

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8072

9454 HOUSE STATE AFFAIRS

90

HB

466

HOUSE COMMITTEE REPORT

(7) Date Referred to Committee: March 6, 1998 FURTHER REFERRALS: Judiciary

Date of Committee Action: 3/31/98

The STATE AFFAIRS Committee considered: HB 466

HOUSE BILL NO. 466 CAMPAIGN MISCONDUCT: FALSE INFORMATION

"An Act relating to violations of state election laws."

recommends it be replaced the same title
 with the following committee substitute _____ a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): <small>(Dept)</small>	APPROVES PREVIOUS: <small>(Dept/Date)</small>
<input type="checkbox"/> fiscal note(s) _____	<input type="checkbox"/> fiscal note(s) _____
<input checked="" type="checkbox"/> zero fiscal note(s) <u>STA</u>	<input type="checkbox"/> zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Jeanette James</i>			✓	
<i>[Signature]</i>		✓		
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE *Jeanette James*

ALASKA STATE LEGISLATURE

Session:

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3779 - Phone
(907) 465-2833 - Fax

Interim:

145 Main St. Loop Suite 221
Kenai, Alaska 99611
(907) 283-7223 - Phone
(907) 283-3075 - Fax

REPRESENTATIVE MARK D. HODGINS
House District 9

Sponsor Statement House Bill 466

"An Act relating to violations of state election laws."

The intent of House Bill 466 is to clean up certain campaign tactics that are illegal and unethical. The practice of casting unproven dispersions in a desperate attempt to sway public opinion during the last few weeks of an election has become pervasive in recent elections and needs to be stopped.

Candidates have had their reputations and integrity impugned as well as causing long lasting emotional damage to their families and friends. This type of slanderous campaign activity should not be tolerated as it erodes the foundation of the entire election process. The public is clearly fed up with this type campaign tactic.

Current law prohibits the practice of knowingly circulating false or misleading information, but as it is only a class A misdemeanor, the courts have all but ignored any attempt to curb this practice. By increasing the penalty to a class C felony, we will send a strong message that this type of campaign misconduct will no longer be tolerated.

0-LS1517A
Glover
2/7/98

*A ordered
final 3/4/98.
Hodgins will
carry it -
Took to
Clark*

HOUSE BILL NO. 466

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE HODGINS

State Affairs

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to violations of state election laws."

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

3 * **Section 1.** AS 15.56.014(a) is amended to read:

4 (a) A person commits the crime of campaign misconduct in the second degree
5 if the person

6 (1) knowingly circulates or has written, printed or circulated a letter,
7 circular, or publication relating to an election, to a candidate at an election, or an
8 election proposition or question without the name and address of the author appearing
9 on its face;

10 (2) except as provided by AS 15.13.090(b), knowingly prints or
11 publishes an advertisement, billboard, placard, poster, handbill, paid-for television or
12 radio announcement, or other communication intended to influence the election of a
13 candidate or outcome of a ballot proposition or question without the words "paid for
14 by" followed by the name and address of the candidate, group, or individual paying
15 for the advertising or communication and, if a candidate or group, with the name of

1 the campaign chair [;

2 (3) KNOWINGLY WRITES OR PRINTS AND CIRCULATES, OR
3 HAS WRITTEN, PRINTED AND CIRCULATED, A LETTER, CIRCULAR, BILL,
4 PLACARD, POSTER, OR ADVERTISEMENT IN A NEWSPAPER, ON RADIO OR
5 TELEVISION

6 (A) CONTAINING FALSE FACTUAL INFORMATION
7 RELATING TO A CANDIDATE FOR AN ELECTION;

8 (B) THAT THE PERSON KNOWS TO BE FALSE; AND

9 (C) THAT WOULD PROVOKE A REASONABLE PERSON
10 UNDER THE CIRCUMSTANCES TO A BREACH OF THE PEACE OR
11 THAT A REASONABLE PERSON WOULD CONSTRUE AS DAMAGING
12 TO THE CANDIDATE'S REPUTATION FOR HONESTY, INTEGRITY, OR
13 THE CANDIDATE'S QUALIFICATIONS TO SERVE IF ELECTED TO
14 OFFICE].

15 * Sec. 2. AS 15.56 is amended by adding a new section to read:

16 **Sec. 15.56.027. Campaign misconduct involving false information.** (a) A
17 person commits the crime of campaign misconduct involving false information if the
18 person disseminates false or misleading information, knowing that the information is
19 false or with reckless disregard for whether the information is false, and the
20 information

21 (1) relates to a candidate for an election; and

22 (2) would provoke a reasonable person under the circumstances to a
23 breach of the peace or that a reasonable person would construe as damaging to the
24 candidate's reputation for honesty, integrity, or qualification to serve if elected to
25 office.

26 (b) Violation of this section is a corrupt practice. However, notwithstanding
27 AS 15.20.540, only a defeated candidate may contest the nomination or election of a
28 person for violation of this section.

29 (c) In this section, "disseminates" means to convey to another person by any
30 means.

31 (d) Publication campaign misconduct is a class C felony.

- 1 * Sec. 3. AS 15.56.025 is repealed.
- 2 * Sec. 4. APPLICABILITY. This Act applies to offenses committed on or after the
- 3 effective date of this Act.

*Took original to
Nadgins
7/5/98
then I took it to the
Clerk.*

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to violations of state election laws."**

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8 election proposition or question without the name and address of the author appearing
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11 publishes an advertisement, billboard, placard, poster, handbill, paid-for television or
12 radio announcement, or other communication intended to influence the election of a
13 candidate or outcome of a ballot proposition or question without the words "paid for
14 by" followed by the name and address of the candidate, group, or individual paying
15 for the advertising or communication and, if a candidate or group, with the name of

1 the campaign chair [;

2 (3) KNOWINGLY WRITES OR PRINTS AND CIRCULATES, OR
3 HAS WRITTEN, PRINTED AND CIRCULATED, A LETTER, CIRCULAR, BILL,
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6 (A) CONTAINING FALSE FACTUAL INFORMATION
7 RELATING TO A CANDIDATE FOR AN ELECTION;

8 (B) THAT THE PERSON KNOWS TO BE FALSE; AND

9 (C) THAT WOULD PROVOKE A REASONABLE PERSON
10 UNDER THE CIRCUMSTANCES TO A BREACH OF THE PEACE OR
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25 office.

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27 AS 15.20.540, only a defeated candidate may contest the nomination or election of a
28 person for violation of this section.

29 (c) In this section, "disseminates" means to convey to another person by any
30 means.

31 (d) Publication campaign misconduct is a class C felony.

- 1 * Sec. 3. AS 15.56.025 is repealed.
- 2 * Sec. 4. APPLICABILITY. This Act applies to offenses committed on or after the
- 3 effective date of this Act.

Alaska State Legislature

CHAIR:
REPRESENTATIVE
JEANNETTE JAMES

State Capitol
Room 102
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381



House of Representatives
HOUSE STATE AFFAIRS

MEMBERS:
REPRESENTATIVES
IVAN IVAN
AL VEZEY
FRED DYSON
MARK HODGINS
KIM ELTON
ETHAN BERKOWITZ

The attached fiscal notes were delivered at 4:30 p.m. 3/18/98

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB468

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title "An Act relating to damages... before the State Commission for Human Rights" BRU Commissions/Special Offices
 Sponsor House Rules Committee Component Human Rights Commission
 Requester House State Affairs Component Serial No. 01

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	4,592.6	2,725.3	2,725.3	2,579.1	2,579.1	2,579.1
Travel	54.0	54.0	54.0	54.0	54.0	54.0
Contractual	191.3	191.3	197.0	197.0	202.9	202.9
Supplies	26.4	26.4	26.4	26.4	26.4	26.4
Equipment	296.8	10.0	10.0	10.0	10.0	10.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5,151.1	3,007.0	3,012.7	2,866.5	2,872.4	2,872.4

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	5,151.1	3,007.0	3,012.7	2,866.5	2,872.4	2,872.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5,151.1	3,007.0	3,012.7	2,866.5	2,872.4	2,872.4

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	55	35	35	24	24	24
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

An increase in the number of personnel and other line item funding will be necessary to process cases in ninety (90) days as required by this bill. Initially 55 positions would be added to the agency to clear its backlog of cases. In the following years, the number of additional positions would decrease. However, in order to process cases in ninety (90) days, a permanent increase in staff will be needed.

Prepared by Paula M. Haley Paula M. Haley, Executive Director Phone 276-7474
 Division HUMAN RIGHTS COMMISSION Date 3/18/98
 Approved by Jim Avers, Chief of Staff Date _____
 Agency Office of the Governor

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

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 307 am

Revision Date _____	Dept. Affected <u>Office of the Governor</u>	
Title <u>"An Act relating to conditions for filling vacancies in the office of the United States senator;..."</u>	BRU <u>Executive Operations</u>	
Sponsor <u>Senators Halford, et al</u>	Component <u>Executive Office</u>	
Requester <u>House State Affairs</u>	Component Serial No. <u>6</u>	

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would not have fiscal impact on the Office of the Governor.

Prepared by <u>Michael A. Nizich, Administrative Director</u> <i>M. Nizich</i>	Phone <u>465-3876</u>
Division <u>Administrative Services</u>	Date <u>3/13/98</u>
Approved by <u>Jim Ayers, Chief of Staff</u> <i>J. Ayers</i>	Date _____
Agency <u>Office of the Governor</u>	

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 408

Revision Date: _____	Dept Affected: <u>Natural Resources</u>
Title: <u>An Act establishing the Alaska Seismic Hazards Safety Commission</u>	BRU: <u>Resource Development</u>
	Component: <u>Geological Development</u>
Sponsor: <u>Rep. Davies</u>	
Requestor: <u>(H)STA</u>	Component Serial No. <u>1031</u>

(Thousands of Dollars)

Expenditures/Revenues	FY99	FY00	FY01	FY02	FY03	FY04
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL	2.0	2.0	2.0	2.0	2.0	2.0
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.0	2.0	2.0	2.0	2.0	2.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

(Thousands of Dollars)

FUND SOURCE	FY99	FY00	FY01	FY02	FY03	FY04
1002 Federal Receipts						
1003 GF Match						
1004 GF	2.0	2.0	2.0	2.0	2.0	2.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	2.0	2.0	2.0	2.0	2.0	2.0

Estimate of any current year (FY98) cost: \$ 0.0

POSITIONS

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

ANALYSIS:

(Attach a separate page if necessary)

Costs to DGGs resulting from HB408 would be for modest staff time (approximately one-half person-month per year) plus travel associated with meetings. Salary costs would be covered under an existing position in DGGs which has responsibilities in geologic hazards that are consistent with work on this commission. The travel costs indicated above (\$2,000 annually) assume four trips per year at an average cost of \$500 per trip.

Prepared by: <u>Milt Wiltse, Director</u> <i>Milt Wiltse</i> <u>irc</u>	Phone: <u>(907) 451-5005</u>
Division: <u>Geological & Geophysical Surveys</u>	Date: <u>18-Mar-98</u>
Approved by Commissioner: <u><i>Milt Wiltse for John Huel</i></u>	Date: <u>3-18-98</u>
Agency: <u>Natural Resources</u>	

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 408

Revision Date _____	Dept. Affected <u>Office of the Governor</u>
Title <u>"An Act establishing the Alaska Seismic Hazards Safety Commission."</u>	BRU <u>Commissions/Special Offices</u>
Hazards Safety Commission.	Component <u>Seismic Hazards Safety Commission</u>
Sponsor <u>Representative Davies</u>	
Requester <u>House State Affairs</u>	Component Serial No. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	11.9	9.7	9.7	9.7	10.0	10.0
Travel	8.3	8.3	8.3	8.3	8.3	8.3
Contractual	7.5	7.5	7.5	7.5	7.5	7.5
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	28.2	26.0	26.0	26.0	26.3	26.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	28.2	26.0	26.0	26.0	26.3	26.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	28.2	26.0	26.0	26.0	26.3	26.3

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Fiscal note assumes 1/4 time clerical staff to support commission activity as technical support needs will be met by existing staff in the Department of Natural Resources; quarterly commission meetings -- 2 face-to-face and 2 teleconferenced. Travel costs reflect estimated meeting costs for commission members and one staff. Contractual reflects estimated postage, communication, advertising, and teleconference costs.

Fiscal note assumes existing departmental office space/equipment will be available for use by the part-time clerical staff position.

Prepared by <u>Michael A. Nizich, Administrative Director</u> <i>[Signature]</i>	Phone <u>465-3876</u>
Division <u>Administrative Services</u>	Date <u>3/18/98</u>
Approved by <u>Jim Ayers, Chief of Staff</u> <i>[Signature]</i>	Date <u>3/18/98</u>
Agency <u>Office of the Governor</u>	

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Author: Shari_Kochman@gov.state.ak.us at CC2MHS1

Date: 3/12/98 4:16 PM

Priority: Normal

TO: Barbara Cotting at LAA_TRANS

CC: David_Koivuniemi@admin.state.ak.us at CC2MHS1,

Jack_Kreinherder@gov.state.ak.us at CC2MHS1, Linda_Perez@gov.state.ak.us at CC2MHS1,

Gail_Fenumiai@gov.state.ak.us at CC2MHS1, Cheryl_Buchanan@cchub.state.ak.us at CC2MHS1

Subject: Re: fiscal notes

barbara,

requests are in (by copy of this note to departmental liaisons) -- but i need to correct some of the depts. you listed as affected by these bills:

hb 466 - doa (apoc, which falls under doa, is in charge of campaign laws)

hb 463 - omb

hb 468 - gov's office (the human rights commission is under our office, not dhss)

hb 408 - gov's office (the bill states the new commission would be located in the gov's office, not law)

sb 307 - gov's office (i don't know why elections has been doing a fiscal note on this bill; it really should just be the gov's office; but i'll check further on this)

Reply Separator

Subject: fiscal notes

Author: Barbara_Cotting@legis.state.ak.us ("Barbara Cotting") at CC2MHS1

Date: 3/12/98 12:55 PM

I need fiscal notes for the following bills which are scheduled in House State Affairs for Thursday, March 19, 1998:

HB 463	Establish Alaska Public Building Fund	Rev
HB 466	Campaign Misconduct: False Information	Elections
HB 468	Damage Awards Human Rights Commission	Hess
HB 408	Seismic hazards Safety Commission	Law
SB 307	U.S. Senate Vacancies	Elections

Alaska State Legislature

CHAIR:
REPRESENTATIVE
JEANNETTE JAMES

State Capitol
Room 102
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House of Representatives
HOUSE STATE AFFAIRS

MEMBERS:
REPRESENTATIVES
IVAN IVAN
AL VEZEY
FRED DYSON
MARK HODGINS
KIM ELTON
ETHAN BERKOWITZ

Fiscal notes for the following bills were requested via email on 3/12/98.

None had been received as of noon on 3/18/98.

Subject: fiscal notes
Author: Barbara_Cotting@legis.state.ak.us ("Barbara Cotting") at CC2MHS1
Date: 3/12/98 12:55 PM

I need fiscal notes for the following bills which are scheduled in House State Affairs for Thursday, March 19, 1998:

HB 463	Establish Alaska Public Building Fund
HB 466	Campaign Misconduct: False Information
HB 468	Damage Awards Human Rights Commission
HB 408	Seismic hazards Safety Commission
SB 307	U.S. Senate Vacancies

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 463

Revision Date (Note if correction) _____ Dept. Affected All departments
 Title An Act establishing the Alaska public building fund. BRU _____
 Component _____
 Sponsor House State Affairs Committee
 Requester House State Affairs Committee Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would establish a fund for the deposit of state facility rent payments, and for appropriations from the fund for maintaining these facilities.

Establishing the fund would not in itself have a direct fiscal impact on any state agency. However, the purpose of the fund and the related facilities rent structure is to improve the management and maintenance of state facilities. Improved management and maintenance will reduce overall facilities costs over the long term. Although these cost reductions may be substantial, there are many variables involved and the cost reductions cannot be accurately projected at this time.

Prepared by Jack Kreinheder *Jack Kreinheder* Phone 465-4676
 Division Office of Management and Budget Date 3/18/98
 Approved by Commissioner Jim Ayers, Chief of Staff *J. Ayers* Date _____
 Agency Office of the Governor

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 466

Revision Date: _____
 Title: Am. (1997) Relating to Appropriations of State Pensions, 1998.
 Sponsor: HOUSE STATE AFFAIRS
 Requester: _____

Dept. Affected _____
 BRU _____
 Component _____
 Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES []						

FUND SOURCE (Thousands of Dollars)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by House, State Affairs
 Division _____
 Approved by Rep. Jeannette James
 Agency _____

Phone _____
 Date _____
 Date _____

Alaska State Legislature

CHAIR:
REPRESENTATIVE
JEANNETTE JAMES

State Capitol
Room 102
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House of Representatives
HOUSE STATE AFFAIRS

MEMBERS:
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IVAN IVAN
AL VEZEY
FRED DYSON
MARK HODGINS
KIM ELTON
ETHAN BERKOWITZ

As of 3:00 p.m. on Friday March 20, 1998, no fiscal note for HB 466 had been delivered.

HB

468

Alaska State Legislature House of Representatives

Committees

Rules Committee, Chair
Legislative Council
International Trade & Tourism
Military & Veterans Affairs
World Trade & State/Federal Relations



Interim:
10928 Eagle River Rd. Suite 141
Eagle River, AK 99577

Session:
Alaska State Capitol
Juneau, AK 99801

HB 468 SPONSOR STATEMENT

HB 468 amends AS 18.80.130(1) to the effect that if the decision of the State Commission for Human Rights is delayed more than 90 days after the complaint was filed, the Commission may not award back pay for wages that the complainant would have earned after the 90th day after the complaint was filed.

The State Commission for Human Rights investigates claims of discrimination by employers, including cases alleging wrongful discharge due to alleged discrimination. Some 5,000 calls are received each year, with 9 investigators and two supervisors doing investigative work. 275 cases are presently on hold

We are advised that there is a major problem with delay. Sometimes cases take over two years to come to a determination. If the findings show probable cause, a reconciliation agreement is presented to the employer which includes payment of back wages for the entire time period the matter was under consideration. The potential monetary impact can be staggering. Further, the claim is still subject to review by other jurisdictions (local human rights commissions, Equal Employment Opportunity Commission).

This legislation provides incentive to the employee to find other employment as well as encouragement to the Commission to expedite the process. We are advised that some 62% of cases do not have substantial evidence to proceed. Quick and speedy decisions are in the best interest of both the employee and employer.

Representative Pete Kott

Juneau Office (907) 465-3777 Toll Free 1-800-861-KOTT(5688) Fax (907) 465-2819
Eagle River Office (907) 694-8944 Fax (907) 694-8945 E-Mail: representative_pete_kott@legis.state.ak.us



STATE OF ALASKA

HUMAN RIGHTS COMMISSION

TONY KNOWLES, GOVERNOR

800 A STREET, SUITE 204
ANCHORAGE, ALASKA 99501-3669
PHONE: (907) 274-4692 / 278-7474
TTY/TDD: (907) 278-3177
FAX: (907) 278-8588

March 13, 1998

Jim Hornaday
Office of the Honorable Pete Kott
Alaska House of Representatives
State Capitol
Juneau, AK 99801

VIA FAX (907) 465-2819

Dear Mr. Hornaday:

I am writing in response to your fax requesting confirmation or correction of the facts in the HB468 sponsor statement. You will find my confirmation/corrections below. I have also provided you with some background regarding the Commission's current inventory and the resulting delays in processing complaints.

SPONSOR STATEMENT

Paragraph 2: It is correct that the Commission investigates claims of discrimination brought by individuals against employers. For your information the agency also investigates complaints brought by Alaskans claiming discrimination in housing, practices by the state and its political subdivisions, places of public accomodation and by financial institutions.

Paragraphs 3 and 4: The Commission acknowledges delay in processing cases, this delay is almost never the cause for an increase in damage awards. The controlling law of employment discrimination, which the Commission is bound to follow, requires that in every case a complainant must make reasonable efforts to mitigate damages. This means, essentially, that those persons with pending discrimination complaints must try to find alternative employment or other means of income to offset those damages for which the respondent would otherwise be responsible.

Where a complainant finds alternative employment which provides less income, the respondent's liability is limited to the difference in pay. If the alternative employment pays more, no damages are allowed. And if the complainant fails to make reasonable efforts to find employment, the law limits a respondent's liability to little or no back pay at all.

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Jim Hornaday

March 13, 1998

Page 2

This legal principle is reflected in the back pay awards arrived at after Commission staff found substantial evidence of discrimination. Whether through conciliation, decision or settlement, the average amount of back pay paid to complainants by private employers, over the last ten years, has been approximately \$4,713.

BACKGROUND

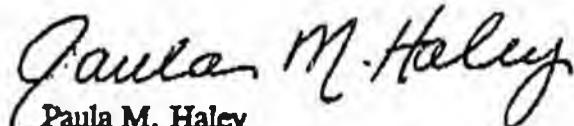
In the past fifteen years, complaints of discrimination filed with the Commission have nearly tripled. During this same time period the number of Commission staff dropped from 26 to 15 and only recently increased to 19. As a result, the complaint inventory is at its highest in its 34 year history. This despite closing 14% more cases in 1997 than in the prior year. The delays resulting from this dramatic increase in inventory, create frustration for both businesses charged with discrimination and those who believe they have experienced discrimination.

The Commission is committed to prompt investigation and eliminating these delays. To that end the Commission has revised its procedures, amended regulations and with the help of the Legislature passed legislation to increase efficiencies and save money. With support from the Governor and Legislature for budget increments, the Commission has increased its investigative staff.

The additional staff in Fiscal Year 1998 have helped reduce the backlog by 24%. The Commission's proposed Fiscal Year 1999 budget includes one full-time investigator who would be devoted to early resolution of cases through voluntary mediation. While the agency still faces a backlog the innovations to work smarter and additional resources are already reducing processing time.

Please feel free to contact me for additional information. I can be reached at 276-7474, Extension 241.

Sincerely,



Paula M. Haley
Executive Director

PHM/med
Rep. W

Cases Referred to the Alaska State Commission for Human Rights

A former female employee with a disability filed a claim in December 1995 because she was not given a position she had applied for. The case was dismissed by the Anchorage Human Rights Commission (AHRC) in June 1996. An appeal was filed in July, 1996 and was subsequently dismissed in August 1996. However, the AkSCHR has decided not to adopt the AHRC decision and will be conducting an investigation of their own. There has been no time frame discussed and until this matter is closed permanently, an exposure to back pay remains a potential and increasing risk. This case has back pay exposure of \$24,000 if the decision by the AkSCHR is in the claimant's favor.

A former employee filed a discrimination case with the AkSCHR in October 1994. In December, 1996, over two years later, a determination was made that there was probable cause (the employer disagreed). The employer was given 30 days to accept a conciliation agreement that basically implicated the employer as the guilty party. If the employer does not agree with the conciliation agreement, the case goes to hearing with the employer having to retain an attorney and still incurring liability for back wages. Potential liability exceeds \$30,000. Attorney's fees could approach \$10,000 - \$15,000. The potential liability in this case was a critical factor in the employer's decision to close the business.

Prospective employee filed a complaint indicating that she was discriminated against due to religious beliefs when applying for employment in April 1995. The individual had stated that her religious beliefs would not allow her to wear a skirt on the job. Complaint filed August, 1995. In September 1995 a letter was received from the AkSCHR stating that no investigator had been assigned due to heavy case load. In February 1996 an investigator was finally assigned. At the end of December, 1996 the case was finally closed with the findings of no fault on the part of the employer. Almost two years of back wages were at stake in this case.

A former minority male employee filed a claim in December 1996 for a position he did not receive while employed in May 1996. Employee requested the next available position and back wages. The AkSCHR sent a letter that they were backlogged and that "their inventory of cases has grown at a disproportionate rate to the number of investigators available... and.. to manage our inventory we must hold this case and other new cases in a suspense cabinet.. we will assign held cases in order of receipt as investigators' case load allows". The letter went on to indicate this could take three to four months. The exposure for the back wages for this claim was approximately \$29,000.

A former minority female employee filed a claim in January 1995 for a position she did not receive in March 1994 and October 1994. This claim was closed in October, 1996 a full two years of potential back pay at stake to the employer.

03/19/98
09:16:28

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:80473 SCHEDULED FOR:03/19/98 08:00 TO 10:00
PUBLIC HEARING HOUSE STATE AFFAIRS

LTN1150
BY:JNU
FOR:ALL

LOCATION: ANCHORAGE

HB 468	PAULA	HALEY	HUMAN RES COMM.	TESTIFY
HB 468	CLARENCE	THOMPSON		TESTIFY
HB 463	KAREN	ROGINA <i>Exec. Director</i>	AK HOTEL ASSOC	TESTIFY

LOCATION: FAIRBANKS

HB 468	MR.	FRANK	ROSE	AK LODGING MGT	TESTIFY
HB 408	MR.	ROD	COMBELICK	AK DEPT OF NR	TESTIFY

03/19/98
08:14:43

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
SCHEDULED FOR: 03/19/98 08:00 TO 10:00
HOUSE STATE AFFAIRS

LTN1150
BY: JNU
FOR: ALL

TCN: 80473
PUBLIC HEARING

LOCATION: ANCHORAGE
HB 468
HB 468

Martha Ciore
PAULA HALEY
CLARENCE THOMPSON

HUMAN RES COMM. TESTIFY
TESTIFY

LOCATION: FAIRBANKS
HB 468 MR.

Karen Regina
FRANK ROSE

AK Hotel Acgn
AK LODGING MGT TESTIFY

Page 2, Line 5, after "filed;" add "if the commission determines that the a delay beyond 180 days is caused by the employer, then the 180 limit on award of back pay for wages does not apply."

Amendment to HB468 "Damage Awards Human Rights Commission,"

submitted by House Rules Committee

3/21/98

Kathy + Paula

Talked 3/25 -

No resolution
yet -

HOLD !!

Kathy will call
Paula & Jack
to her
directly!

3/25/98

Jerry Cramer
Chapter

Use poster
radiation ?

Sophie -
Kathy Schultz
479-3650
FAX: 479-7051

463-3408

Mitch Cravo

Karen Rogne Exec Dir.

AK Hotel/Motel Assoc.

Paula Haley -

include in

teleconf -

HB 468

907-276-7474

X 241.



ALASKA STATE COMMISSION
FOR HUMAN RIGHTS

JAMES CHASE
COMMISSIONER

HEADQUARTERS OFFICE
800 A STREET, SUITE 204
ANCHORAGE, ALASKA 99501-3669

E-MAIL ADDRESS:
Jchase02@Interserv.com
(907) 276-7474
FAX (907) 278-8588

Peer Kelly Schultzy

3/25/98 - They STILL
Went This!

Use Termination date as
start date for

Back Wages
"not to exceed 90 days from
Termination Date."

Get 3 employees' interviewed signatures.

3/24/98

Asked
Paula Kelly

Check AAC - how is
this enforced?

(Requiring Person to look
for work -
Is this policy in writing?)

She'll send me into

Peer
Paula

Maybe best to
use "Duty to Mitigate"

"~~It~~ make less intense
or severe."

FAX TRANSMISSION SHEET

Alaska State Commission For Human Rights

800 A Street, Suite 204
Anchorage, Alaska 99501-3669

PHONE: (907) 274-4692 or (907) 276-7474

FAX: (907) 276-7462

DATE: March 24, 1998 TIME: 2:37 pm

TO: Barbara Cotting FROM: Paula Haley
Office of the Honorable
Jeannette James, State Affairs Ch Executive Director

FAX #: (907) 465-2381

THIS FAX IS:

- CONFIDENTIAL
- URGENT
- For action/processing
- For your information
- As requested
- Hard copy will follow

ADDITIONAL INFORMATION:

Barbara,
(I hope that this information)
helps.
Paula

PLEASE CALL IMMEDIATELY IF YOU DO NOT RECEIVE ALL PAGES. THANK YOU.

of Pages: 4
(Including cover sheet)

Operator: Sharon Defreez
Extension No.: x 239

TONY KNOWLES, GOVERNOR

HUMAN RIGHTS COMMISSION

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FAX: (907) 278-8588

March 24, 1998

Barbara Cotting
Office of the Honorable Jeannette James
Alaska House of Representatives
State Capitol, Room 102
Juneau, AK 99801-1182

VIA FAX (907) 465-2381

Re: Question on Mitigation of Damages

Dear Ms. Cotting,

Thank you for your call earlier today. I hope that the following information is of assistance to you.

The duty to mitigate back pay damages is not specifically set forth in a Commission statute or regulation. Nevertheless, this is a legal principle to which the Commission adheres, and which all respondents are entitled to invoke.

The duty flows from the general legal principle that any person complaining of a wrong has a responsibility to lessen damages flowing from that wrong. The Alaska Supreme Court has recognized that this duty is the "universal rule." University of Alaska v. Chauvin, 521 P.2d 1234, 1239 (Alaska 1974). The Commission has consistently followed this principle.

In Sharon Webb v. VECO, Inc., ASCHR No. C-88-295, the Commission's decision cited to the Alaska Supreme Court's decision, stating that "the universal rule [is] that a wronged party must use reasonable efforts to avoid the consequences of injury done by another. . . . In other words, Sharon Webb has the burden of proving liability and that she made an effort to mitigate her damages." Final Order, September 24, 1993, at 17. Earlier, in Margaret Chambers v. Engine & Gear Co., Inc., ASCHR No. C-89-004, the Commission recognized the duty to mitigate back pay damages, and found that this duty had been satisfied when the complainant found another job within two weeks, and thus limited back pay to the same two-week period. Final Order, July 26, 1991, at 11. More recently, in Terra Jean Richardson v. Kurani, Inc., ASCHR No. C-94-181, the Commission awarded back pay for only four weeks, even though the complainant was out of work for much longer. The Commission found that the complainant did not show any efforts to mitigate damages, but awarded limited damages because it was unlikely that the complainant could have found another job within four weeks time.

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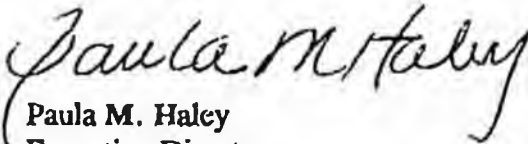
Barbara Cotting
Re: Mitigation of Damages

March 24, 1998
Page 2

The Commission has also followed this principle as a policy in settling damages claims. For example, in the only case cited by the Alaska Hotel and Motel Association in which back pay was awarded, the complainant found another job within two weeks of her termination. This was the reason back pay was limited to \$2,400. See attached letter from Mark Ertischek to Robert Royce transmitting the Settlement Agreement.

If you need additional information regarding the requirement that a person with a discrimination complaint mitigate his or her damages, please let me know. I can be reached at 276-7474, Extension 241.

Sincerely,



Paula M. Haley
Executive Director

Enc.

PMB/rod
HB468/Cotting

TONY KNOWLES, GOVERNOR

HUMAN RIGHTS COMMISSION

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ANCHORAGE, ALASKA 99501-3659
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TTY/TDD: (907) 276-3177
FAX: (907) 278-8588

May 16, 1997

Robert Royce Esq.
Assistant Attorney General
Alaska Department of Law
1031 West 4th Avenue, Suite 204
Anchorage, Alaska 99501

Re: Armstrong v. Chena Hot Springs Resort
ASCHR No. D-94-077

Dear Assistant Attorney General Royce:

I am enclosing the Settlement Agreement signed by the parties to the above entitled case. Please forward the Settlement Agreement to the settlement Commissioner. I believe that this is a full relief settlement and I hope it will be approved as soon as possible.

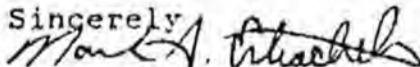
Ms. Armstrong worked as a housekeeper. she alleged that she was terminated because of her race, age and marital status. The staff determined that substantial evidence supported Ms. Armstrong's allegations of race and age discrimination but not her allegation of marital status discrimination.

Ms. Armstrong found another, higher paying, job shortly after termination. She is not interested in reinstatement in her former position. The respondent offered to pay complainant damages that approximate her lost earnings. Complainant agreed with the amount offered.

The entity responsible for terminating complainant was North American Asset Management Inc., a management company. After the investigation, the NAAM ended its contract to manage the Chena Hot Springs Resort and decided to go out of business. However, NAAM agreed to train its managers and supervisor on the requirements of Alaska civil rights law if it continues to engage in business in Alaska after June 30, 1997.

Please contact me if you have any questions.

Sincerely


Mark A. Ertischek
Human Rights Advocate

Toll Free
In Alaska (800) 478-4692
TTY / TDD Only (800) 478-3177

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

HUMAN RIGHTS COMMISSION

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FAX: (907) 278-8588

March 26, 1998

Barbara Cotting
Office of the Honorable Jeannette James
Alaska House of Representatives
State Capitol, Room 102
Juneau AK 99801-1182

VIA FAX (907) 465-2381

RE: Mitigation of Damages

Dear Ms. Cotting;

For your information I have attached a copy of the Commission's Post Charge Counseling sheet. In accordance with Section 2.09 of the Commission's Procedures Manual, at the time a complaint is filed, the agency staff counsels a potential complainant regarding their rights and responsibilities. You will note that included in the Post Charge Counseling is the requirement to mitigate damages, including documentation of job seeking efforts and expenses incurred. This is the method used by the Commission to relate to complainants the legal principles outlined in my letter to you yesterday.

Also enclosed is a copy of an article from today's Anchorage Daily News regarding a \$125,000 settlement for emotional distress in a sexual harassment suit. This is a case which was originally filed with the Equal Employment Opportunity Commission. In this case the complainant's attorney took the case to court and was able to secure damages for emotional distress. As you may recall from the Commission's testimony, those damages are not available before our agency.

Please call me at extension 241 if you have any additional questions.

Sincerely,


Paula M. Haley
Executive Director

enc: as noted

PMH/mak

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POST CHARGE COUNSELING

COMPLAINANT'S NAME _____

PCC DATE _____ INVESTIGATOR _____

I explained the following to complainant:

___ Option of court action/statute of limitation - two years (AS 22.10.020(c)).

___ Impartial investigative role of commission.

___ Investigative procedures.

___ Complainant's right to have representative (interpreter, etc), if applicable or legal counsel during commission proceedings.

___ Complainant's responsibility to advise change of address and/or phone number.

___ AERC/EEOC worksharing information, where applicable.

___ ASCHR caseload / possible waiting periods.

___ Complainant's duty to mitigate damages, including documentation of job seeking efforts and expenses incurred.

Complainant's desired relief is: _____

14. If notary public or postmaster is unavailable, complainant may swear to and certify the complaint by signing and dating Section 14. The place of this action must be entered in Section 14.

2.05 LENGTHY COMPLAINTS: In general, complaints will be drafted in sufficient form using one page of the complaint form. Additional pages may be added as needed. Each page of the complaint form will be signed by the complainant and verified or notarized.

2.06 COMPLETING HUD FORMS: In general, HUD Form 903 will be used in addition to ASCHR Form No. 85-09 to file housing discrimination complaints. Complaints alleging violations of AS 18.80.230 and/or .240 which are not jurisdictional under Title VIII of the 1968 Civil Rights Act will be filed on ASCHR Form No. 85-09. *No longer applicable*

2.07 COMPLETING THE AUTHORIZATION TO RELEASE INFORMATION: The investigator will assist complainants to complete the Authorization to Release Information (ASCHR Form No. 85-07) as part of the initial filing of the complaint and place in the complaint file

2.08 COMPLETING THE COMPLAINT PROCESS BY MAIL: If the complainant is not able to sign the appropriate documents in person, the investigator will mail the complaint(s) and authorization to release information forms to complainant along with the cover letter, found as Exhibit 2.08. Complainant will be given 10 days from the date on the letter to return the signed forms. If the forms are not returned by the due date, the file will be stored as an unperfected complaint. Unperfected complaints are kept for two years.

* 2.09 ADDITIONAL COUNSELING: During intake, the investigator will explain to complainant the right to file a complaint in court under AS 22.10.020(c) and the two year statute of limitations, the commission's impartial investigation and procedures, complainant's right to have legal counsel during the investigation, complainant's responsibility to keep in touch with the commission, complainant's duty to mitigate damages and other pertinent information about the processing of the case. The investigator will obtain from complainant the desired remedy and the terms of a possible settlement. The investigator will complete the post charge counseling checklist, found as Exhibit 2.09, and place it in the case file.

2.10 COMPLETING THE INTAKE NOTES: The investigator will complete the Intake Notes (ASCHR Form No. 85-19) to memorialize the intake interview and place this document as evidence in the file. Documents submitted by complainant at intake will be date stamped and placed in the file with a Cover Sheet (ASCHR Form No. 85-10) as evidence.

2.11 COMPLETING THE HERO SOURCE DOCUMENT: The investigator will complete the five-page HERO Source Document, found as Exhibit 2.11(a). Specific instructions and codes are found as Exhibit 2.11(b).

2.12 COMPLETING THE MIS SOURCE DOCUMENT: The investigator will complete numbers 9, 10, 17-21 and 55 on the one-page MIS Source Document, found as Exhibit 2.12(a). Specific instructions and codes are found as Exhibit 2.12(b).

rules for handling heat exhaustion in soldiers in the wake of a medical report showing that an 18-year-old Alaska National Guardsman died last summer after drinking too much water to ease his heat exhaustion.

"The guideline has always been 'when in doubt, give water,'" Lt. Col. Richard Kaiura said. "That's going to change."

A December medical report from the Armed Forces Institute of Pathology in Washington originally concluded that

An amended medical report, compiled by the chief of pathology at the post's Martin Army Community Hospital and shown to Kaiura last week, shows that Dock essentially drank himself to death.

When Dock began vomiting and acting delirious on a rifle range, drill sergeants began giving him water — lots of it.

Instead of helping Dock, the soldiers forcing fluids into him unwittingly contributed to his death, Kaiura,

the *Columbus Ledger-Enquirer* on Tuesday.

"The drill sergeants tried to do the right thing," Kaiura said. "Until this happened, no one thought that you could drink too much water."

Kaiura said Dock was encouraged to drink "large quantities of water." Post spokeswoman Monica Mangano said Wednesday she did not have access to the medical report to find out exactly how much water Dock drank.

"Just plain water can be lethal, especially if someone is

at Michigan State University.

Adams said sweating causes a loss of crucial electrolytes — sodium, potassium and others — as well as water. People must replace both at the same time to avoid serious health problems.

Dock's father, Paul Dock, told the newspaper Tuesday from his home in Kipnuk that he had not received any official information about his son.

In the past, he and other family members have criticized the Army for taking recruits from Alaska's cool climate to basic

Alaska National Guard spokesman Capt. Mike Haller said the decision to attend basic training during the summer is made by each recruit.

"We send them year-round. We have done that for decades. We try to advise young people to make a decision to go over the winter or spring or fall, not summer. But sometimes, a young man or woman decides to go during the summer," he said Wednesday.

On July 2, 1997, Dock was out on a rifle range as part of

Woman who was shrink-wrapped wins harassment suit

The Associated Press

JUNEAU — A woman who was shrink-wrapped to a pallet by her co-workers at a Pepsi bottling plant has been awarded \$125,000 in a sexual harassment lawsuit.

The jury found that Pepsi-Cola Bottling Co. of Alaska knew Joyce Crosby was subjected to a hostile working environment when she worked there as a part-time secretary in 1995. The panel also found that Tim Steinnmuller, her supervisor, did nothing to correct the situation.

On Monday, the jury ordered Pepsi to pay \$123,750 for emotional distress. One of Crosby's co-workers, Richard Sjoroos, hit Crosby without intending to cause her harm, the jury found. He was ordered to pay \$1,250.

Crosby testified Sjoroos and Hal Kulm began by telling crude jokes and snapping her bra strap. Over time, they pulled her hair, pushed, poked and hit her. She complained to the U.S. Equal Employment Opportunity Commission in 1995 and filed her lawsuit in 1997.

Sjoroos said Crosby would laugh when he would "play-punch" her. Testifying about the shrink-wrapping, Kulm said Crosby had leaned against the pallet and refused to move.

"She was the only woman in the shop and they treated her differently because of that," said Jeff Friedman, one of Crosby's attorneys.

A psychiatrist testified that Crosby suffered from depression, nausea and panic attacks after working at the bottling plant, Friedman said.

Pepsi plans an appeal, said Nancy Pritikin, one of the company's lawyers.

An internal investigation turned up "no evidence to support the plaintiff in this case," Pritikin said Tuesday. "Pepsi has a very strong sexual harassment policy and has zero tolerance for any kind of sexual harassment."

Crosby left the company and moved to New England, where she teaches art at an elementary school, Friedman said.

ADN 3-26-97

Alaska State Commission for Human Rights

800 A Street, Suite 204

Anchorage, AK 99501-3669

Barbara Cotting

Office of the Honorable Jeannette James

Alaska House of Representatives

State Capitol, Room 102

Juneau, AK 99801-1182

FAX TRANSMISSION SHEET

Alaska State Commission For Human Rights

800 A Street, Suite 204
Anchorage, Alaska 99501-3669

PHONE: (907) 274-4692 or (907) 276-7474

FAX: (907) 276-7462

DATE: March 30 1998 TIME: 1:21 pm

TO: Jeannette James FROM: Paula M. Haley

Representative Executive Director

FAX #: (907) 465-2381

THIS FAX IS:

CONFIDENTIAL

URGENT

For action/processing

For your information

As requested

Y/N Hard copy will follow

ADDITIONAL INFORMATION:

PLEASE CALL IMMEDIATELY IF YOU DO NOT RECEIVE ALL PAGES. THANK YOU.

of Pages: 10
(Including cover sheet)

Operator: Sharon DeFreez
Extension No.: x 239

TONY KNOWLES, GOVERNOR

HUMAN RIGHTS COMMISSION

800 A STREET, SUITE 204
ANCHORAGE, ALASKA 99501-3669
PHONE: (907) 274-4692 / 276-7474
TTY/TDD: (907) 276-3177
FAX: (907) 278-8588

March 30, 1998

The Honorable Jeannette James
State Affairs Committee Chair
Alaska House of Representatives
State Capitol, Room 102
Juneau, AK 99801-1182

*Via Fax (907) 465-2381***Re: House Bill 468**

Dear Representative James:

Thank you for the opportunity to testify and answer questions on House Bill 468 at the State Affairs hearings held on March 19 and 24, 1998. This letter is in response to questions you and other committee members raised during these hearings. I have also provided information which I hope will be helpful regarding some of the issues raised during the discussion.

After listening to testimony on HB 468 and again reviewing Frank Rose's letter to Mitch Gravo, which, I understand, generated this legislation, I wish to underscore the Commission's belief that this bill will result in greater and not lesser hardship for businesses.

As I have noted in earlier correspondence the legal principle of mitigation of damages governs the decisions of staff and Commissioners when settling cases or making awards. I wish to underscore that if a complainant fails to mitigate his or her damages, as required under the law he or she will not be entitled to damages before the Commission.

EXAMPLES

To further illustrate why fears of unlimited damages before the Commission are unfounded, I will refer to the examples noted in Mr. Frank Rose's letter to Mitch Gravo.

In only one of these five examples did the Commission find substantial evidence of discrimination. As stated in my testimony, staff found substantial evidence to support the 61-year-old Alaskan Native woman's complaint that Chena Hot Springs Resort discriminated

*Toll Free
In Alaska (800) 478-4692
TTY / TDD Only (800) 478-3177*

The Honorable Jeannette James

March 30, 1998

Page 2

against her because of her race and age. As required by law, the former employee mitigated her damages. In fact, she secured another higher paying job within three weeks of being fired - limiting the damages to \$2,400 in back pay.

In three of the examples staff did not find substantial evidence of discrimination and closed the cases. Even had staff found in favor of these complainants' damages would have been limited. In one instance the applicant found another higher paying job one week later; in another the applicant took himself out of the job market; and in the third, the employee continued to work for the employer. In the one example where staff has not yet completed the investigation, that employee has her own business and a part time job, which would greatly limit damages if staff found in her favor.

RISK OF GREATER LIABILITY

Since the Commission follows the legal principle which requires mitigation of damages, and punitive and compensatory damages are not available before the agency, the average back pay award paid by private employers in cases before the Commission is \$4,713.

However, if this legislation becomes law the employer will likely be liable for greater damages for a couple of reasons. First, the federal Equal Employment Opportunity Commission (EEOC) has stated that it will review the awards capped by this legislation and would pursue the additional remedies available to it including punitive and compensatory damages. As you know, our agency may only award back pay, and not additional damages. EEOC's average award at conciliation in cases where it found in favor of the complainant is \$31,720¹ which is \$27,007 higher than that awarded by our Commission.

In addition, it is reasonable to expect that with a cap on back pay, many people will choose to file their complaints in federal or state court where damages will be greatly increased. Just this week an employee received \$123,750 for emotional distress in a sexual harassment case filed in Superior Court. These damages are not available before the Commission in such cases. Employers will be more likely to seek legal counsel to defend a case in court than before the Commission.

BURDEN ON EMPLOYER

The Commission also asks that the Committee consider the substantial burden that this legislation would place on employers who would have to respond to the Commission's request for records and interviews in short order. Currently when the Commission staff requests information from employers they frequently allow the employer additional time to provide

¹ This figure does not include damages awarded after EEOC takes a case to court - those figures are maintained separately and are not available. If included, this figure would likely be much higher.

The Honorable Jeannette James

March 30, 1998

Page 3

information. For example, if an employer cannot afford to make a key management witness available to speak to us in a given month due to its retail schedule or seasonal deadlines, staff will consider the employer's needs. Often employers will ask for additional time to gather personnel or application files that the staff needs for comparative evidence.

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If this legislation passes the EEOC may terminate its contractual relationship with the Commission. If this occurs, employers will have to respond to requests for information/evidence from two separate enforcement agencies. This will certainly prove more time consuming and costly.

BUDGET INCREASE

The loss of the EEOC contract would reduce the Commission's current budget by 10%, requiring the State to pick up more of the cost of civil rights enforcement in Alaska. The agency may well lose revenue at a time when it needs additional resources more than ever. This legislation has a large fiscal note attached to it because it would require considerably more staff than the Commission currently has to process complaints of discrimination from the initial filing through investigation, conciliation, preparation for hearing, hearing, and decision.

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The time it takes for the Commission to process a complaint has increased considerably over the past six years. This is because, even with increased efficiencies, the reduced workforce could not keep pace of the dramatic increase in cases filed with the agency.

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Once a case is assigned to an investigator the time it takes to complete the investigation varies considerably from case to case. Currently the average time to process is 627 days. In 1990

² The processing days plotted on this chart refer to the days it took staff to reach a determination and do not include the hearing process.

The Honorable Jeannette James

March 30, 1998

Page 4

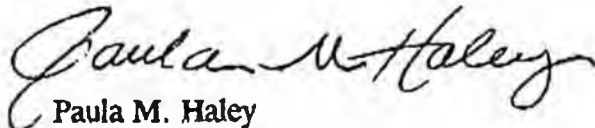
before the increase in filings and inventory and before the staffing level dropped to 15, the agency processed cases on average within 319 days.

The time it currently takes to process cases in which staff found substantial evidence of discrimination and was unable to conciliate is 1175 days. This additional time is due not only to the Commission's limited resources in the hearing unit, but is also subject to the scheduling needs of the employers. However, as noted above, regardless of the time it takes to process a case in the hearing unit - the complainant has the duty to mitigate damages.

I hope that this information responds to several of the questions raised and clarifies the impact of this legislation on the Commission and the Alaskan public.

If you have any questions, please call me at 276-7474, extension 241.

Sincerely,

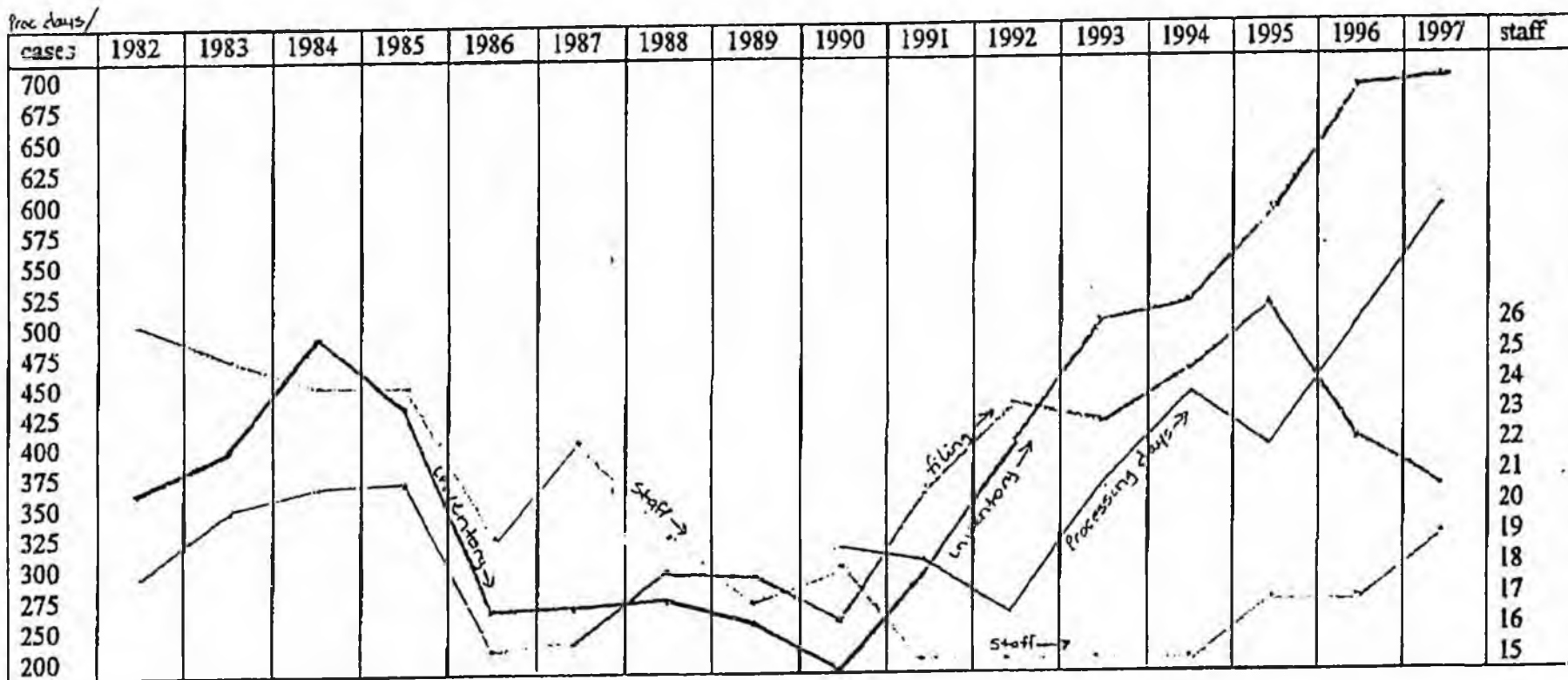


Paula M. Haley
Executive Director

C: House State Affairs
Committee Members

Enc. As stated

WORKLOAD / RESOURCES / PROCESSING TIME



Filings
 Staff
 Inventory
 Processing days (start 1990)

STATE OF ALASKA

HUMAN RIGHTS COMMISSION

TONY KNOWLES, GOVERNOR

800 A STREET, SUITE 204
ANCHORAGE, ALASKA 99501-3669
PHONE: (907) 274-4692 / 276-7474
TTY/TDD: (907) 276-3177
FAX: (907) 278-8588

March 30, 1998

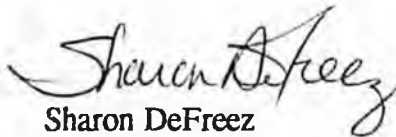
Barbara Cotting
Office of the Honorable Jeannette James
Alaska House of Representatives
State Capitol, Room 102
Juneau, AK 99801-1182

Dear Ms. Cotting,

Please find enclosed hard copies of Ms. Haley's letter to Representative James (faxed earlier today). We decided to send these hard copies because the charts are so difficult to read without the color. Is it possible that you or a member of your staff could distribute these to State Affairs Committee members?

Thank you very much for your assistance in this matter.

Sincerely,


Sharon DeFreez
Commission Secretary

Enc.

House State Affairs Committee Members:

Honorable Jeanette James

Honorable Mark Hodgins

Honorable Kim Elton

Honorable Al Vezey

Honorable Ethan Berkowitz

Honorable Ivan Ivan

Honorable Joe Ryan

House State Affairs Committee Members:

Honorable Jeanette James

Honorable Mark Hodgins

Honorable Kim Elton

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Honorable Ethan Berkowitz

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Honorable Ivan Ivan

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STATE OF ALASKA

HUMAN RIGHTS COMMISSION

TONY KNOWLES, GOVERNOR

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PHONE: (907) 274-4692 / 276-7474
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March 30, 1998

The Honorable Jeannette James
State Affairs Committee Chair
Alaska House of Representatives
State Capitol, Room 102
Juneau, AK 99801-1182

Via Fax (907) 465-2381

Re: House Bill 468

Dear Representative James:

Thank you for the opportunity to testify and answer questions on House Bill 468 at the State Affairs hearings held on March 19 and 24, 1998. This letter is in response to questions you and other committee members raised during these hearings. I have also provided information which I hope will be helpful regarding some of the issues raised during the discussion.

After listening to testimony on HB 468 and again reviewing Frank Rose's letter to Mitch Gravo, which, I understand, generated this legislation, I wish to underscore the Commission's belief that this bill will result in greater and not lesser hardship for businesses.

As I have noted in earlier correspondence the legal principle of mitigation of damages governs the decisions of staff and Commissioners when settling cases or making awards. I wish to underscore that if a complainant fails to mitigate his or her damages, as required under the law he or she will not be entitled to damages before the Commission.

EXAMPLES

To further illustrate why fears of unlimited damages before the Commission are unfounded, I will refer to the examples noted in Mr. Frank Rose's letter to Mitch Gravo.

In only one of these five examples did the Commission find substantial evidence of discrimination. As stated in my testimony, staff found substantial evidence to support the 61-year-old Alaskan Native woman's complaint that Chena Hot Springs Resort discriminated

*Toll Free
In Alaska (800) 478-4692
TTY / TDD Only (860) 478-3177*

against her because of her race and age. As required by law, the former employee mitigated her damages. In fact, she secured another higher paying job within three weeks of being fired - limiting the damages to \$2,400 in back pay.

In three of the examples staff did not find substantial evidence of discrimination and closed the cases. Even had staff found in favor of these complainants' damages would have been limited. In one instance the applicant found another higher paying job one week later; in another the applicant took himself out of the job market; and in the third, the employee continued to work for the employer. In the one example where staff has not yet completed the investigation, that employee has her own business and a part time job, which would greatly limit damages if staff found in her favor.

RISK OF GREATER LIABILITY

Since the Commission follows the legal principle which requires mitigation of damages, and punitive and compensatory damages are not available before the agency, the average back pay award paid by private employers in cases before the Commission is \$4,713.

However, if this legislation becomes law the employer will likely be liable for greater damages for a couple of reasons. First, the federal Equal Employment Opportunity Commission (EEOC) has stated that it will review the awards capped by this legislation and would pursue the additional remedies available to it including punitive and compensatory damages. As you know, our agency may only award back pay, and not additional damages. EEOC's average award at conciliation in cases where it found in favor of the complainant is \$31,720¹ which is \$27,007 higher than that awarded by our Commission.

In addition, it is reasonable to expect that with a cap on back pay, many people will choose to file their complaints in federal or state court where damages will be greatly increased. Just this week an employee received \$123,750 for emotional distress in a sexual harassment case filed in Superior Court. These damages are not available before the Commission in such cases. Employers will be more likely to seek legal counsel to defend a case in court than before the Commission.

BURDEN ON EMPLOYER

The Commission also asks that the Committee consider the substantial burden that this legislation would place on employers who would have to respond to the Commission's request for records and interviews in short order. Currently when the Commission staff requests information from employers they frequently allow the employer additional time to provide

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information. For example, if an employer cannot afford to make a key management witness available to speak to us in a given month due to its retail schedule or seasonal deadlines, staff will consider the employer's needs. Often employers will ask for additional time to gather personnel or application files that the staff needs for comparative evidence.

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The Honorable Jeannette James

March 30, 1998
Page 4

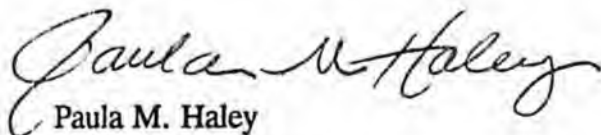
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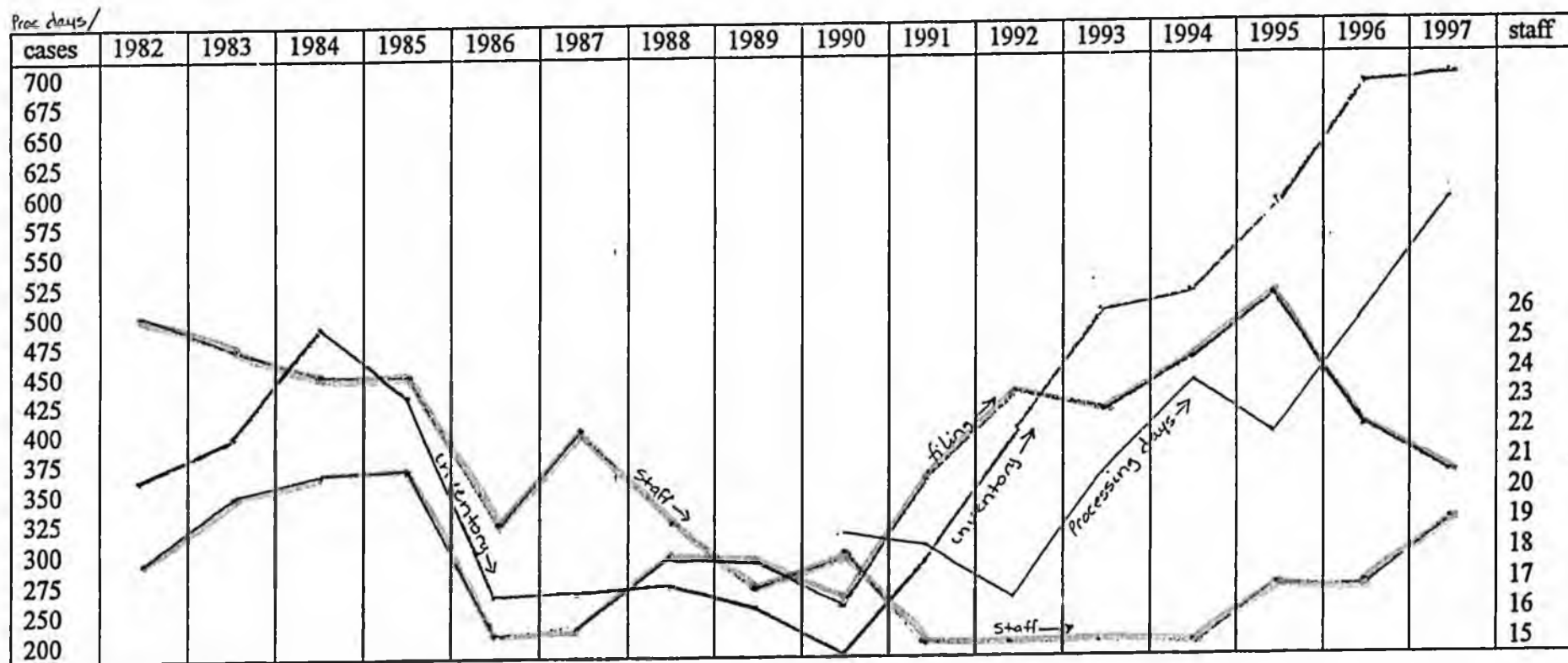


Paula M. Haley
Executive Director

C: House State Affairs
Committee Members

Enc. As stated

WORKLOAD / RESOURCES / PROCESSING TIME



Filings

~~Staff~~

Inventory

Processing days (start 1990)



ALM Alaska Lodging Management, Inc.

P.O. Box 72478
Fairbanks, Alaska 99707-2478
250 Cushman St., Suite 4C
Phone 907-474-8555
Fax 907-474-8557

March 23, 1998

Representative Jeannette James, Chair
House State Affairs Committee
State Capital
Juneau, AK 99801

Thank you for the opportunity to testify at the recent hearing concerning HB468 ("An Act relating to damages awarded in complaints before the State Commission for Human Rights).

As a small business owner, I am very concerned about the provisions in the current law that potentially places unlimited liability on employers. The major problem that presents itself is that AkSCHR sometimes takes over two years to make a determination. If their findings show that there is probable cause, then a conciliation agreement is presented to the employer. That conciliation agreement contains a number of provisions, not the least of which is a provision for the employer to pay back wages during the entire period the AkSCHR has been considering the case. An employer can sign this agreement and the case will go away. The employer admits no wrong doing and the former employer agrees not to pursue the matter further. The problem, however, is that over the 2 - 3 years the case was being considered by the AkSCHR, wages in the tens of thousands of dollars could have accrued and the employer is liable. The potential monetary impact from these delays can be staggering. Furthermore, a claim once decided upon by one organization is still subject to review and acceptance or rejection by other organizations that have jurisdiction: (local human rights commissions, Equal Employment Opportunity Commission).

I am not suggesting that the AkSCHR limit the time required to investigate a case and pull the facts together adequately to render a determination. I am suggesting that should any back pay be a part of the settlement agreement, that the amount be limited to 90 days wages. This does not eliminate the possibility of other monetary awards that might be proposed in the conciliation agreement. If an employer does not accept the settlement, and the case goes forward to the courts, then, if found at fault, the employer could be liable for additional penalties not tied to wages. 90 days should be adequate to find new employment and the prior employer should not be responsible, whether at fault or not. Other penalties/fines may be imposed and appropriate for wrongdoing.

I hope that you will consider the above information in making your decision on changes to the Human Rights Commission Statutes. For your information, I have attached summaries of several cases that were brought to my attention by hotel operators.

Yours sincerely,

Frank W. Rose
President
Alaska Lodging Management, Inc.

Cases Referred to the Alaska State Commission for Human Rights

A former female employee with a disability filed a claim in December 1995 because she was not given a position she had applied for. The case was dismissed by the Anchorage Human Rights Commission (AHRC) in June 1996. An appeal was filed in July, 1996 and was subsequently dismissed in August 1996. However, the AkSCHR has decided not to adopt the AHRC decision and will be conducting an investigation of their own. There has been no time frame discussed and until this matter is closed permanently, an exposure to back pay remains a potential and increasing risk. This case has back pay exposure of \$24,000 if the decision by the AkSCHR is in the claimant's favor.

A former employee filed a discrimination case with the AkSCHR in October 1994. In December, 1996, over two years later, a determination was made that there was probable cause (the employer disagreed). The employer was given 30 days to accept a conciliation agreement that basically implicated the employer as the guilty party. If the employer does not agree with the conciliation agreement, the case goes to hearing with the employer having to retain an attorney and still incurring liability for back wages. Potential liability exceeds \$30,000. Attorney's fees could approach \$10,000 - \$15,000. The potential liability in this case was a critical factor in the employer's decision to close the business.

Prospective employee filed a complaint indicating that she was discriminated against due to religious beliefs when applying for employment in April 1995. The individual had stated that her religious beliefs would not allow her to wear a skirt on the job. Complaint filed August, 1995. In September 1995 a letter was received from the AkSCHR stating that no investigator had been assigned due to heavy case load. In February 1996 an investigator was finally assigned. At the end of December, 1996 the case was finally closed with the findings of no fault on the part of the employer. Almost two years of back wages were at stake in this case.

A former minority male employee filed a claim in December 1996 for a position he did not receive while employed in May 1996. Employee requested the next available position and back wages. The AkSCHR sent a letter that they were backlogged and that "their inventory of cases has grown at a disproportionate rate to the number of investigators available... and... to manage our inventory we must hold this case and other new cases in a suspense cabinet... we will assign held cases in order of receipt as investigators' case load allows". The letter went on to indicate this could take three to four months. The exposure for the back wages for this claim was approximately \$29,000.

A former minority female employee filed a claim in January 1995 for a position she did not receive in March 1994 and October 1994. This claim was closed in October, 1996 a full two years of potential back pay at stake to the employer.

TO: Honorable Members of State Affairs Committee: Rep. James - Chair
Rep. Dyson; Rep. Ivan; Rep. Hodgins; Rep. Vezey; Rep. Berkowitz; Rep. Elton

FROM: City and Borough of Juneau Human Rights Commission

SUBJECT: HB 468

"An act relating to damages awarded in complaints before the State Commission for Human Rights."

Please vote against this bill. It unfairly punishes victims of discrimination. As you know, the Alaska State Commission for Human Rights is backlogged well over 90 days on cases due to severe cutbacks in staffing over the last 10 years. The City and Borough of Juneau Human Rights Commission was established by the Juneau Assembly in 1992, partly in response to the closure of the Juneau office of the State Human Rights Commission. The Juneau Human Rights Commission has two primary functions: educating the community about the sources and effects of abrogations of human rights, and investigating and intervening on behalf of community members who request our assistance. In fulfilling the second function, we refer numerous complainants to the State Human Rights Commission. We feel strongly that HB 468 unfairly punishes victims of discrimination by limiting back pay awards to which they would be legally entitled because of unlawful discrimination.

Thank you for your attention to this matter. If you have questions, please contact the Commission Chair, Leslie Longenbaugh, at 586-1400.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB468

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title "An Act relating to damages... before the State Commission for Human Rights" BRU Commissions/Special Offices
 Component Human Rights Commission
 Sponsor House Rules Committee
 Requester House State Affairs Component Serial No. 01

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	4,592.6	2,725.3	2,725.3	2,579.1	2,579.1	2,579.1
Travel	54.0	54.0	54.0	54.0	54.0	54.0
Contractual	191.3	191.3	197.0	197.0	202.9	202.9
Supplies	26.4	26.4	26.4	26.4	26.4	26.4
Equipment	286.8	10.0	10.0	10.0	10.0	10.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5,151.1	3,007.0	3,012.7	2,866.5	2,872.4	2,872.4

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

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5,151.1	3,007.0	3,012.7	2,866.5	2,872.4	2,872.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5,151.1	3,007.0	3,012.7	2,866.5	2,872.4	2,872.4

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	55	35	35	24	24	24
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

An increase in the number of personnel and other line item funding will be necessary to process cases in ninety (90) days as required by this bill. Initially 55 positions would be added to the agency to clear its backlog of cases. In the following years, the number of additional positions would decrease. However, in order to process cases in ninety (90) days, a permanent increase in staff will be needed.

Prepared by: Paula M. Haley Paula M. Haley, Executive Director Phone 276-7474
 Division HUMAN RIGHTS COMMISSION Date 3/18/98
 Approved by: Jim Ayers, Chief of Staff Date _____
 Agency Office of the Governor

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Alaska State Legislature

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REPRESENTATIVE
JEANNETTE JAMES

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FAX (907) 465-2381



House of Representatives
HOUSE STATE AFFAIRS

MEMBERS:
REPRESENTATIVES
IVAN IVAN
AL VEZEY
FRED DYSON
MARK HODGINS
KIM ELTON
ETHAN BERKOWITZ

Fiscal notes for the following bills were requested via email on 3/12/98.

None had been received as of noon on 3/18/98.

Subject: fiscal notes
Author: Barbara_Cotting@legis.state.ak.us ("Barbara Cotting") at CC2MHS1
Date: 3/12/98 12:55 PM

I need fiscal notes for the following bills which are scheduled in House State Affairs for Thursday, March 19, 1998:

HB 463	Establish Alaska Public Building Fund
HB 466	Campaign Misconduct: False Information
HB 468	Damage Awards Human Rights Commission
HB 408	Seismic hazards Safety Commission
SB 307	U.S. Senate Vacancies

HB

481

WORK DRAFT

WORK DRAFT

WORK DRAFT

0-LS1716B
Cook
4/15/98

CS FOR HOUSE BILL NO. 481()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to application for and payment of permanent fund dividends of
2 certain deceased individuals; and providing for an effective date."

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

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

5 (h) If an individual who would otherwise have been eligible for a permanent
6 fund dividend dies after applying for the dividend but before the dividend is paid, the
7 department shall pay the dividend to a personal representative of the estate or to a
8 successor claiming personal property under AS 13.16.680. If an individual who would
9 otherwise have been eligible for a dividend and who did not apply for the dividend
10 dies during the application period, a personal representative of the estate or a successor
11 claiming personal property under AS 13.16.680 may apply for and receive the
12 dividend. Notwithstanding AS 43.23.011, the application for the dividend may be filed
13 by the personal representative or the successor at any time before the end of the
14 application period for the next dividend year.

WORK DRAFT

WORK DRAFT

0-LS1716B

1 * Sec. 2. AS 43.23.025(a) is amended to read:

2 (a) By October 1 of each year, the commissioner shall determine the value of
3 each permanent fund dividend for that year by

4 (1) determining the total amount available for dividend payments,
5 which equals

6 (A) the amount of income of the Alaska permanent fund
7 transferred to the dividend fund under AS 37.13.145(b) during the current year;

8 (B) plus the unexpended and unobligated balances of prior fiscal
9 year appropriations that lapse into the dividend fund under AS 43.23.045(d);

10 (C) less the amount necessary to pay prior year dividends from
11 the dividend fund in the current year under AS 43.23.005(h) and under
12 AS 43.23.055(3) and (7);

13 (D) less the amount necessary to pay dividends from the
14 dividend fund due to eligible applicants who, as determined by the department,
15 filed for a previous year's dividend by the filing deadline but who were not
16 included in a previous year's dividend computation;

17 (E) less appropriations from the dividend fund during the
18 current year, including amounts to pay costs of administering the dividend
19 program and the hold harmless provisions of AS 43.23.075;

20 (2) determining the number of individuals eligible to receive a dividend
21 payment for the current year and the number of estates and successors eligible to
22 receive a dividend payment for the current year under AS 43.23.005(h); and

23 (3) dividing the amount determined under (1) of this subsection by the
24 amount determined under (2) of this subsection.

25 * Sec. 3. Section 1 of this Act is retroactive to January 1, 1998

26 * Sec. 4. Sections 1 and 3 of this Act take effect immediately under AS 01.10.070(c).

27 * Sec. 5. Section 2 of this Act takes effect January 1, 1999.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 3, 1998

FURTHER REFERRALS: Finance

Date of Committee Action: 4/16/98

The STATE AFFAIRS Committee considered:

HB 481

HOUSE BILL NO. 481

PERMANENT FUND DIVIDENDS FOR ESTATES

"An Act relating to application for and payment of permanent fund dividends of certain deceased individuals; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 481 (STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) REV _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Jeanette James</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE *Jeanette James*

Alaska State Legislature

CHAIR:
REPRESENTATIVE
JEANNETTE JAMES

State Capitol
Room 102
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381



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ETHAN BERKOWITZ

SPONSOR STATEMENT HOUSE BILL 481

"An Act relating to application for and payment of permanent fund dividends of certain deceased individuals; and providing for an effective date."

House Bill 481 corrects an inequity in the categories of individuals who may receive Permanent Fund Dividends (PFDs). Currently, eligible individuals fall under numerous categories. Besides those physically present in the state for the entire period of eligibility, categories include individuals absent from the state for military reasons, educational advancement or medical treatment. Additionally, individuals accompanying those who are absent from the state for medical treatment are also eligible to receive a dividend.

One category of eligible individuals, however, has been deprived of the opportunity to receive PFDs. Those are the individuals who, though eligible to receive a PFD, do not because they died during the application period before applying. In other words, they do not receive a permanent fund dividend simply because they died at the wrong time of the year.

The application deadline for permanent fund dividends is March 31 of the year following the year for which the dividend applies. This dividend is normally paid sometime the following October. If an eligible individual applies for and receives a dividend and then dies, the individual's estate has access to the permanent fund dividend. Similarly, although by regulation rather than statute, the PFD of an eligible individual who applies for a PFD but dies before receiving it, is also given to the individual's estate. However, if an eligible individual dies during the application period prior to applying, the estate's representative is unable to apply on the individual's behalf. This creates a class of individuals based solely on the date of their deaths.

House Bill 481 corrects this inequity. It puts into statute that the estate of an individual who applies for a PFD but dies before receiving it may keep the PFD. It also provides that as long as an individual was eligible for and would have received a permanent fund dividend had the individual continued to live, the individual's estate is eligible to apply for and receive the dividend. This correction could be a great assistance in many circumstances.

The dividend of an individual who died unexpectedly could be used by the family to help pay the funeral expenses and any medical expenses that may have been incurred. It could be used to pay for the support of an individual's offspring or to assist with other costs. The family of a deceased individual should not be deprived of the Permanent Fund Dividend simply because of the time of year during which the individual died. Nor, on a less compassionate note, should an individual's creditors be deprived if no heirs exist.

House Bill 481 requires no additional funding. Its effect on the amount of individual permanent fund dividends would be negligible; however the advantages to the family of the deceased individual would be great.

Alaska State Legislature

CHAIR:
REPRESENTATIVE
JEANNETTE JAMES

State Capitol
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Juneau, Alaska
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House of Representatives
HOUSE STATE AFFAIRS

MEMBERS:
REPRESENTATIVES
IVAN IVAN
AL VEZEY
FRED DYSON
MARK HODGINS
KIM ELTON
ETHAN BERKOWITZ

SECTIONAL ANALYSIS

HOUSE BILL 481

"An Act relating to application for and payment of permanent fund dividends of certain deceased individuals; and providing for an effective date."

- Section 1: Adds a new subsection to AS 43.23.005, Eligibility, which provides that the permanent fund dividend of an individual eligible to receive a dividend who applied for, but died before receiving, the dividend may be paid to the deceased individual's estate. Also provides that the personal representative of the estate, or a successor claiming personal property under AS 13.16.680, Formal Testacy Proceedings Order, Foreign Will, may apply for the dividend of an individual eligible to receive a dividend who dies during the application period before applying for the dividend.
- Section 2: Amends AS 43.23.025(a), Amount of Dividend, to specify that the number of estates and successors eligible to receive a dividend payment for the current year be included with the number of individuals eligible to receive a dividend for that year.
- Section 3: Provides a type of transition to allow a personal representative of an estate that, or a successor who, qualifies for and has not received a dividend for 1997 or 1998 to apply for the dividend during the 1999 application period. Gives the Department of Revenue authorization to prescribe and furnish an application form for claiming a dividend under this section.
- Section 4: Makes Section 1 retroactive to January 1, 1997
- Section 5: Provides an immediate effective date for Sections 1, 3, and 4 of the bill.
- Section 6: Section 2 of the legislation becomes effective January 1, 1999.

Permanent Fund and the state's natural and mineral resources are not rationally related to the distinctions Alaska seeks to make in the dividend program between newer residents and those who have been in the state since 1959. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Objective to reward citizens for past contributions is not a legitimate state purpose since this reasoning could open the door to state apportionment of other rights, benefits and services according to length of residency and would permit the states to divide citizens into expanding numbers of permanent classes, a result which would be clearly impermissible. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

This statute does not impose any threshold warning period on those seeking dividend benefits; persons with less than a full year of residency are entitled to share in the distribution. Nor does the statute purport to establish a test of the bona fides of state residence. Instead, the dividend statute creates fixed, permanent distinctions between an ever increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the state. *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Permanent fund dividend payments were made for "public purpose" within the meaning of Alaska Const., Art. IX, § 6. *Beattie ex rel. Beattie v.*

United States, 635 F. Supp. 481 (D. Alaska 1986), aff'd sub nom. *Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Permanent fund dividend payments subject to federal income tax. — Permanent Fund dividend payments are income and, since these payments are not excludable from gross income as "gifts", they are therefore subject to the federal income tax. *Beattie ex rel. Beattie v. United States*, 635 F. Supp. 481 (D. Alaska 1986), aff'd sub nom. *Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Payments received under Alaska's Permanent Fund Dividend Program are subject to federal income tax. *Greisen ex rel. Greisen v. United States*, 831 F.2d 916 (9th Cir. 1987), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 699 (1988).

Property of bankruptcy estate. — Debtor's permanent fund dividend, sent to IRS by the State of Alaska, is the property of the bankruptcy estate and subject to turnover by the IRS pursuant to 11 U.S.C. §§ 541 and 542. Interest of IRS in permanent fund dividend was no greater than that of any other levying creditor. If levy is valid, IRS holds a perfected lien against debtor's permanent fund dividend. *Camacho v. United States*, 177 Bankr. 667 (Bankr. D. Alaska 1994).

Sec. 43.23.005. Eligibility. (a) An individual is eligible to receive one permanent fund dividend each year in an amount to be determined under AS 43.23.025 if

- (1) the individual applies to the department;
 - (2) on the date of application the individual is a state resident;
 - (3) the individual was a state resident for at least the calendar year immediately preceding January 1 of the current dividend year;
 - (4) the individual has been physically present in the state at some time during the prior two calendar years before the current dividend year; and
 - (5) the individual is
 - (A) a citizen of the United States;
 - (B) an alien lawfully admitted for permanent residence in the United States;
 - (C) an alien with refugee status under federal law; or
 - (D) an alien that has been granted asylum under federal law.
- (b) *[Repealed, § 18 ch 4 SLA 1992.]*
- (c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of a disabled or an incompetent individual who is eligible to receive a payment under this section. Notwithstanding (a)(2) — (4) of this section, a minor is eligible for a dividend if, during the two calendar years immediately preceding the current dividend year, the minor was born to or adopted by an individual who is eligible for a dividend for the current dividend year.
- (d) Notwithstanding the provisions of (a) — (c) of this section, an individual is not eligible for a permanent fund dividend for a dividend year when
- (1) during the calendar year immediately preceding that dividend year the individual was sentenced as a result of conviction in this state of a felony;
 - (2) during all or part of the calendar year immediately preceding that dividend year, the individual was incarcerated as a result of the conviction in this state of a
 - (A) felony; or
 - (B) misdemeanor if the individual has been convicted of two or more prior crimes as defined in AS 11.81.900.

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(e) [Repealed, § 64 ch 21 SLA 1991.]

(f) In a time of national military emergency, the commissioner may waive the requirement of (a)(4) of this section for an individual absent from the state under military orders while serving in the armed forces of the United States, or for the spouse and dependents of that individual.

(g) For purposes of applying (d)(1) of this section, the date the court imposes a sentence or suspends the imposition of sentence shall be treated as the date of conviction. For purposes of applying (d)(2)(B) of this section, multiple convictions arising out of a single criminal episode shall be treated as a single conviction. (§ 1 ch 102 SLA 1982; am § 1 ch 57 SLA 1987; am § 1 ch 54 SLA 1988; am § 1 ch 159 SLA 1988; am §§ 2, 3 ch 107 SLA 1989; am § 1 ch 63 SLA 1990; am §§ 46, 62 ch 21 SLA 1991; am § 1 ch 68 SLA 1991; ara §§ 4 — 8, 18 ch 4 SLA 1992; am §§ 2, 3 ch 46 SLA 1996)

Revisor's notes. — Sections 2 and 3, ch. 99, SLA 1985, amend (c) and add a new subsection (d) of this section respectively. The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the subsections will read: "(c) A parent, guardian, or other authorized representative may claim a permanent fund dividend on behalf of an unemancipated minor or on behalf of an incompetent individual who is eligible to receive a dividend under this section.

"(d) A person who is eligible to receive a permanent fund dividend under this section, or who is authorized to claim a dividend on behalf of another under (c) of this section, may elect to receive the dividend either in cash or as an annuity credit. Alternatively, a person may elect to receive 25 percent, 50 percent, or 75 percent of the dividend in cash and the remainder as an annuity credit. A person who is 65 years of age on or before January 1, 1988 may only receive the permanent fund dividend in cash and may not elect to receive an annuity credit."

Cross references. — For legislative findings in connection with the 1989 amendment to (a) of this section, see § 1(a), ch. 107, SLA 1989 in the Temporary and Special Acts.

For the application deadlines for minors who qualified for a dividend for 1992 because of the 1992 amendment to (c) of this section, see § 19, ch. 4, SLA 1992 in the Temporary and Special Acts.

For legislative purpose relating to the 1996 amendments amending subsection (d) and adding subsection (g), see § 1, ch. 46, SLA 1996 in the Temporary and Special Acts.

Effect of amendments. — The 1987 amendment in subsection (a) deleted "on the date of application the individual" at the end of the introductory language, added "on the date of application the individual" at the beginning of paragraph (1), and in paragraph (2) substituted "the individual was" for "has been" and at the end of the paragraph substituted "April 1 of the current dividend year" for "the date of application."

The first 1988 amendment added subsection (d).

The second 1988 amendment, in subsection (a), deleted "and" at the end of paragraph (1), added "and" at the end of paragraph (2), and added paragraph (3).

The 1989 amendment substituted "24 consecutive months" for "six consecutive months" in paragraph (a)(2) and added subsection (e).

The 1990 amendment, effective January 1, 1991, inserted "a disabled or" before "an incompetent" in subsection (c).

The first 1991 amendment, effective June 11, 1991, substituted "12 consecutive months" for "24 consecutive months" in paragraph (a)(2) and repealed subsection (e).

The second 1991 amendment, effective June 20, 1991, added subsection (f).

The 1992 amendment, effective January 1, 1993, rewrote subsections (a), (c), and (d), repealed subsection (b), and made a paragraph reference substitution in subsection (f).

The 1996 amendment, effective August 27, 1996, rewrote subsection (d) and added subsection (g).

Editor's notes. — Under §§ 5 and 20, ch. 4, SLA 1992, from April 1, 1992, to January 1, 1993, and retroactive to January 1, 1992, the last sentence of (c) of this section read "Notwithstanding (a)(1)-(3) of this section, a minor is eligible for a dividend if, during the 24 months immediately preceding the current dividend year, the minor was born to or adopted by an individual who is eligible for a dividend for the current dividend year."

Section 6, ch. 46, SLA 1996 provides that the 1996 amendments that amended subsection (d) and added (g) "apply only to individuals convicted of crimes committed after December 31, 1996" and that "[c]onvictions for crimes committed before January 1, 1997, may not be considered in determining the number of prior convictions for purposes of applying AS 43.23.005(d)(2)(B)."

Legislative history reports. — For legislative letter of intent relating to the enactment of subsection (f) by § 1 ch. 68, SLA 1991 (HCS CSSB 98(FIN)), see 1991 Senate Journal, pages 256, 257.

NOTES TO DECISIONS

Constitutionality. — The 1989 amendment to paragraph (a)(2) of this section, imposing a two-year residency requirement for applicants, was unconstitutional; the one year requirement in subsection (e) is the applicable period, since no appeal is pending., (The 1991 amendment codified this decision.), Lindley, et al. v. Malone, Superior Court, 3rd Jud.

Dist. C.A. No. 90-2586 (1990).

Subsection (d) does not violate the equal protection clause of the United States Constitution and/or the Alaska Constitution. State v. Anthony, 810 P.2d 155 (Alaska 1991).

Subsection (d), which makes incarcerated felons ineligible for permanent fund dividends, does not

Revision Date: _____ Dept. Affected: _____ Revenue _____
 Title: Permanent Fund Dividends for Estates BRU: Permanent Fund Dividend
 Component: Permanent Fund Dividend
 Sponsor: (H) STA
 Requestor: (H) STA COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year cost \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

This bill will allow the estate to receive the dividend of an individual who died after filing the PFD application. It also allows the personal representative of the estate to apply for a dividend on behalf of an individual who dies during the PFD application period. These estates must be included and accounted for in the annual calculation of the dividend. There is a one-time retroactivity that will allow estates to file for individuals who died in the 1997 and the 1998 filing periods, to file by March 31, 1999. Thereafter, an estate making an application under this provision must file an application by July 31 of the dividend year.

This bill will have no fiscal affect on the Permanent Fund Dividend Program.

Prepared by: Nanci Jones, Director
 Division: Permanent Fund Dividend Division
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-2323
 Date: April 14, 1998
 Date: April 14, 1998

Author: Shari_Kochman@gov.state.ak.us (Shari Kochman) at CC2MHS1
Date: 4/13/98 1:33 PM
Priority: Normal
TO: Barbara Cotting at LAA_TRANS
Subject: Re: fiscal note

Request is in
thanks

Reply Separator

Subject: fiscal note
Author: Barbara_Cotting@legis.state.ak.us (Barbara Cotting) at CC2MHS1
Date: 4/9/98 11:44 AM

I have scheduled HB 481, Permanent Fund Dividends for Estates, in
State Affairs for Thursday, April 16, and need fiscal notes.

----- Original message header:

>MAIL FROM:<Barbara_Cotting@legis.state.ak.us>

>RCPT TO:<shari_kochman@gov.state.ak.us>

>DATA

>Received: from smtpmail1.legis.state.ak.us ([146.63.202.96]) by pop1.state.ak.u

s (Post.Office MTA v3.1.2 release (PO205-101c) ID# 0-44072U100L100S0) with ESMT

id AAA159 for <shari_kochman@gov.state.ak.us>; Thu, 9 Apr 1998 11:47:11 -0800

>Received: from ccbridge.legis.state.ak.us (ccbridge.legis.state.ak.us [146.63.2

02.114]) by smtpmail1.legis.state.ak.us (8.8.5/8.7.3) with SMTP id LAA30006 for

<shari_kochman@gov.state.ak.us>; Thu, 9 Apr 1998 11:47:01 -0800

>Message-Id:<199804091947.LAA30006@smtpmail1.legis.state.ak.us>

>Date: Thu, 09 Apr 1998 11:44 -0900

>From: "Barbara Cotting" <Barbara_Cotting@legis.state.ak.us>

>To: "shari_kochman@gov.state.ak.us" <shari_kochman@gov.state.ak.us>

>Subject: fiscal note

----- End of message header.

HCR

7

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 22, 1997

FURTHER REFERRALS:

Date of Committee Action: 2/25/97

The STATE AFFAIRS Committee considered:

HCR 7

HOUSE CONCURRENT RESOLUTION NO. 7

AMEND UNIFORM RULES:COM. MEETING NOTICE

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to notice of committee meetings held during the first week of a first regular session.

recommends it be replaced with the following committee substitute [] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

[] fiscal note(s) _____

[] fiscal note(s) _____

[x] zero fiscal note(s) L.H.A.

[] zero fiscal note(s) _____

Table with 5 columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. It contains four rows of signatures with checkmarks in the DP column.

CHAIR'S SIGNATURE [Signature]

Alaska State Legislature

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CO-CHAIR, RESOURCES COMMITTEE
VICE CHAIR, JUDICIARY COMMITTEE
MEMBER, STATE AFFAIRS COMMITTEE

FINANCE SUBCOMMITTEE-8
DEPT. OF NATURAL RESOURCES
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT
DEPT. OF ENVIRONMENTAL CONSERVATION

Representative Joe Green

District 10

Sponsor Statement

HCR 7 - Amending Rule 23(a) of the Uniform Rules

HCR 7 addresses the problem of meeting the public notice requirement of the Uniform Rules during the first week of the first legislative session.

Problem: Uniform Rule 23 (a) states that "the person who chairs the committee" shall provide public notice of a meeting "by 4:00 p.m. on the preceding Thursday." Under this requirement it is technically impossible for a chairman to hold a meeting during the first week of the first legislative session. A member is selected to serve as a chairman (or co-chairman) by the Committee on Committees. Under normal circumstances the Committee on Committees report is in effect until the members of the next legislature are sworn in. So the previous chairman has no authority beyond his/her term as chairman, and the new chairman has already missed the preceding Thursday deadline and can therefore not meet during the first week.

In order to mobilize the committee, prospective new chairmen have for some years dutifully noticed meetings planned for the first week of session by the preceding Thursday deadline, even though they do not yet preside over the committee. The alternative, of course, would be to give notice on the first day of session, and then wait until the following week to hold the first meeting.

Solution: HCR 7 amends the Uniform Rules to allow for a hearing during the first week of the first session to be held after 24 hours notice. Under such a rule, a meeting could be held on the second day of session if notice was given immediately after swearing in and approval of the Committee on Committees report. Such a hearing could only be held for the purposes of an overview or committee organization, as the requirement in Rule 23(a) that a bill or resolution be noticed for a least five days before the first public hearing would still apply.

HCR 7 - Amend Uniform Rule 23(a) by Representative Joe Green

Problem #1: The member who is chairman on the preceding Thursday CEASES to be the chairman on Legislative Day 1 when the new legislature is sworn in.

Problem #2: The chairman selected on legislative Legislative Day 1 had no authority on the preceding Thursday to notice the meeting.

Result: Under strict adherence to the rule meetings scheduled during the first week of the first session fail to meet the public notice requirement..

Solution: HCR 7 allows meetings to be held with 24 hours notice during the first week of session.

M	T	W	Preceding Thursday	F	S	S
M Legislative Day 1	T Legislative Day 2	W Legislative Day 3	TH Legislative Day 4	F Legislative Day 5	S Legislative Day 6	S Legislative Day 7

legislative matter which is consistent with the jurisdiction of the committee. A standing, special, or joint committee which acts between legislative sessions constitutes a subcommittee of the Legislative Council for administrative purposes. A special or joint committee may expend money only in accordance with an appropriation made for the work of the committee.

(d) A committee may not be established unless authorized by law or by the Uniform Rules.

OPEN AND EXECUTIVE SESSIONS

RULE 22. OPEN AND EXECUTIVE SESSIONS. (a) All meetings of a legislative body are open to all legislators, whether or not they are members of the particular legislative body that is meeting, and to the general public except as provided in (b) of this rule.

(b) A legislative body may call an executive session at which members of the general public may be excluded for the following reasons:

(1) discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit;

(2) discussion of subjects that tend to prejudice the reputation and character of a person;

(3) discussion of a matter that may, by law, be required to be confidential.

(c) When a legislative body desires to call an executive session in accordance with (b) of this rule, the body shall first convene as a public meeting and the question of holding an executive session shall be determined by a majority vote of the members present.

(d) The provisions of this rule may not be interpreted as permitting the exclusion of a legislator from an executive session, whether or not the legislator is a member of the body that is meeting. A legislator not a member of the body holding an executive session shall, however, be subject to the same rules of confidentiality and decorum as pertain to regular members of the body.

COMMITTEE MEETINGS

RULE 23. COMMITTEE MEETINGS. (a) Written notice of the time, place and subject matter of all meetings of standing, special, and joint committees during a week