandparent/grandchild bond can be strengthened, both parents and grandparents must make a firm commitment to the relationship's development. Research indicates that a child's love for a grandparent is second only to the love of a parent.

The following activities nurture grandparent/grandchild love. They can be done by grandparents as well as children. And parents can help children whenever necessary. The sharing of oneself, through the following methods, will enhance the time spent together when visits occur between grandparents and grandchildren.

• Scheduled telephone conversations



Eva Honon of Chugach spends a sunny afternoon with her great-granddaughters, Amber McIntire (L.) and Kimberly McIntire (R.)  
Sharon McRide Photo

- Sending videotapes of special family or school events
- Writing letters
- Making audiotapes of singing, reading, or reflections of an ordinary day
- Sending photos with captions
- Making names that have been written by either grandparent or child
- Sending children's art pieces or school work
- Sending treasures like broken fabric that can be taken apart or rocks that have been found on a day's outing

# MODERN CHILD CUSTODY PRACTICE

1994 Cumulative Supplement

JEFF ATKINSON

*Member of the Illinois and  
United States Supreme Court Bars*

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# MODERN CHILD CUSTODY PRACTICE

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murder of the mother (apparently by the father); the court said the aunt and uncle could file an action for custody separate from the divorce action.)

For description of a custody dispute between a grandfather and step-grandmother following the death of both parents, see *supra* § 8.07, note 62 in this supplement.

### § 8.09 Burden of proof in modification actions when a third party has custody

Page 426, n. 88. *Glover v. McRipley*, 159 Mich. App. 150, 406 N.W.2d 246, 254 (1987) (holding that the burden of proof was on the father by a preponderance of the evidence to show reasons why there should be a change in the established custodial environment with the grandparents, who had cared for the seven-year-old girl since birth; the mother had died when the child was two years old. The court, in denying the father's petition, commented: "[T]he importance of residence with a biological parent pales beside the importance of stability and continuity in the life of a child").

Page 426, n. 90. *In re Marriage of Stewan*, 307 N.E.2d 555, 357 (Ind. Ct. App. 1986), in which the court held that the grandparents bore a "strenuous burden of proof" to show that the natural parent was unfit or had acquiesced in the custody arrangement, even though the grandparents had raised the girl for three of her four years. Custody to the grandparents was reversed and custody was given to the mother, who had recently completed parenting classes while on welfare, and who planned to become a beautician.

*In re Custody of Walkers*, 174 Ill. App. 3d 949, 529 N.E.2d 308 (1988) (applying a presumption of parental custody even though grandmother had custody by virtue of a prior uncontested petition; nonetheless, the presumption of parental custody was overcome when maternal grandmother had raised the child for 10 years and mother's life seemed unstable).

### § 8.10 Grandparent visitation

#### § 8.11 —Statutory provisions

Page 427. Replace first paragraph with:

All fifty states now have statutes which allow grandparents to seek court-ordered visitation.<sup>98</sup> The District of Columbia does not have a grandparent visitation statute. As of 1994, twenty-seven states specifically provide visitation upon the death of a parent (usually upon the death of the parent related by blood to the grandparent seeking visitation). Twenty-nine states also provide for visitation upon the divorce of the parents; most of the states in this group also would allow grandparents to seek visitation upon the separation of the parents. In addition, six states also specifically provide that a grandparent may seek

visitation if the grandchild has lived with the grandparent for a certain period of time (between six and 12 months),<sup>99</sup> and another eight states (with some overlap) allow grandparent visitation if the child is in the custody of someone other than the parent or if parental rights have been terminated.<sup>97</sup>

Twenty-two states have what might be called general visitation statutes which allow grandparents to seek visitation, but do not specifically limit the circumstances under which visitation may be sought (e.g., limiting visitation to cases in which a parent has died or the parents are divorced). Some of these statutes are written very broadly but with some detail, apparently allowing visitation even if the mother and father are alive and their marriage is intact.<sup>99</sup> Other statutes are brief and somewhat vague—for example, allowing grandparent visitation if it is in the best interest of the child. If such a statute is part of a state's divorce law, a court may construe this general visitation provision as limiting visitation to cases in which the parties are separated or divorced.<sup>97</sup> A court, however, is not required to do so and could interpret the general provision as allowing visitation in a variety of situations, including intact marriages. Legislative history, if it is available, may be an important part of construing vague statutes.

<sup>98</sup>In 1986, Nebraska was the last state to adopt a grandparent visitation statute. For citations to the Nebraska statute and the other statutes, see *infra* the Appendix at § 8.19 in this supplement.

<sup>99</sup>The states with statutes specifically providing for grandparent visitation after the child has lived with the grandparent for a certain period of time are: Minnesota (twelve months), New Mexico (six months), Pennsylvania (12 months), Texas (six months within the preceding twenty-four months), West Virginia (six months), and Wyoming (six months). The absence of such a provision in the statutes of other states would not necessarily prohibit granting visitation to grandparents with whom a child had lived for a substantial period of time.

<sup>97</sup>The states with statutes specifically allowing a grandparent to seek visitation if the child is in the custody of a non-parent or if parental rights have been terminated are: Colorado, Georgia, Iowa, Michigan, Nevada, Oklahoma, Tennessee, and Texas.

<sup>98</sup>The states with very broad visitation statutes, which apparently allow visitation of children in intact marriages include: Alabama, Mississippi, Maryland, New York, South Dakota. (Illinois formerly had such a statute, but now only allows grandparent visitation for children in an intact marriage if parent joins in the petition ... in which case one may assume the marriage

will not be intact for long.) Delaware has a general visitation statute, but prohibits grandparent visitation if husband and wife cohabit and object to visitation.

<sup>99</sup>See, e.g., *White v. Jacobs*, 198 Cal. App. 3d 122, 243 Cal. Rptr. 597 (1988); *Van Cleve v. Hemminger*, 341 Wis. 2d 543, 415 N.W.2d 571 (App. Ct. 1987).

Page 428, n. 100. In *Farrell v. Denson*, 821 S.W.2d 547 (Mo. Ct. App. 1991), the court held that paternal grandparents had a right to seek visitation of a child born out of wedlock, even though the statute did not specifically deal with this situation. The court said, "Such grandparents wanting visitation could have been anticipated and as the legislature did not deny them visitation rights or otherwise exclude them, it is reasonable to assume that they have the same rights as the parents of a married father. . . . A child and his grandparents have the same relationship regardless of whether his parents are married." *Id.*, quoting *In re C.E.R.*, 796 S.W.2d 421, 425 (Mo. Ct. App. 1992).

In *Thompson v. Vanaman*, 219 N.J. Super. 225, 309 A.2d 304, 305 (Ch. Div. 1985), the court held that it had "inherent equitable jurisdiction as well as jurisdiction pursuant to court rules" to hear a grandparent's request for visitation, even though the statute only provided for grandparent visitation upon the death or divorce of the parents and neither of those circumstances applied here. In *Thompson*, both parents were alive and still married. The grandmother had taken care of the children eight to ten hours per day, five days per week for four years. The grandmother and the children's parents had a dispute over an unpaid loan to the parents and the parents thereafter objected to visitation. The court granted the grandmother visitation on the third Saturday of each month from 10 a.m. to 6 p.m.

See *supra* § 8.04, note 33.

But see *In re R.A.N.*, 435 N.W.2d 71 (Minn. Ct. App. 1989), in which the court said that the legislature limited the court's power to allow grandparent visitation. The statute allows visitation upon death or divorce of the parents, or after the child resided with the grandparents for 12 months or more. Miss. Stat. § 237.022 (1976). In this case, the court did not allow the paternal grandparents to seek visitation after their son had murdered the mother, been sentenced to prison, and voluntarily relinquished his parental rights.

In an unusual fact situation, the court in *Worley v. Worley*, 354 So. 2d 862 (Fla. Dist. Ct. App. 1988) ruled that the adoption of the adult child of a grandparent did not preclude the grandparent from obtaining visitation with the grandchildren who were already in being. The court added that any children born to the adult child after the adult child's adoption would have no relationship with the grandparents, and thus the grandparents could not seek visitation with them.

Granting visitation to grandparents normally requires that the grandparents petition for visitation or that there be some extraordinary circumstance. *In re Marriage of Balzell*, 207 Ill. App. 3d 319, 366 N.E.2d 20, 23 (1991) (reversing an order of visitation to the maternal grandparents when the

grandparents had not petitioned for visitation and the custodial father said he would facilitate the child's strong relationship with the grandparents).

Page 428. Add at end of section:

If a grandparent seeks visitation, the burden of proof normally is on the grandparent to show that visitation is in the best interest of the child—the burden is not on the natural parent to show that visitation would be harmful to the child.<sup>100</sup>

<sup>100</sup> *Kerns v. Southern*, 100 N.C. App. 661, 397 S.E.2d 651, 652 (1990).

*Santaniello v. Santaniello*, 18 Kan. App. 2d 112, 830 P.2d 259, 271 (1992) (remanding the case and holding that the burden of proof was on the paternal grandparents to show that visitation was in the best interest of the children; the burden of proof was not on the mother of the deceased father to show that visitation was not in the children's best interest).

## § 8.12 — Underlying rationale

Page 429, n. 101. In *In re Bomgardener*, 711 P.2d 92, 97 (Okla. 1985), the court found the grandmother had standing to seek visitation and commented: "The grandparents here are the child's deceased mother's parents. The importance of a continued relationship with them is perhaps more significant now than while the mother was living. . . . Equity recognizes—independent of statute—the grandparents claim to the companionship of their grandchild. Quite often it is an important source of stability and calm in the child's environment."

## § 8.13 — Determining factors

Page 429, n. 102. *Constance Rose v. Commissioner of Social Services*, 170 A.D.2d 339, 556 N.Y.S.2d 43 (1991), in which the court denied both custody and visitation to a grandmother with "psychological problems" who illegally removed the child from the county and "has acted in an inappropriate and insensitive fashion toward the child when allowed visitation".

Page 429, n. 103. See *supra* § 8.08, note 73 and § 8.11, note 100 in this supplement. Cf. *supra* § 8.04, note 33 in this supplement.

Page 430, n. 104. In *Brown v. Earnhardt*, 395 S.E.2d 353, 360 (S.C. 1990), the court reversed an order of visitation to paternal grandparents and held it would seldom if ever be in the best interest of the child to grant visitation to the grandparents when their child, the parent, has such rights. In this case, the father regularly exercised visitation, often in the company of his parents.

Also see *In re Adoption of a Child by M.*, 140 N.J. Super. 91, 353 A.2d 211, 213 (Ch. Div. 1976).

## § 8.14 —When court order is desirable

Page 430, n. 105. In *State ex rel. Foley v. Landberg*, 151 A.D.2d 439, 542 N.Y.S.2d 619 (1989), the court found grandparent visitation appropriate when the father did not regularly exercise visitation with his son, in part because the father was incarcerated for drug possession. The court commented, "[I]n view of the finding that the grandparents had, and in the future might resume, an important loving role in [the child's] life, we believe that visitation rights, independent of the exercise of such rights by [the father] are appropriate." 542 N.Y.S.2d at 642.

Page 431, n. 108. *Arcont* Del. Court Ass. § 19-950(7) (Supp. 1989) (prohibiting grandparent visitation if the natural or adoptive parents are alive, living together, and object to visitation). *But cf.* the statutes of Minnesota, New Mexico, Pennsylvania, and Texas, which specifically allow grandparent visitation if the grandchild has lived with the grandparent for a significant period of time (six to twelve months, depending on the state). For citation to these statutes, see *infra* § 8.19. Cf. also *Thompson v. Vanzeant*, *supra* § 8.11, note 101 of this supplement.

*White v. Jacobs*, 138 Cal. App. 3d 122, 243 Cal. Rptr. 397 (1983) (holding that, in the absence of an express statutory provision, grandparents did not have a right to visitation with grandchildren of an intact marriage; the state's general provision regarding grandparent visitation contained in the dissolution statute was construed to apply only to cases in which a dissolution or nullity action was pending).

Page 431. Add new section:

## § 8.14A —Constitutionality of grandparent visitation statutes (New)

The constitutionality of grandparent visitation statutes has been attacked by both grandparents and parents: grandparents claiming the statutes are too narrow and parents claiming the statutes are too broad, and thus intruding on family privacy. In recent cases, both arguments have been rejected and the statutes have been upheld.

In a case before the Delaware Family Court, grandparents challenged a statute which did not allow grandparents to seek visitation of grandchildren in an intact marriage.<sup>1001</sup> The grandparents argued that not allowing them to seek visitation, while grandparents whose adult children were divorced, separated or deceased could seek visitation, violated due process and equal protection. The court ruled against the grandparents, finding that grandparents who had not had a custodial relationship with their grandchildren did not have a fundamen-

tal liberty interest in visitation which had been recognized at common law or elsewhere.

Furthermore, in response to the grandparent's equal protection argument, the Delaware court held it was reasonable for the legislature to create different standards for grandparent visitation depending on whether or not the parents cohabitated as husband and wife. The court said, "Stated simply, parents, natural or adoptive, living together as husband and wife are more likely to make decisions regarding with whom their children associate in a manner that protects the children's best interests. Personal animosity towards the other parent and his or her family is less likely to color this visitation decision."<sup>1002</sup>

Another constitutional argument was raised by a custodial parent in a Florida case.<sup>1003</sup> The mother challenged the constitutionality of the state's grandparent visitation statute, which allowed the paternal grandparents to seek visitation following the death of the mother's husband. The mother argued that the statute which allowed grandparents to seek court-ordered visitation was an invasion of her right of privacy and right to raise her children "as she sees fit." The appellate court rejected the argument, saying "The state has a sufficiently compelling interest in the welfare of children that it can provide for the continuation of relations between children and their grandparents under reasonable terms and conditions so long as that is in the children's interest."<sup>1004</sup>

<sup>1001</sup> *Ward v. Ward*, 337 A.2d 1963 (Fam. Ct. 1987).

*Compare In re D.S.*, 805 P.2d 1143, 1145 (Okla. Ct. App. 1991), in which the court held, "Grandparents have no constitutional right to visitation with their grandchildren. These rights come from statutory authority." Nonetheless, the court found that the grandparents had standing in juvenile court to contest reduction of visitation which earlier had been granted by a divorce court.

<sup>1002</sup> *Ward v. Ward*, 337 A.2d at 1970. The court also found that the statute in question did not violate principles of separation of powers between the legislature and the judiciary—particularly since no fundamental rights are involved. In closing, the court commented, "This opinion is not to be taken as the Court's endorsement of the position taken by the natural parents in this matter; indeed, the Court would remind them of what other courts have stressed: that it is the moral duty of parents to promote and strengthen association between grandchildren and grandparents."

<sup>1003</sup> *Bengton v. Giroud*, 359 So. 2d 380 (Fla. Dist. Ct. App. 1990).

*Id.* at 382. Although finding the statute to be constitutional, the court held that the amount of visitation granted was excessive. The trial court gave the paternal grandparents visitation: one full day every other weekend, every other Wednesday evening for two hours; certain holidays; plus one week in the summer. The court held the record did not support such "extensive visitation rights." *Id.* at 383. The case was remanded for a new visitation schedule and findings in support.

### § 8.15 —When stepparent adopts child

Page 431, n. 109. Other states that have statutes allowing grandparent visitation following adoption by a stepparent include: North Carolina, Ohio, Pennsylvania, Virginia, and many others. For citation to these statutes, *see infra* § 8.19.

*Lottin v. Smith*, 590 So. 2d 323 (Ala. Civ. App. 1991) (following Louisiana's statute and allowing visitation by paternal grandparents after adoption of children by stepfather).

*Cf. Bush v. Squellau*, 154 Ill. App. 3d 727, 505 N.E.2d 972, 974-75 (1987) (holding that a grandparent visitation statute that allows grandparents to visit a child after adoption by a stepparent would not be construed to allow grandparent visitation after adoption of a child by an aunt and uncle (even though the aunt and uncle were related to the grandparents seeking visitation)).

Page 431, n. 111. In *Echols v. Smith*, 427 S.E.2d 820 (Ga. Ct. App. 1993), the court held that the paternal grandparents could not obtain visitation with their grandchildren after the father voluntarily terminated his parental rights and the children were adopted by their stepfather. The state's grandparent visitation statute allowed grandparent visitation after adoption only if the adoption was by a "blood" relative. A concurring judge said the legislature's limitation on grandparent visitation was "unfortunate" and did not allow full consideration of what may be best for the child. *Id.* at 821 (Blackburn, J., concurring).

Page 432, n. 113. *McVey v. Frederickson*, 226 Ill. App. 3d 1082, 1084, \_\_\_ N.E.2d \_\_\_ (1992) (in a case in which the grandparents cared for the child frequently after the father's death, the appellate court stated, "we find that while a different trial court may have granted more visitation, the instant trial court's grandparent visitation order of one Saturday per month [8 a.m. to 8 p.m.] was not an abuse of discretion").

*Thompson v. Vanaman*, 219 N.J. Super. 225, 529 A.2d 304 (Ch. Div. 1986) (granting visitation to grandmother on the third Saturday of each month from 10 a.m. to 5 p.m.). For a further description of this case, see *supra* § 8.11, note 190. See also *Sketo v. Brown*, discussed in note 195 *supra* in this supplement.

### § 8.16 —Procedure

Page 433, n. 114. *Quintella v. Ramero*, 117 A.D.2d 1019, 119 N.Y.S.2d 567 (1986) (reversing an order of grandparent visitation that was entered without

an evidentiary hearing and remanding the case so that a hearing could be held).

### § 8.17 Antagonism between the parties: effect on visitation

Page 434, n. 122. In *Strouse v. Olson*, 397 N.W.2d 651, 655 (S.D. 1986), the court affirmed termination of the paternal grandmother's visitation with her two granddaughters, ages ten and eight, who were in the custody of the father (the grandmother's son). The court found termination of visitation to be in the best interest of the children because of the "severe ill feelings, bitterness, and animosity" between the grandmother and the father. The grandmother had threatened the father's life, demeaned his new wife, and threatened to sue them over personal property matters. In addition, the children testified that they did not wish to visit with their grandmother any more. Aside from visitation no longer being in the children's best interest, the Iowa statutory law on which the visitation originally was based was interpreted as not permitting grandparent visitation when the child or the grandparent objected to visitation.

For discussion of the effect of antagonism between the parties when a stepparent seeks visitation, *see infra* § 8.15 in this supplement.

Page 435, n. 125. Compare *Truitt v. Truitt*, 65 Ohio App. 3d 126, 353 N.E.2d 351, 354-55 (1989), in which the court held that a mother's contempt of court and lack of cooperation in providing visitation to the paternal grandparents could not serve as a basis for placing custody of the children with the department of children's services. The court adopted the language of another court for the proposition that:

Too long have courts labored under the notion that divorced parents must somehow be perfect in every respect. The law should recognize that parents, married or not, are individual human beings each with his or her own peculiar virtues and vices. The children of married parents are expected to take their parents as they find them—as Oliver Cromwell said to his portraitist, "with warts and all." Whatever their faults, unless the married parent's conduct is harming the child, the courts will not intervene in the parent-child relationship.

583 A.2d at 334-35, quoting *Conkel v. Conkel*, 31 Ohio App. 3d 169, 171-72, 509 N.E.2d 983, 985-86 (1987). The court said other penalties for contempt could have been imposed and "We find it was unconscionable to award custody of the children to the county as punishment for contempt ..." 583 N.E.2d at 335.

Page 435. Change title of § 8.18 to:

### § 8.18 Visitation for stepparents and other third parties

Page 435, n. 127. States which specifically provide for stepparent visitation by statute include: Oregon, Virginia, and Wisconsin. For citations to statutes, see appendix at *infra* § 8.19. The Wisconsin Supreme Court, with three jus-

tices dissenting, held that the state's stepparent visitation statute applied only to actions for divorce between the stepparent and natural parent, and did not apply to a stepparent seeking visitation after death of the natural parent to whom the stepparent was married. *In re Marriage of Cox*, 177 Wis. 2d 433, 502 N.W.2d 128 (Wis., 1993). The Chief Justice Heffernan commented in his dissent: "If the law is construed as the majority has construed it, the words of Charles Dickens in *Oliver Twist* are pertinent. 'If the law supposes that . . . the law is a ass, a idiot.'" 502 N.W.2d at 131.

Page 435, n. 128. *Cf. In re Marriage of Goetz*, 203 Cal. App. 514, 259 Cal. Rptr. 30 (1986) (holding that under California statutes, a stepparent may obtain visitation, but not joint custody).

Page 435, n. 129. *But see In re Boland*, 186 A.D.2d 1065, 588 N.Y.S.2d 435 (1992) (holding that a former stepmother lacked standing to seek visitation with her former stepdaughter). Compare this case with *In re Ronald FF, infra* n. 130, in which another New York court allowed a man who was led to believe he was the father to obtain visitation with a child even though he was not the father.

Page 436, n. 130. *In re Custody of Banning*, 511 N.E.2d 283 (Ind. Ct. App. 1986), the court affirmed visitation for the stepmother following death of the father. The court noted that the stepmother had helped care for the child on a daily basis. The criteria in Indiana is: "To establish visitation, a third person must first show that a custodial and parental relationship exists and then, that visitation would be in the best interest of the child." *Id.* at 284.

In *Honaker v. Barnside*, 388 S.E.2d 322 (W. Va., 1989), the stepfather was able to obtain "liberal" visitation following the death of the custodial mother. The court noted that after the death of the mother, the two people closest to the six-year-old girl were her stepfather and her half brother. The natural father (who had kept contact with the child) was given custody as a natural right, but the court ordered a six-month transition period in which the stepfather would have custody and the father would have ever-increasing amounts of visitation until a transfer of custody after six months with visitation for the stepfather.

In *In re Ronald FF*, 117 A.D.2d 332, 502 N.Y.S.2d 823 (1986), a man who lived with the mother and child during much of the child's first two years of life and was listed on the child's birth certificate as father (although he was not the father) was found to be entitled to visitation under New York's "extraordinary circumstance" test for giving rights to third parties.

Similarly, in *In re Marriage of Duenno*, 554 P.2d 1352 (Co. Ct. App. 1983), a man who first learned at the time of the divorce that he was not the biological father of the child was able to obtain visitation. The court said: "Therefore, we hold that the trial court in a dissolution of marriage proceeding may grant visitation privileges to a stepparent or surrogate parent under the following conditions: (1) the nonparent is jurisdictionally capable of litigating custody; (2) the nonparent has acted in a custodial and parental capacity toward the minor child; and (3) visitation would be in the minor child's best interest." *Id.* at 1357.

*But see In re Maricopa County Juvenile Action*, 131 Ariz. 407, 656 P.2d 1268 (1982), in which the court provided the following dictum in a case involving termination of parental rights: "A stepfather has no legal right to custody or control of a minor child nor even a right of visitation. To give such rights to stepfathers would invade the rights of natural parents and would further endanger the welfare of children by pitting the rights of stepparents against those of the natural parents."

Compare *In re Marriage of Gayden*, 229 Cal. App. 3d 1510, 280 Cal. Rptr. 852 (1991), in which the court rejected a visitation request by a woman who moved in with the custodial father and later sought visitation with the child when the relationship terminated. In *Gayden*, the woman said she lived with the custodial father and the child from the time the child was seven months old until the child was about 1½ years old. She then moved out, but continued to see the child until the child was 3½ years old. (The father disputed the length of the time periods.) At the time the woman sought visitation, the father and his former wife were attempting to reconcile, and they both opposed visitation by the woman. The appellate court denied visitation, stating "Where the parents are unified in opposition, visitation must not be allowed unless it is clearly and convincingly shown that denial of visitation would be detrimental to the child." 280 Cal. Rptr. at 867.

In a case somewhat similar to *Gayden*, the court in *Cooper v. Merkel*, 470 N.W.2d 253 (S.D., 1991), held that a man who had lived with a woman and her son for seven years did not state a cause of action for visitation with the boy in the absence of an allegation that the mother was unfit or had engaged in misconduct. Under the court's ruling, the man's assistance in raising the boy was not a sufficient basis for seeking visitation. For commentary applicable to this case, see the "Comment" in *infra* § 8.18A.

Page 437, n. 134. *Cf. Klipstein v. Klipstein*, 290 N.J. 567, 553 A.2d 1384 (Ch. Div. 1988) (holding that a stepfather was not entitled to visitation when: his marriage to the child's mother lasted less than one year; the stepfather had not paid support; and the child had a natural father with whom the child apparently had a good relationship).

Page 437. Add at end of section:

As with grandparent visitation,<sup>134</sup> the existence of a high degree of animosity between the divorcing stepparent and natural parent can result in a finding that visitation with the party seeking visitation will not be in the child's best interest. In one case in which a stepmother sought visitation upon divorce from the natural father (who had custody of the children), the court commented:

Ideally, had the parties been capable of controlling their animosity and hostility toward one another, we would agree that the trial court may well have found that continuing stepmother's visitation would have been in the chil-

legislature could expand "parental" rights to cover situations, but the courts would not do so.

In the California case, the court said that expanding the definition of "parent" to cover this case "could expose other natural parents to litigation brought by child-care providers of long standing, relatives, successive sets of step-parents or other close friends of the family.... By deferring to the Legislature in matters involving complex social and policy ramifications far beyond the facts of a particular case, we are not telling the parties that the issues they raise are unworthy of legal recognition. To the contrary, we intended only to illustrate the limitations of the courts in fashioning a comprehensive solution to such a complex and socially significant issue."<sup>1240</sup>

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**COMMENT:** Just as a child can have a very significant relationship with a stepparent which could justify visitation, and even custody,<sup>1241</sup> so too can a child have such a relationship with a person who has lived with the parent and child and served as a parent to the child. The fact that both "parents" are of the same sex does not diminish the child's potential attachment to both parties as well as both parties' attachments to the child. Granting custody or visitation to a party who is not related by blood or adoption to a child is an extraordinary circumstance which should be done with caution, but it nonetheless should be done if it will serve the best interest of the child.

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<sup>1240</sup> *Alison D. v. Virginia M.*, 77 N.Y.2d 651, 569 N.Y.S.2d 566, 572 N.E.2d 27 (1991); *Narcy S. v. Michele G.*, 228 Cal. App. 3d 531, 279 Cal. Rptr. 212 (1991).

<sup>1241</sup> *But compare In re Adoption of Evan*, 153 Misc. 2d 814, 583 N.Y.S.2d 997 (Sup. Ct. 1992) in which the court approved adoption of a six-year-old boy by the lesbian life-partner of the biological mother. The biological mother and her partner decided to have a child together and obtained sperm from a friend who relinquished any claims to the child. The adoption was recommended by a guardian ad litem and two licensed social workers. The court

stated: "Here this Court finds a child who has all of the above benefits and the adults dedicated to his welfare, secure in their loving partnership, and determined to raise him to the very best of their considerable abilities. There is no reason in law, logic, or social philosophy to obstruct such a favorable situation." 583 N.Y.S.2d at 1002 (court's emphasis). The court also cited several trial court opinions from other states approving adoptions by lesbian partners. *Id.* The court also noted that in the event the couple separated, the lesbian partner would be entitled to seek visitation.

<sup>1242</sup> *In re Interest of Z.J.H.*, 157 Wis. 2d 431, 459 N.W.2d 602 (Ct. App. 1990).

<sup>1243</sup> 209228 Cal. App. 3d at \_\_\_, 279 Cal. Rptr. at 219.

<sup>1244</sup> For discussion of visitation and custody for stepparents and other third parties, see *supra* §§ 8.06, 8.07 and 8.16.

### ✓ § 8.19 Appendix: Grandparent visitation statutes

Pages 438-447. Add new text:

The grandparent visitation statutes cited in this section are part of the divorce statutes of the respective states unless otherwise indicated. For discussion of the significance of including a general grandparent visitation provision as part of a divorce statute, see *supra* § 8.11 and the cases cited under California and Wisconsin, in this supplement.

- Alabama:** Ala. Code § 30-3-4 (1989), allowing visitation on death or divorce of parents, and under general provision if grandparent has been unreasonably denied visitation with the child for a period exceeding 90 days.
- Alaska:** Alaska Stat. § 25.24.150 (Supp. 1991), allowing visitation on death, divorce, or separation of parents.
- Arizona:** Ariz. Rev. Stat. Ann. § 25-337.01 (West 1991), allowing visitation on death or divorce of parent, or if parent has been missing three months.
- Arkansas:** Ark. Code Ann. § 9-13-103 (1991), allowing visitation on death, divorce, or separation of parents.
- California:** Cal. Fam. Code §§ 3102-3104 (West 1994), allowing visitation on death, divorce, or sepa-

ration of parents, but not if parents live together in an intact marriage, unless one of the parents joins in a petition of the grandparent who seeks visitation.

*Colorado:*

Colo. Rev. Stat. § 19-1-117 (West 1990), recodifying statute allowing grandparent visitation on death or divorce of parents, or upon child being placed with party other than parent.

*Connecticut:*

Conn. Gen. Stat. Ann. §§ 46b-57, 46b-59 (1986), allowing visitation to "any person" according to the best interest of the child.

*Delaware:*

Del. Code Ann. § 10-950(7) (Supp. 1988), containing a general provision for grandparent visitation, but prohibiting an order of visitation if both parents object and they cohabit and live as husband and wife.

*Georgia:*

The parallel provision to the Official Code is Ga. Code Ann. § 74-112 (Harrison Supp. 1989), allowing visitation on death or divorce of the parents, or upon termination of parental rights.

*Illinois:*

750 Ill. Comp. Stat. § 5/607(b) (West 1993), allowing grandparent or sibling visitation on separation, divorce, or death of parent, or if a parent joins in the petition for visitation. The statute, as amended in 1991, does away with a former provision which allowed a court to give grandparents or siblings visitation for children in intact marriages even if both parents opposed visitation.

*Indiana:*

Ind. Code Ann. § 31-1-11.7-2 (Barns Supp. 1993), allowing visitation on death or divorce of parents or if child is born out of wedlock.

*Iowa:*

Iowa Code Ann. § 598.35 (West Supp. 1990), allowing visitation on death or divorce of

parents, or upon foster placement of the child.

*Kentucky:*

Ky. Rev. Stat. Ann. § 405.021 (1984), general visitation provision.

*Louisiana:*

La. Rev. Stat. Civ. Code Ancillaries § 9:572 (West 1991), allowing visitation on death or divorce of the parents; however, a grandparent may seek visitation only if the parent to whom the grandparent is related does not have custody.

*Maine:*

Me. Rev. Stat. Ann. tit. 19, § 752(6) (West Supp. 1989), providing "[t]he court may award reasonable rights of contact with a minor child to any 3rd persons."

*Maryland:*

Md. Fam. Law Code § 9-102 (Michie Supp. 1993), allowing grandparent visitation if it is in the best interest of the child (and deleting former requirement that visitation was granted only on death or divorce of parent)

*Massachusetts:*

Mass. Gen. Laws Ann. § 119-39D (West Supp. 1992), allowing grandparent visitation in several circumstances, including death, divorce, or separation of parents, and as part of paternity proceedings.

*Michigan:*

Mich. Comp. Laws Ann. §§ 722.27(b) & 722.27b (Supp. 1990), allowing grandparent visitation on death or divorce of parents, or upon placement of custody of the child with a person other than a parent.

*Minnesota:*

Minn. Stat. Ann. § 257.022 (West Supp. 1991), providing grandparents may seek visitation on death or divorce of parents, or if child has lived with grandparent 12 month or more; a non-grandparent may seek visitation if the child has lived with that person more than two years.

*Mississippi:*

Miss. Code Ann. §§ 93-16-1 & 93-16-3 (West Supp. 1990), allowing visitation on death or divorce of the parents, or upon termination of parental rights. The statute also provides a general grandparent visitation provision (§§ 93-16-3(2)—93-16-3(4)) under which any grandparent may petition for visitation and obtain visitation rights if the grandparent "had established a viable relationship with the child and the parent or custodian of the child unreasonably denied the grandparent visitation rights with the child, and ... visitation rights of the grandparent with the child would be in the best interests of the child." "Viable relationship" requires financial support of the grandchild for six months and frequent visitation, including occasional overnight visitation, for not less than one year. This general grandparent provision will be repealed automatically on July 1, 1992, unless there is further action by the legislature.

*Missouri:*

Mo. Rev. Stat. § 452.402 (Vernon Supp. 1990), recodifying statute allowing grandparent visitation on death or divorce of parents. The statute also allows visitation when "a grandparent is unreasonably denied visitation with the child for a period exceeding 90 days."

*Montana:*

Mont. Code Ann. § 40-9-102 (1989), containing general provision for grandparent visitation.

*Nebraska:*

Neb. Rev. Stat. §§ 43-1801—43-1803 (1956), allowing visitation on death or divorce of the parents.

*Nevada:*

Nev. Rev. Stat. Ann. §§ 125A.330 & 125A.340 (Supp. 1989), recodifying statute allowing grandparent and sibling visitation on

death, divorce, or separation of parents, or upon termination of parental rights.

*New Hampshire:*

N.H. Rev. Stat. Ann. §§ 458:17(VI), 458:17-d (Supp. 1990), general grandparent visitation provision enumerating eight factors for consideration relating to quality of grandparent-grandchild relationship and degree of conflict between grandparent and parent.

*New Jersey:*

N.J. Stat. Ann. § 9:2-7.1 (West Supp. 1990), allowing grandparent or sibling visitation on death, divorce, or separation of parents. See also *Thompson v. Vanaman*, 210 N.J. Super. 225, 509 A.2d 304 (Ch. Div. 1986) (holding that the court had "inherent equitable jurisdiction as well as jurisdiction pursuant to court rules" to grant visitation in circumstances other than death and divorce of the parents). *Thompson* is described further in § 8.11, note 100 *supra* of this supplement.

*New Mexico:*

N.M. Stat. Ann. §§ 40-9-1—40-9-4 (1989), allowing visitation on death or divorce of parents, or if child has lived with grandparents six months or more.

*New York:*

N.Y. Dom. Rel. Law §§ 72 & 240(1) (McKinney Supp. 1990), allowing visitation on death, divorce, or separation of parents. The statute (§ 72) also contains a general visitation provision: "Where either or both of the parents of a minor child, residing within this state, is or are deceased, or where circumstances show that conditions may exist which equity would see fit to intervene," the grandparent may seek visitation.

*Ohio:*

Ohio Rev. Code Ann. § 3109.051 (Page's Supp. 1990), allowing visitation to grandparent, relative, or any other person if action relates to divorce or support; the statute list:

- 15 factors for consideration. § 3109.11 provides for visitation upon death of parent.
- Oklahoma:* Okla. Stat. Ann. tit. 10, § 5 (West Supp. 1990), allowing visitation upon termination of parental rights; plus a general visitation provision—not in the divorce statute—providing: “any grandparent of an unmarried minor child shall have reasonable rights of visitation to the child if the district court deems it to be in the best interest of the child.”
- Oregon:* Or. Rev. Stat. Ann. §§ 109.119, 109.121 & 109.123 (Butterworth 1990), general visitation and custody provision, allowing “any person” including, but not limited to, a grandparent, stepparent, relative by blood or marriage, and foster parent who has “established emotional ties creating a parent-child relationship” to seek visitation or custody regardless of whether other proceedings are pending (a “parent-child relationship” includes providing day-to-day care for the child); the statute also provides that third parties with an “ongoing personal relationship with substantial continuity for at least one year with the child” (or three years for foster parents) may seek visitation; another provision of the statute applying specifically to grandparents allows grandparents to seek visitation if: “(A) The grandparent has established or has attempted to establish ongoing personal contact with the child; (B) The custodian has denied the grandparent reasonable opportunity to visit the child.”
- Pennsylvania:* Pa. Cons. Stat. Ann. tit. 23, §§ 5311-5314 (Purdon Supp. 1990), allowing visitation on death or divorce of the parents or after the child had lived with the grandparent for one year.
- Rhode Island:* R.I. Gen. Laws §§ 15-5-24.1—15-5-24.3 (Supp. 1988), allowing visitation on death or divorce of parents; the grandparents must present “clear and convincing evidence” to rebut a presumption that the parents’ refusal of visitation was reasonable.
- South Dakota:* S.D. Codified Laws Ann. §§ 25-4-52—25-4-56 (Smith 1984 & Smith Supp. 1990), general grandparent visitation provision: “The circuit court may grant grandparents reasonable rights of visitation with their grandchild, with or without petition by the grandparents, if it is in the best interest of the grandchild.” The statute is part of South Dakota’s divorce laws, but the general nature of the visitation provision is reflected by the legislature’s repeal of a section of the law which limited visitation to cases involving the death of divorce of the parents.
- Tennessee:* Tenn. Code Ann. § 36-6-301 (Michie Supp. 1990), general “best interests” visitation provision, including for children in the custody of non-parents.
- Texas:* Tex. Fam. Code Ann. § 14.03(e) (Vernon Supp. 1990), allowing visitation in a variety of circumstances, including: the death, divorce, separation, or incarceration of the parents; abuse or neglect of the child; termination of parental rights; and cases in which the child resided with the grandparent for at least six months.
- Utah:* Utah Code Ann. § 30-3-5(4) (Michie Supp. 1993), providing: In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child. (The phrase “other members of the immedi-

- ate family" was substituted for the phrase "other relatives."
- Vermont:** Vt. Stat. Ann. tit. 15, §§ 1011-1016 (1989), allowing visitation on death or divorce of the parents.
- Virginia:** Va. Code § 20-137.2 (1990), allowing visitation upon divorce of the parents; visitation may be for grandparents, stepparents, or other family members.
- Washington:** Wash. Code Ann. 26.09.210 (West Supp. 1990), providing, "The court may order visitation rights for a person other than the parent when visitation may serve the best interest of the child whether or not there has been any change of circumstances."
- West Virginia:** W. Va. Code §§ 18-2-15(b)(1) & 18-2B-1 — 18-2B-9 (Michie Supp. 1993), allowing grandparent visitation in several circumstances, including death, divorce, or separation of parents, or if child had resided with grandparent for six consecutive months during the preceding two years, or when child was born out of wedlock.
- Wisconsin:** Wis. Stat. Ann. § 767.215 (West 1993), allowing visitation to grandparents, stepparents, and other persons who have maintained a relationship with the child similar to a parent-child relationship. *Van Cise v. Hemminger*, 141 Wis. 2d 513, 415 N.W.2d 571 (App. Ct. 1987), holding that Wisconsin's former general visitation statute which allowed visitation if "it is in the best interest and welfare of the child" did not include a right to seek visitation of grandchildren in an intact marriage.
- Wyoming:** Wyo. Stat. Ann. §§ 20-2-113(c) & 20-7-101 (Michie Supp. 1993), allowing visitation of grandparent in several circumstances, in-

cluding death, divorce, or separation of parents, or if child had lived with grandparent for six consecutive months, or in connection with juvenile proceedings.



1989



## APPENDIX A

## GRANDPARENT VISITATION STATUTES\*

State	Citation to Statute	On Death <sup>1</sup> of Parent	On Divorce <sup>2</sup> of Parents	After Living with <sup>3</sup> Grandparent	General <sup>4</sup> Provision
1. Alabama	Ala. Code §30-3-3 (1983)	X	X		X
2. Alaska	Alaska Stat. §25.24.150 (1983)	X	X		
3. Arizona	Ariz. Rev. Ann. §25-337.01 (Supp. 1987)	X	X		
4. Arkansas	Ar. Stat. Ann. §9-13-103 (Supp. 1987)	X	X		
5. California	Cal. Civ. Code §§197.5, 4601 (West 1984 & Supp. 1987)	X			X
6. Colorado	Colo. Rev. Stat. §19-1-116 (1986)	X	X		
7. Connecticut	Conn. Gen. Stat. Ann. §§46b 59, -59a (West 1986 & Supp. 1988)				X
8. Delaware	Del. Code Ann. tit. 10, §950(?) (Supp. 1986)		X		X
9. Florida	Fla. Stat. §61.13(2) (b)2c (Supp. 1987)		X		
10. Georgia	Ge. Code Ann. §19-7-3 (Supp. 1988)	X			
11. Hawaii	Haw. Rev. Stat. §§71.46(?) (1985)		X		
12. Idaho	Idaho Code §32-1008 (1983)				X
13. Illinois	Ill. Ann. Stat. ch.40, para. 607(b) (c) (Smith-Hurd Supp. 1988)	X	X		
14. Indiana	Ind. Code Ann. §§31-1-11.7-1 to .7-8 (Burns 1987 & Supp. 1988)	X	X		

\*Reprinted, with minor editorial and substantive changes, from J. Atkinson 2 Modern Child Custody Practice §8.19 (1986 & Supp. 1987)

## FOOTNOTES

- 1 Under this type of provision, visitation could be granted to a grandparent whose son or daughter (the parent of the child) died.
- 2 Several statutes also specifically provided for grandparent visitation while the parents are separated, where the marriage was annulled, or where there are or have been child custody proceedings.

- 3 The length of the time in which the child lived with the grandparent triggered the right of the grandparent to seek visitation: twelve months (Minnesota and Pennsylvania) and six months (Texas and New Mexico).
- 4 "General provision" refers to visitation statutes which did not specify or restrict the circumstances under which a grandparent could obtain visitation.

State	Citation to Statute	of Parent	of Parents	Grandparent	Provision
15. Iowa	Iowa Code Ann. §§598.35-.36 (West 1987 & Supp. 1988)	X	X		
16. Kansas	Kan. Stat. Ann. §60-1616(b) (Supp. 1987)				X
17. Kentucky	Ky. Rev. Stat. Ann. §405.021 (Daldwin 1984)				X
18. Louisiana	La. Rev. Stat. Ann. §9:572 (West Supp. 1988)	X	X		
19. Maine	Me. Rev. Stat. Ann. tit. 19, §752 (Supp. 1988)				X
20. Maryland	Md. Fam. Law Code Ann. §9-102 (1984)		X		X
21. Massachusetts	Mass. Gen. Laws Ann. ch.119, §39D (West Supp. 1988)	X	X		
22. Michigan	Mich. Comp. Laws Ann. §§722.72(b), 722.72b (West Supp. 1988)	X	X		
23. Minnesota	Minn. Stat. Ann. §257.022 (West 1982 & Supp. 1988)	X	X	X	
24. Mississippi	Miss. Code Ann. §§91-16-1, -3, -5, -7 (Supp. 1988)	X	X		X
25. Missouri	Mo. Ann. Stat. §§452.400, .402 (Vernon 1986)	X	X		
26. Montana	Mont. Code Ann. §§40-9-101 to -102 (1987)				X
27. Nebraska	Neb. Rev. Stat. §§43-1801 to -1803 (Supp. 1986)	X	X		
28. Nevada	Nev. Rev. Stat. §§125A.330, .340 (1987)	X	X		
29. New Hampshire	N.H. Rev. Stat. Ann. §458:17 VI (1983)		X		X
30. New Jersey	N.J. Stat. Ann. §9:2-7.1 (West Supp. 1988)	X	X		
31. New Mexico	N.M. Stat. Ann. §§40-9-1 to -4 (1986 & Supp. 1988)	X	X	X	
32. New York	N.Y. Dom. Re. Law §§72, 240(1) (McKinney 1986 & 1988)	X	X		X
33. North Carolina	N.C. Gen. Stat. §§50-13.2(b1), .2A, .5(j) (1987)		X		
34. North Dakota	N.D. Cent. Code §14-09-05.1 (Supp. 1987)				X
35. Ohio	Ohio Rev. Code Ann. §3109.05(B) (Anderson Supp. 1987)		X		
36. Oklahoma	Okla. Stat. Ann. tit. 10, §5 (West 1987)	X	X	X	
37. Oregon	Or. Rev. Stat. §§109.121, .123 (1987)	X	X		

State	Citation to Statute	On Death <sup>1</sup> of Parent	On Divorce <sup>2</sup> of Parents	After Living with <sup>3</sup> Grandparent	General <sup>4</sup> Provision
38. Pennsylvania	23 Pa. Cons. Stat. Ann. §§5311-5314 (Purdon Supp. 1988)	X		X	
39. Rhode Island	R.I. Gen. Laws §§15-5-24.1 to .2 (1981 & Supp. 1987)	X	X		
40. South Carolina	S.C. Code Ann. §20-7-420(33) (Law. Co-op. 1976)				X
41. South Dakota	S.D. Codified Laws Ann. §§25-4-52 to -54 (1984)	X	X		X
42. Tennessee	Tenn. Code Ann. §36-6-301 (Supp. 1988)				X
43. Texas	Tex. Fam. Code Ann. §14.03(e)-(g) (Vernon Supp. 1988)	X	X	X	
44. Utah	Utah Code Ann. §30-3-5(4),(7) (Supp. 1988)				X
45. Vermont	Vt. Stat. Ann. tit. 15, 1011-1016 (Supp. 1988)	X	X		
46. Virginia	Va. Code Ann. §20-107.2 (Supp. 1988)		X		
47. Washington	Wash. Rev. Code Ann. §26.09.240. (Supp. 1988)				X
48. West Virginia	W. Va. Code §§48-2-15(b)(1), 48-2B-1 (1986)	X	X		
49. Wisconsin	Wis. Stat. Ann. §767.245 (West Supp. 1988)				X
50. Wyoming	Wyo. Stat. §20-2-113(c) (Supp. 1988)	X	X		

**S B**

**36**

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR ZHAROFF

TO: SB 36

- 1 Page 2, line 4, after "time":
- 2       Insert "in the state"

✓  
2-A Adopted  
unanim.  
consent.

- 
- 3 Page 2, line 5, after "field":
  - 4       Insert "or is employed full time in another state in fisheries, fishery science, fishery
  - 5       management, seafood processing, food technology, or other closely related field and the
  - 6       employment directly supports the fishing industry located in this state"

AMENDMENT # 1

OFFERED IN THE SENATE  
TO: SB 36

BY SENATOR ZHAROFF

Page 2, line <sup>2</sup> 4, after the first "loan":  
Delete: "indebtedness"  
Insert: "principal"

Page 2, line 4, after the second "loan":  
Delete: "indebtedness"  
Insert: "principal"

Page 2, line 6, after "principal"  
Delete: "and interest"

✓  
adopted  
unanim.  
consent



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99815 (907) 488-5259 (FAX ALSO)

DURING SESSION:

STATE CAPITOL, JUNEAU, ALASKA 99801-1182 • (907) 465-3473 • FAX: (907) 463-3043

DISTRICT C

KODIAK ISLAND • RURAL SOUTHEAST • SOUTH KENAI PENINSULA

### SPONSOR STATEMENT

#### SB 36-WINN BRINDLE MEMORIAL SCHOLARSHIP LOANS SENATOR FRED F. ZHAROFF

SB 36, "An Act relating to interest on and repayment of A. W. Brindle memorial scholarship loans; and providing for an effective date" was introduced at the recommendation of Alec Brindle of Wards Cove Packing Company. The intent of this bill is to make the A. W. Brindle memorial scholarship loan program more attractive to students seeking post secondary degrees. The Brindle program may be used by students statewide--not just those who reside in fishing communities as some have perceived--who are interested in seeking degrees in fisheries, fishery sciences, fishery management, seafood processing, food technology or other closely related fields.

The program is funded by contributions from the fish processing industry. Fisheries businesses are entitled to a tax credit of not more than five percent of their fish tax liability for contributions made during the year to the A. W. Brindle scholarship account.

According to the Alaska Commission on Postsecondary Education, the Brindle program is currently being underutilized by students. Although over \$1.8 million has been contributed to the program by the industry since 1987, a balance of approximately \$1.4 million remains in the fund. My hope is that by allowing a forgiveness provision similar to that of the old student loan program and by fixing a low interest rate (5%), more students will take advantage of the A. W. Brindle memorial scholarship loan program and seek degrees in fisheries related fields.



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*30% Tax Credit / 5% of that to Loan Program*

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According to the Alaska Commission on Postsecondary Education, the Brindle program is currently being underutilized by students. Although over \$1.8 million has been contributed to the program by the industry since 1987, a balance of approximately \$1.4 million remains in the fund. My hope is that by allowing a forgiveness provision similar to that of the old student loan program and by fixing a low interest rate (5%), more students will take advantage of the A. W. Brindle memorial scholarship loan program and seek degrees in fisheries related fields.

*ethnic / regional -  
impact on any  
other loan*

*example of Co. -  
any residency required?*

SENATE BILL 36  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 NINETEENTH LEGISLATURE - FIRST SESSION

BY SENATOR ZHAROFF

Introduced: 1/17/95  
 Referred: HES. FIN

A BILL  
 FOR AN ACT ENTITLED

1 "An Act relating to interest on and repayment of A. W. Brindle memorial  
 2 scholarship loans; and providing for an effective date."

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

4 \* Section 1. AS 14.43.305(f) is amended to read:

5 (f) That portion of the loan that is forgiven under (e) or (j) of this section shall  
 6 be considered a grant to the recipient.

7 \* Sec. 2. AS 14.43.305(i) is amended to read:

8 (i) To the extent they are not in conflict with terms and conditions under  
 9 AS 14.43.250 - 14.43.325, the terms and conditions of a memorial scholarship loan  
 10 made under AS 14.43.250(b)(5) are the same as the terms and conditions for a  
 11 scholarship loan under AS 14.43.090 - 14.43.160, except that the interest on the loan  
 12 is equal to five percent.

13 \* Sec. 3. AS 14.43.305 is amended by adding a new subsection to read:

14 (j) A recipient of a memorial scholarship loan under AS 14.43.250(b)(5) who

1 graduates from a certificate or degree program shall receive forgiveness of 10 percent  
2 of loan <sup>principal</sup> indebtedness, up to a maximum of 50 percent of loan <sup>principal</sup> indebtedness, for each  
3 one-year period during the first five years following graduation that the recipient is  
4 employed full time <sup>in the State</sup> (ii) fisheries, fishery science, fishery management, seafood  
5 processing, food technology, or other closely related field.

6 \* Sec. 4. This Act applies to principal ~~and interest~~ due on a loan entered into on or after  
7 July 1, 1995.

8 \* Sec. 5. This Act takes effect July 1, 1995.

A. W. BRINDLE  
 A. W. BRINDLE

PROCESSORS OF  
 CHOICE ALASKA SEAFOOD  
 SINCE 1912

## Wards Cove Packing Company

PHONE (206) 323-3200

THE "WALTON" STORE  
 P.O. BOX 61000  
 SEATTLE, WA 98105-0000

Day Fax (206) 323-9163

November 8, 1994

Senator Fred Zharoff  
 P.O. Box 405  
 Kodiak, Alaska 99615

Ref: A.W. "Winn" Brindle Memorial Scholarship Loan Program

Dear Fred,

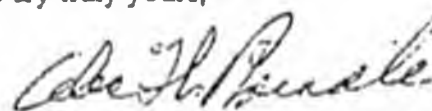
I am enclosing a memo to the Alaska Fisheries Businesses, from Gordon Olson, Administrative Assistant of the Alaska Commission on Postsecondary Education. The memo has to do with fisheries business tax credits for donations to the A.W. "Winn" Brindle Memorial Scholarship Loan Program. I note that since 1987 a total of \$1,405,988.76 has been contributed, and that there is still remaining in the account about \$1,000,000.00. While we should all be pleased with the progress the program has made, in view of the amount of money remaining, I wonder if it would be time to consider changing the program from a straight loan program to some compilation of a grant and loan program.

Students today have a difficult time repaying educational loans with all of the other financial pressures on them. What would you think of a program where, of the amount borrowed only 50 percent would have to be repaid? The other 50 percent would be forgiven if each student worked in Alaska for a five year period of time, with a proportion of the entire loan of up to 50 percent being forgiven for each year of employment in the state. This would also apply even if they were out of state, if they were employed in the fisheries business.

This is only a preliminary idea. I hate to see as much money sitting in the fund as there is, when it might be better used for helping Alaska students. I would be happy to discuss my ideas with you further when you have time. Thank you for your consideration.

Very truly yours,

Alec W. Brindle



*for original person  
whom named*

AWB/cp



ALASKA COMMISSION ON POSTSECONDARY EDUCATION  
3030 Vintage Blvd.  
Juneau, AK 99801-7109  
Phone Number: (907) 465-6741 (Voice)  
(907) 465-5318 (Fax)  
(907) 465-3143 (TDD)

## MEMORANDUM

TO: Alaska Fisheries Businesses

FROM: Gordon Olson, Administrative Assistant  
Alaska Commission on Postsecondary Education

SUBJECT: Fisheries Business Tax Credits for Donations to the A.W. "Winn" Brindle Memorial Scholarship Loan Program

DATE: November 3, 1994

The 1986 Alaska Legislature established the A.W. "Winn" Brindle Memorial Scholarship Loan Program. This scholarship is in memory of A.W. "Winn" Brindle who was President of the Wards Cove Packing Company and Columbia Wards Fisheries. It is funded by private donations and contributions from fisheries businesses in exchange for tax credits.

The loan funds are used to provide educational loans for full-time undergraduate or graduate study at accredited schools in the following degree or certificate programs: fisheries, fishery science, fishery management, seafood processing, food technology, and other closely related fields. Loans may be used for tuition and fees, books and supplies, room and board, and transportation costs. Interest charged is 8%. A 1994-95 status report for this program is attached.

A fisheries business is entitled to a credit of up to 5% of its business tax liability for contributions made during the tax year to the A.W. "Winn" Brindle Memorial Scholarship loan account. A tax credit may not be approved for more than 100% of a scholarship contribution. Total tax credits claimed for a tax year for capital expenditures and scholarship contributions may not exceed 50% of the taxpayer's business tax liability for that tax year.

To make a contribution to the scholarship fund:

Mail or deliver your contribution in the form of a check payable to the Winn Brindle Memorial Scholarship Loan Fund to the Alaska Commission on Postsecondary Education, 3030 Vintage Blvd., Juneau, AK 99801-7109. The check will be deposited in the Memorial Scholarship fund account at the Commission. Please remember that a donation must be received by our agency by December 31, 1994 to qualify as a credit for the 1994 tax year.

Attachment

**A.W. "WINN" BRINDLE MEMORIAL SCHOLARSHIP LOAN PROGRAM  
NOMINATION FORM**

I would like to nominate the following Alaska resident to be considered for a scholarship loan under the A.W. "Winn" Brindle Memorial Scholarship Loan Program.

I believe this person would benefit from a scholarship loan to assist in the pursuit of a degree or certificate in a seafood industry or fisheries-related field of study.

Nominee's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Phone No.: \_\_\_\_\_

Please write a brief statement about your relationship to the above individual and how long you have known him or her. Include the nominee's current or proposed educational plans and field of study if known.

Please circle one:

I will/will not contribute to the A.W. "Winn" Brindle Memorial Scholarship Fund for the current tax year.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Date

\_\_\_\_\_  
Business Phone

Return to:

Alaska Commission on Postsecondary Education  
 3030 Vintage Blvd.  
 Juneau, AK 99801-7109  
 (907) 465-6741

**The 1994 Nomination Deadline is May 15, 1995.**

1994-1995 WINN BRINDLE MEMORIAL SCHOLARSHIP LOAN  
STATUS REPORT

<u>Student</u>	<u>Institution</u>	<u>Field of Study</u>	<u>Degree</u>	<u>Amount</u>
Asplund, Brian	University of Alaska Fairbanks	Fisheries/Natural Resource Management	Bachelor's	\$ 5,000
Gold, Joseph	Texas A&M-Galveston	Marine Biology	Bachelor's	\$ 5,000
Horne, Rickey	Sheldon Jackson College	Fisheries	Bachelor's	\$18,550
Knuth, Jason	The Ocean Corporation	Commercial Diving	Certificate	\$18,800
Olson, Nels	University of Washington	Chemistry/Salmon Speciation	PHD	\$ 5,000
Stonecipher, Alice	University of Alaska Fairbanks	Fisheries	Bachelor's	<u>\$ 7,000</u>
				<u>\$55,350</u>

Amount Remaining in Account \$1,018,155.71

Contributions

07/87 - 12/90		\$327,563.55
12/91	St. Elias Ocean Products	12,500.00
12/91	King Crab, Inc.	4,000.00
12/91	Ocean Beauty Alaska, Inc.	6,000.00
12/91	MV Ocean Pride	25,000.00
12/91	King Crab, Inc.	30,000.00
12/91	Alyeska Seafoods, Inc.	38,400.00
12/91	Wards Cove Packing	76,500.00
12/91	Peter Pan Seafoods	120,000.00
12/92	J.R. Fisheries	300.00
12/92	Peter Pan Seafoods	180,000.00
12/92	Wards Cove Packing Company	100,000.00
12/92	Alyeska Seafoods, Inc.	32,300.00
12/92	King Crab, Inc. - Kodiak	20,000.00
12/92	King Crab, Inc. - Naknek	6,000.00
12/92	St. Elias Ocean Products	12,000.00
12/92	Chatham Strait Seafoods	8,000.00
12/92	MV Ocean Pride	30,000.00
12/93	Wards Cove Packing Company, Ekuk	549.45
12/93	Neibro Packing Company	26,875.78
12/93	Peter Pan Seafoods	180,000.00
12/93	Wards Cove Packing Company	80,000.00
12/93	Alyeska Seafoods, Inc.	39,000.00
12/93	King Crab, Inc. - Kodiak	25,000.00
12/93	King Crab, Inc. - Naknek	5,000.00
12/93	St. Elias Ocean Products	9,000.00
12/93	Chatham Strait Seafoods	9,000.00
12/93	MV Ocean Pride	25,000.00
12/93	Queen Fishery	20,000.00
		<u>\$1,405,988.78</u>

Revenue Statute establishing tax credit  
for A.W. Brindle Program

Sec. 43.75.012. Tax credit for scholarship contributions. (a) A fisheries business is entitled to a credit of not more than five percent of the business tax liability under AS 43.75.015 for contributions made during the tax year to the A. W. "Winn" Brindle memorial scholarship account (AS 11.13.250). A tax credit under this section may not be approved for more than 100 percent of a scholarship contribution.

(b) The department may not approve a tax credit under this section if the fisheries business claiming the credit is in arrears in the payment of a fisheries business tax under AS 43.75.015; for purposes of this subsection, a taxpayer is not in arrears if the payment is under administrative or judicial appeal.

(c) The department shall prepare an application form for a credit under this section.

(d) The department shall approve or disapprove an application for credit under this section not later than 60 days after receiving it (application (AS 2, 3 ch 79 S.L.A. 1986)).

Effect of amendments. — The 1986 (1986, effective January 1, 1992, reworded) amendment by Section 3, ch 79, S.L.A. (1986) amended this section.

**Revisor's notes.** — Formerly AS 14.40.308. Renumbered in 1982.

Reorganized in 1985 to alphabetize the defined terms.

Paragraph (4) was enacted as (7). Renumbered in 1991, at which time former paragraph (2) was also deleted, and former paragraphs (3)-(4) were renumbered as (2)-(3).

**Cross references.** — For Title IV, Part B of the Higher Education Act of 1965, see 20 U.S.C. 1071-1087-2.

**Effect of amendments.** — The 1991 amendment, effective July 1, 1991, repealed former paragraph (2) and added paragraph (4).

### Article 5. Memorial Scholarship Revolving Loan Fund.

Section	Section
250. Declaration of purpose	310. Selection
255. Fund created	315. Discrimination prohibited
300. Limits on, conditions of loans	320. Administering authority
305. Repayment of loans	325. Funding

**Sec. 14.43.250. Declaration of purpose.** (a) The legislature may pay tribute to the memory of Alaskans who, by the example of their lives, or by their distinguished contribution and service to this state, their community or their profession, exemplified the best that is the challenge of "The Great Land" by the creation of memorial scholarships as a part of a general memorial scholarship revolving loan fund, setting out the purpose for which each is created, and the conditions applicable to each scholarship.

(b) The purposes of the several memorial scholarship accounts in the memorial scholarship revolving loan fund are as follows:

(1) the Michael Murphy memorial scholarship perpetuates the memory of Michael Murphy, a member of the Alaska State Troopers, who, while on leave from that division, gave his life for his adopted country in Vietnam on May 22, 1968;

(2) the Carroll L. "Butch" Swartz memorial scholarship perpetuates the memory of Carroll L. "Butch" Swartz, of Juneau, who was a student intern with the Criminal Justice Planning Agency and the Governor's Commission on the Administration of Justice during the summer months of 1972 and 1973 and whose accidental and untimely death in November 1973 occurred while completing his undergraduate education at Yale University, thus never realizing his educational goals or career objective;

(3) the Harvey Golub memorial scholarship perpetuates the memory of Harvey Golub, of Juneau, who was chief engineer of the bridge design section of the Department of Highways of the State of Alaska and whose accidental and untimely death September 13, 1971, cut short a widely-respected career in civil engineering;

(4) the Robert L. Thomas memorial scholarship perpetuates the memory of Robert L. Thomas, of Juneau, who as Deputy Commissioner of Education, and for 13 years as a member of the professional staff of that department contributed significantly to the creation, op-

eration, and administration of a sound system of public education in Alaska and whose tragic and untimely death March 12, 1974, terminated a distinguished career in education and public administration that long will be exemplary for those who aspire to service in that profession:

\* (5) the A.W. (Winn) Brindle memorial scholarship loan perpetuates the memory of A.W. (Winn) Brindle, who was the president of the Wards Cove Packing Company and Columbia-Wards Fisheries and whose death July 4, 1977, terminated a distinguished career dedicated to the development of the Alaska seafood industry; and

(6) the Nick Begich memorial scholarship perpetuates the memory of Nick Begich, teacher and school superintendent at Fort Richardson, father of the Alaska kindergarten program, state senator, and member of the United States House of Representatives, whose accidental and untimely death in October of 1972 cut short a productive and distinguished career in education and public service. (§ 21 ch 136 SLA 1974; am § 1 ch 78 SLA 1986; am § 1 ch 13 SLA 1991)

Revisor's notes. — Formerly AS 14.40.810. Renumbered in 1982. In subsection (b), added paragraph (6) and made punctuation and related stylistic changes.

Effect of amendments. — The 1991 amendment, effective September 3, 1991.

**Sec. 14.43.255. Fund created.** (a) There is created a memorial scholarship revolving loan fund. The fund shall be used to provide educational scholarship loans to students selected under AS 14.43.250 — 14.43.325. Unless the instrument evidencing the memorial scholarship loan has been sold or assigned to the Alaska Student Loan Corporation, repayments of a loan shall be deposited into the memorial scholarship revolving loan fund and shall be used to make new loans.

(b) Each memorial scholarship, the purpose of which is set out in AS 14.43.250(b), is a separate account in the memorial scholarship revolving loan fund created under (a) of this section.

(c) The commission may sell or assign notes and other instruments evidencing memorial scholarship loans to the Alaska Student Loan Corporation and enter into agreements with the corporation relating to loans, the administration of the student loan fund created under AS 14.42.210, and the payment of and security for bonds of the corporation. Proceeds from the sale or assignment of a note or other instrument shall be deposited in the appropriate memorial scholarship loan fund account. (§ 21 ch 136 SLA 1974; am § 2 ch 78 SLA 1986; am §§ 11, 12 ch 92 SLA 1987; am § 18 ch 43 SLA 1991)

Revisor's notes. — Formerly AS 14.40.815. Renumbered in 1982. section (c), substituted "the commission" for "the Student Financial Aid Committee

Effect of amendments. — The 1991 amendment, effective July 1, 1991, in sub-

created under AS 14.43.096."

**Sec. 14.43.300. Limits on, conditions of loans.** (a) A scholarship loan to a recipient under AS 14.43.250(b)(1) — (4) or (6) may not exceed \$2,500 a school year for an undergraduate student or \$5,000 a school year for a graduate student, and may not be made to a student for more than six years. A scholarship loan to a recipient under AS 14.43.250(b)(5) may not exceed the cost of tuition and required fees, books and educational supplies, room and board, and transportation for two round trips between the recipient's home and school each year. A loan under AS 14.43.250(b)(5) may not be made for more than five years of undergraduate study, five years of graduate study, or a combined maximum of eight years of study.

(b) A loan made under AS 14.43.250 — 14.43.325 may be used only as follows:

(1) a Michael Murphy memorial scholarship loan may be used only to pursue a degree program in an accredited college or university in law enforcement, law, probation and parole, or penology, or closely related fields;

(2) a Carroll L. "Butch" Swartz memorial scholarship loan may be used only to pursue a degree program in an accredited college or university in criminal law, criminology, corrections, police science and administration, juvenile justice, or other fields closely related to criminal justice;

(3) a Harvey Golub memorial scholarship loan may be used only to pursue a degree program in an accredited college or university in civil, mechanical, electrical, electronic, petroleum, mining, traffic and transportation, sanitary, chemical, or other recognized field of engineering;

(4) a Robert L. Thomas memorial scholarship loan may be used only to pursue a degree program in an accredited college or university that will lead to a career in education or public administration, or other closely related field;

(5) an A.W. (Winn) Brindle memorial scholarship loan may be used only to pursue a certificate or degree program in an accredited school, college, or university in fisheries, fishery science, fishery management, seafood processing, food technology, or other closely related field; and

(6) a Nick Begich memorial scholarship loan may be used only to pursue a degree program in an accredited college or university that will lead to a career in education, public administration, government, or other closely related field.

(c) The recipient of a memorial scholarship loan must be a resident of Alaska and enrolled or eligible for enrollment as a full-time student in a certificate or degree program in a field listed in (b) of this section that is appropriate to the memorial scholarship loan received.

(d) The recipient must at all times continue to be enrolled as a full-time student in good standing at an accredited postsecondary institution that is appropriate to the memorial scholarship received.

(e) In any year in which the memorial scholarship revolving loan fund created under AS 14.43.255 has inadequate receipts to fund a loan in one of the scholarship categories listed in AS 14.43.250(b), no loan in that scholarship category may be offered and the receipts shall be added to the amount available for that category in the succeeding year.

(f) The administering authority may provide conditions in the note signed by the recipient or in a separate document or communication that will help it carry out the provisions of AS 14.43.250 — 14.43.325. § 21 ch 136 SLA 1974; am §§ 3 — 5 ch 78 SLA 1986; am § 3 ch 168 SLA 1990; am §§ 2, 3 ch 13 SLA 1991.

**Revisor's notes.** — Formerly AS 14.40.320. Renumbered in 1982.

**Effect of amendments.** — The 1990 amendment, effective June 22, 1990, substituted the language beginning "postsecondary institution" for "college or university" at the end of subsection (d).

The 1991 amendment, effective September 3, 1991, in subsection (a), inserted "or 6)" in the first sentence; and, in subsection (b), added paragraph (6) and made related stylistic changes.

**Sec. 14.43.305. Repayment of loans.** (a) Memorial scholarship loans under AS 14.43.250(b)(1) — (4) or (6) shall be noninterest-bearing and security for the loan may not be required. However, the note signed by the recipient shall provide for the payment of attorney fees, costs of court, and skip-tracing fees if any are incurred in collection of the unpaid amount owed on the loan.

(b) No part of a loan made under AS 14.43.250 — 14.43.325 need be repaid during an academic year in which the student is attending an accredited college or university as a full-time student.

(c) Loans may be repaid at an accelerated rate at the option of the recipient.

(d) If a loan is in default, the administering authority shall notify the recipient that repayment of the remaining balance is accelerated and due by sending the recipient a notice of registered or certified mail.

(e) A recipient of a memorial scholarship loan under AS 14.43.250(b)(1) — (4) or (6) who graduates from a degree program shall receive forgiveness of one-fifth of loan indebtedness for each one-year period the recipient is employed full time in Alaska in

(1) law-enforcement or related fields, if a recipient of a Michael Murphy memorial scholarship loan;

(2) criminal law, criminal justice, or other closely related fields, if a recipient of a Carroll L. "Butch" Swartz memorial scholarship loan;

(3) a recognized branch of the engineering profession or other closely related fields, if a recipient of a Harvey Golub memorial scholarship loan;

(4) education or public administration, or other closely related field, if a recipient of a Robert L. Thomas memorial scholarship loan; or

(5) education, public administration, government, or other closely related field, if a recipient of a Nick Begich memorial scholarship loan.

(f) That portion of the loan that is forgiven under (e) of this section shall be considered a grant to the recipient.

(g) A recipient who does not qualify for forgiveness of all or a part of the loan made under AS 14.43.250(b)(1) — (4) or (6) shall begin repayment of the unforgiven portion within six months after leaving employment or terminating studies in

(1) law enforcement or related fields, if a recipient of a Michael Murphy memorial scholarship loan;

(2) criminal law, criminal justice, or other closely related fields, if a recipient of a Carroil L. "Butch" Swartz memorial scholarship loan;

(3) a recognized branch of the engineering profession or other closely related fields, if a recipient of a Harvey Golub memorial scholarship loan;

(4) education or public administration, or other closely related field, if a recipient of a Robert L. Thomas memorial scholarship loan; or

(5) education, public administration, government, or other closely related field, if a recipient of a Nick Begich memorial scholarship loan.

(h) The unforgiven portion of a loan under (g) of this section shall be repaid in an amount, and at a monthly rate, to be determined by the administering authority after consultation with the recipient, but in any event not less than \$50 a month.

(i) To the extent they are not in conflict with terms and conditions under AS 14.43.250 — 14.43.325, the terms and conditions of a memorial scholarship loan made under AS 14.43.250(b)(5) are the same as the terms and conditions for a scholarship loan under AS 14.43.090 — 14.43.160. (§ 21 ch 136 SLA 1974; am §§ 6 — 9 ch 78 SLA 1986; am §§ 4 — 6 ch 13 SLA 1991)

*A.W. Bandle  
Program*

Revisor's notes. — Formerly AS 14.40.825. Renumbered in 1982.

Effect of amendments. — The 1991 amendment, effective September 3, 1991.

in subsections (a), (e), and (g), inserted "or (6)"; and, in subsections (e) and (g), added paragraph (5) and made related stylistic changes.

**Sec. 14.43.310. Selection.** (a) In selecting from among eligible applicants a person who will be granted a loan under AS 14.43.250 — 14.43.325, the administering authority shall consider the following:

- (1) the applicant's career goals and aspirations;
- (2) the applicant's prior academic record;

(3) the financial need of the applicant; and  
 (4) other items that may be considered relevant by the administering authority to determine whether an applicant will receive a loan.

(b) To assist the administering authority in selecting eligible applicants for award of each of the memorial scholarship loans under AS 14.43.250 — 14.43.325 and in reviewing the memorial scholarship loan program, the following advisory committees are established:

(1) three Alaska state troopers, each one to be selected from and to represent a state trooper region of the state by the regional commander to serve for three years, for the Michael Murphy memorial scholarship;

(2) three members of the Governor's Commission on the Administration of Justice selected annually by the commission from among its membership, for the Carroll L. "Butch" Swartz memorial scholarship;

(3) three members of the state Board of Registration for Architects, Engineers and Land Surveyors selected annually by the board from among its engineer members, for the Harvey Golub memorial scholarship; and

(4) three members of the state Board of Education, or of the staff of the Department of Education, or any combination of these, selected annually by the board, for the Robert L. Thomas memorial scholarship.

(c) In selecting from among eligible applicants for award of a memorial scholarship loan under AS 14.43.250(b)(5), the administering authority shall give preference to applicants nominated by private donors to the A.W. (Winn) Brindle memorial scholarship loan account in the memorial scholarship revolving loan fund.

(d) In selecting from among eligible applicants for award of a memorial scholarship loan under AS 14.43.250(b)(6), the administering authority shall give preference to applicants nominated by the board members of the Nick Begich Scholarship Intern Fund, Inc. (§ 21 ch 136 SLA 1974; am § 10 ch 78 SLA 1986; am § 7 ch 13 SLA 1991)

*Revisor's notes.* — Formerly AS 14.40.830. Renumbered in 1982. amendment, effective September 3, 1991, added subsection (d).

*Effect of amendments.* — The 1991

**Sec. 14.43.315. Discrimination prohibited.** The memorial scholarship loan program shall be carried out without regard to the race, creed, sex, color, ancestry, national origin, or membership in fraternal or political organizations of the applicant. (§ 21 ch 136 SLA 1974)

*Revisor's notes.* — Formerly AS 14.40.835. Renumbered in 1982.

*Cross references.* — See also AS 14.18 and AS 18.80.

**Sec. 14.43.320. Administering authority.** (a) The memorial scholarship loans provided for under AS 14.43.250 — 14.43.325 shall be administered by the executive director of the commission, subject to review by the commission and to those regulations the commission may prescribe to carry out the purposes of AS 14.43.250 — 14.43.325.

(b) To the extent that they are not in conflict with the provisions of AS 14.43.250 — 14.43.325, the provisions of AS 14.43.090 — 14.43.160 relating to scholarship loans are applicable to loans made under AS 14.43.250 — 14.43.325. (§ 21 ch 136 SLA 1974; am § 19 ch 43 SLA 1991)

**Revisor's notes.** — Formerly AS 14.40.840. Renumbered in 1982.

**Effect of amendments.** — The 1991 amendment, effective July 1, 1991, in subsection (a), substituted "director" for "secretary" and references to the commission for references to the Student Financial Aid Committee.

**Sec. 14.43.325. Funding.** (a) The memorial scholarship revolving loan fund created under AS 14.43.255 shall be funded by voluntary contributions by state employees who may contribute the value of one or more days of annual leave a year to the memorial scholarship revolving loan fund to be credited to any one or more of the scholarship accounts listed in AS 14.43.250(b) at the discretion of the donor.

(b) The Department of Administration shall pay to the account of the memorial scholarship revolving loan fund established under AS 14.43.255 an amount equal to the value of the total number of days of annual leave contributed by state employees under (a) of this section.

(c) The administering authority may accept contributions from private sources for the memorial scholarship revolving loan fund created under AS 14.43.255. These contributions shall be deposited in the memorial scholarship revolving loan fund created under AS 14.43.250 to be credited to any one or more of the scholarship accounts listed in AS 14.43.250(b) at the discretion of the donor. For the purpose of this subsection, "private sources" means private individuals, corporations, foundations, or other philanthropic or charitable organizations. (§ 21 ch 136 SLA 1974)

**Revisor's notes.** — Formerly AS 14.40.845. Renumbered in 1982.

**Article 6. Educational Incentive Grant Program.**

**Section**  
400. Purpose; creation  
405. Administration  
410. Distribution of funds

**Section**  
415. Eligibility; priority  
420. Limitation on grants  
500. Definitions

**SB**

**39**

# Alaska State Legislature

Chairman,  
Judiciary Committee

Deputy Chairman,  
Transportation Committee



State Capitol  
Juneau, Alaska 99801-1182  
907-586-3473  
Fax: 907-586-3922

Member,  
Resources Committee  
Western Legislative Forestry Task Force

352 Front Street  
Ketchikan, Alaska 99901  
907-225-8084  
Fax: 907-225-0713

*Senator Robin L. Taylor*

## Sponsor Statement

### SENATE BILL 39

Before the Senate HES Committee  
February 8, 1995

Senate Bill 39 was introduced at the suggestion of Kathleen Niles, admissions clerk at the University of Alaska Southeast-Sitka. The bill would modify the eligibility requirements of the Alaska State Troopers Michael Murphy Scholarship program to include certificate programs.

The wording of AS14.43.300 currently limits the awarding of Murphy scholarship loans to students who pursue a degree program in law enforcement, law, probation and parole, penology or closely related fields. The language prevents students in certificate programs, such as the Law Enforcement Certificate Program offered at the Sitka campus, from eligibility.

The scholarship revolving loan fund established by the Legislature includes a provision allowing forgiveness of one-fifth of the loan indebtedness for each one year period of full time employment in law enforcement in Alaska. Department of Labor statistics show that 63 percent of Sitka program graduates are currently employed in the state as law enforcement personnel.

The bill carries a zero fiscal note and received unanimous "do pass" recommendations from both the HES and Finance committees last year before receiving a unanimous vote of the full Senate.

SB 39 will potentially benefit Alaska students attending an Alaska school with an eye toward employment in Alaska.

District A

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# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SB 39

Revision Date: \_\_\_\_\_ Dept. Affected: Education  
 Title: An Act relating to memorial BRU: Postsecondary Education  
scholarship loans. Component: Student Loan Program  
 Sponsor: Senator Taylor  
 Requester: Senate HESS Committee COMPONENT SERIAL NO. 0218

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0- 0.0</b>	<b>-0- 0.0</b>	<b>-0- 0.0</b>	<b>-0- 0.0</b>	<b>-0- 0.0</b>	<b>-0- 0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )	-0-	-0-	-0-	-0-	-0-	-0-
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY95) cost: \$ -0-

**POSITIONS**

FULL-TIME						
PART TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Zero (0) fiscal impact.

Prepared by: Dr. Joe L. McCormick, Executive Director  
 Division: Alaska Commission on Postsecondary Education

Phone: (907)465-6740  
 Date: January 26, 1995

Approved by Commissioner: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Date: \_\_\_\_\_

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 For further distribution information, call the Governor's Legislative Office

**BILL NO:** SB 160

**DATE:** March 31, 1993

**TITLE:** "An Act relating to  
memorial scholarship loans"

**CONTACT:** C.E. Swackhammer  
Deputy Commissioner  
465-4322

The Michael Murphy scholarship loan program was established by the Alaska Legislature in 1968 in memory of Michael Murphy, an immigrant from Ireland. Because he felt he owed his adopted country, he took a leave of absence from the Alaska State Troopers and went to Viet Nam as a civilian police advisor. On May 22, 1968 he was killed in action.

The Michael Murphy Scholarship Fund is supported entirely by State Employees donating a day or more of annual leave per year to the fund.

Currently a loan granted under the Michael Murphy Scholarship Loan program can only be used to pursue a degree program in an accredited college or university in Law Enforcement, Law, Probation and Parole, or Penology, or closely related fields.

SB 160 enlarges the use of a Michael Murphy memorial scholarship loan to include a certificate program as well as a degree program. This would allow the awarding of scholarship loans to students who wish to enroll in a program such as the Alaska Law Enforcement Training program (ALET) conducted by the Department of Public Safety Training Academy in Sitka under the accreditation of the University of Alaska Southeast.

ALET is the basic requirement for employment as a police officer as required by the Alaska Police Standards Council. Prospective police officers must successfully complete ALET or a similar program approved by APSC to be employed as a law enforcement officer.

By enlarging the usage of the Michael Murphy scholarship loan program to include certificate programs a larger number of prospective police officers can be aided in achieving a career in law enforcement. This is a desirable change that would help those in need of assistance in meeting the basic requirements for entry into the law enforcement field.



Richard L. Burton  
Commissioner

# Alaska State Legislature

Senate Majority Leader  
Chair, Judiciary Committee  
Vice Chair, Community &  
Regional Affairs

Member, State Affairs Committee  
Committee on Committees  
Western States Legislative Forestry Task Force  
Legislative Council



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*Senator Robin L. Taylor*

## FOR IMMEDIATE RELEASE

February 15, 1994

Contact: Joe Ambrose  
465-4906

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The State Senate today gave unanimous approval to legislation that would make students attending the Law Enforcement Certificate Program at UAS-Sitka eligible for the State Troopers Michael Murphy Scholarship Loan Program.

Senate Bill 160 was introduced last year by Senator Robin L. Taylor at the suggestion of Kathleen Niles, admissions clerk at the Sitka campus.

Current state law limits the awarding of scholarship loans to students in a degree program in law enforcement and related fields. Recipients receive forgiveness of one-fifth of their loan indebtedness for each year of full time employment in law enforcement in the state following graduation.

Niles suggested that since 63 percent of the Sitka graduates are currently employed in Alaska, certificate program students too should be eligible to benefit from the revolving loan fund.

Richard Burton, Commissioner of Public Safety, in a position paper on Taylor's bill, called it "a desirable change"

"By enlarging the usage of the Michael Murphy scholarship loan program to include certificate programs', Burton wrote, "a larger number of prospective police officers can be aided in achieving a career in law enforcement".

Senate Bill 160 moves to the House for its consideration.

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University of Alaska Southeast

Juneau • Ketchikan • Sitka

MAR 9 RECD

March 5, 1993

The Honorable Robin Taylor  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Taylor:

I am the Admissions Clerk at the University of Alaska Southeast in Sitka and am in charge of the recruitment process for the Law Enforcement Certificate Program. The University of Alaska Foundation's *Alaska State Troopers: Michael Murphy Scholarship* was recently brought to my attention as potentially being available for students applying for this program.

I spoke with the contact person for the scholarship, Lieutenant Robin Lown of Juneau. He felt that it would be a good idea if this scholarship was made available to Certificate students, but advised me to contact the Postsecondary Commission for restrictions. I spoke with Linda Avery from the Commission; she felt that the scholarship was probably for four-year degree program students, but that an application from a certificate student had never been submitted as a test case.

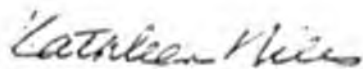
I would like to promote the eligibility of the Law Enforcement Certificate Program for the *Alaska State Troopers: Michael Murphy Scholarship*. The limitations as currently stated in Sec 14.43.300 are "...a Michael Murphy memorial scholarship loan may be used only to pursue a degree program in an accredited college or university in law enforcement, law, probation and parole, or penology, or closely related fields."

Senator Taylor  
Page 2

This scholarship is a revolving loan fund, the recipient receiving forgiveness of one-fifth of loan indebtedness for each one-year period of full-time employment in Alaska in law-enforcement or related field. The enclosed brochure states that recent Alaska Labor Department statistics show that 63 percent of the Law Enforcement Certificate Program graduates are currently employed in Alaska as law enforcement personnel and this percentage does not include those working for the federal government or outside of Alaska.

This is an expensive program. The cost for the 17 week program for Fall 1992 was over \$5000; for the 11 week program, a student could expect to spend close to \$3750. As an employee who hears the moans and groans from those who want to enter the Law Enforcement field and are trying to finance this program, the possibility of scholarship help would be very encouraging. I would appreciate your consideration of this matter and thank you for your time.

Sincerely,



Kathleen Niles  
Admissions

enclosures

#### **MICHAEL MURPHY MEMORIAL SCHOLARSHIP LOAN FUND**

The Alaska State Legislature has established the Michael Murphy Scholarship Loan Fund for eligible Alaska residents. This scholarship loan is funded by private donations and by voluntary contributions from state employees who may contribute one or more days of annual leave to the fund. The Department of Administration credits the memorial with funds equal to the value of the donated leave and furnishes the employee with a statement reflecting the value of the donation. The statement may be used for income tax purposes.

Funds of up to \$1,000 per year are available for undergraduates and graduates who are full-time students pursuing a degree program at an accredited college or university in law enforcement, law, probation and parole, penology, or closely related fields. The loans are non-interest-bearing and, upon degree completion, the scholarship loan recipient shall receive forgiveness of 20 percent of total loan indebtedness for each one year period he or she is employed full-time in Alaska law enforcement or related fields.

Applications must be submitted by April 1 for fall enrollment. For further information and applications interested students should contact:

Lieutenant Robin Lown  
Alaska State Troopers  
ATTN: Michael Murphy Scholarship Fund  
2760 Sherwood Lane  
Juneau, AK 99801  
(907) 789-2161