

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 80/2

9521 SENATE HEALTH EDUCATION & SOCIAL SERVICES 158

Orange County argues that even if Warner was forced to attend the meetings, he was not required to participate in the religious exercises that took place. The County argues that, as a mature adult, Warner was less susceptible to such pressure than the children who were required to stand in respectful silence during a school prayer in *Lee v. Weisman*, 505 U.S. at 591-95, 112 S.Ct. at 2658-59; it points out that the Supreme Court expressly questioned whether the obligation imposed by the school in *Lee* might have been constitutionally tolerable "if the affected citizens [had been] mature adults." *Id.* at 593, 112 S.Ct. at 2658.

We do not find Orange County's argument convincing. Although it is true Warner was more mature, his exposure was more coercive than the school prayer in *Lee*. The plaintiff in *Lee* was subjected only to a brief two minutes of prayer on a single occasion. Warner, in contrast, was required to participate in a long-term program of group therapy that repeatedly turned to religion as the basis of motivation. And when he appeared to be pursuing the Twelve Steps of the A.A. program with insufficient zeal--"Thirteen Stepping" in A.A. parlance--the probation officer required that he attend "Step meetings" to intensify his motivation. Warner was also paired with another member of A.A. as a method of enhancing his indoctrination into the group's approach to recovery from alcoholism. Most importantly, failure to cooperate could lead to incarceration. Although the trial judge found that Warner's success in remaining aloof diminished his damages to a token of one dollar, the fact that Warner managed to avoid indoctrination despite the pressure he faced does not make the County's program any less coercive, nor nullify the County's liability.

[13] The County argues further that the non-sectarian nature of the A.A. experience immunizes its use of religious symbolism and practices from Establishment Clause scrutiny. The argument is at the very least factually misleading, for the evidence showed that every meeting included at least one explicitly Christian prayer. Furthermore, the claim that non-sectarian religious exercise falls outside the First Amendment's scrutiny has been repeatedly rejected by the Supreme Court. As the Court made clear in *Board of Education of Kiryas Joel v. Grumet*, --- *213 U.S. ---, 114 S.Ct. 2481, 129 L.Ed.2d 546 (1994), "a principle at the heart of the

Establishment Clause [is] that government should not prefer one religion to another, or religion to irreligion." *Id.* at ---, 114 S.Ct. at 2491; see also *Allegheny*, 492 U.S. at 591, 109 S.Ct. at 3100; *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 216-17, 83 S.Ct. 1560, 1568-69, 10 L.Ed.2d 844 (1963). [FN10]

FN10. Orange County relies upon *Stafford v. Harrison*, 766 F.Supp. 1014 (D.Kan.1991), for the proposition that A.A. participation is not a religious exercise. *Stafford* involved a mandatory prison-based substance abuse program, structured around the principles of A.A. The court upheld the program, arguing that A.A.'s notions of a "higher power" and "God" were sufficiently flexible and non-denominational that the program could not be said to constitute a "religion." This is a misapplication of First Amendment doctrine, which prohibits coerced participation in religious exercise of any variety for its favoritism of religion over non-religion. We decline to follow that case, which has been criticized for misreading relevant Supreme Court precedent. See *Scarpino v. Grosshiem*, 852 F.Supp. 798, 804 n. 5 (S.D.Iowa 1994); *Warner v. Orange County Dep't of Probation*, 827 F.Supp. 261, 267 (S.D.N.Y.1993).

Similarly, the County's reliance on *Marsh v. Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983), is unavailing. In *Marsh*, the Supreme Court held that the Nebraska state legislature did not violate the Establishment Clause by commencing its sessions with a sectarian prayer. That opinion relied heavily on the long tradition of public prayer in this context. *Id.* at 786-90, 795, 103 S.Ct. at 3333-35, 3338 (noting "unbroken practice for two centuries in the National Congress"). The Court in *Lee* noted the significant differences between the opening ceremony of a state legislative session where adults are free to "enter and leave with little comment and for any number of reasons" and the powerful emotional compulsion for a child to be present at her high school graduation. *Lee*, 505 U.S. at 595-97, 112 S.Ct. at 2660. The differences between the invocation at a session of the state legislature and Warner's compulsory adherence to the A.A. program are even more obvious. [FN11]

FN11. The parties also offer analyses of this case within the much-maligned but still viable framework

of *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971). Compare *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 n. 7, 113 S.Ct. 2141, 2148 n. 7, 124 L.Ed.2d 352 (1993)(noting ongoing viability of *Lemon*) with *Lee*, 505 U.S. at 643-45, 112 S.Ct. at 2685 (Scalia, J., dissenting) (noting criticism of *Lemon*) and *Lamb's Chapel*, 508 U.S. at 397-400, 113 S.Ct. at 2149-50 (Scalia, J., concurring)(same). Whatever other tests may be applicable in the Establishment Clause context, the Supreme Court has made clear that "at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Lee*, 505 U.S. at 587, 112 S.Ct. at 2655. Because sending Warner to A.A. as a condition of his probation, without offering a choice of other providers, plainly constituted coerced participation in a religious exercise, we find a violation of the Establishment Clause.

Resolving questions as to the reach of the Establishment Clause "of necessity [requires] line-drawing, ... determining at what point a dissenter's rights of religious freedom are infringed by the State." *Id.* at 598, 112 S.Ct. at 2661. We have little difficulty concluding that the constitutional line was crossed here.

Conclusion

We have considered Orange County's other claims, and find them to be without merit. The judgment of the district court is affirmed.

WINTER, Circuit Judge, dissenting:

I respectfully dissent.

The pertinent facts concerning Warner's plea and sentencing are not in dispute. He was arrested and pled guilty to his third alcohol-related driving offense in a year. Prior to meeting with the probation officer who would recommend a sentence, Warner voluntarily began to attend Alcoholics Anonymous meetings. This was on the advice of his lawyer, who, according to Warner's testimony, believed "that the court would look upon me more favorably in the sentencing procedure if I can show that I was pursuing a program of rehabilitation." The probation officer subsequently recommended to the sentencing court that Warner continue his

ongoing attendance at A.A. meetings as a special condition of probation. The sentencing *214 judge, who is obliged by state law to make an independent sentencing decision, imposed that condition. Warner registered no objection at the sentencing hearing and took no appeal. Later, he moved the sentencing court to relieve him of any obligation to attend meetings with a religious component and was quickly accommodated with a non-religious counseling program. Based on these facts, my colleagues hold that the county probation authority may be sued for damages under Section 1983 for violating the Establishment Clause.

My dissent is based on two of the available grounds. First, Warner waived his claim or, applying tort law, consented to the probation officer's alleged intentional tort of recommending to the court attendance at A.A. meetings as a condition of probation. Indeed, Warner voluntarily began attendance at A.A. meetings before any involvement by the probation office in order to convince the sentencing judge that his voluntary selection of this particular rehabilitative program obviated the need for a stiffer sentence. Moreover, the judge exercised his exclusive authority to determine what sentence should be imposed. The imposition of the sentence by the court was, therefore, an independent cause that superseded the recommendation of the probation officer in causing the injuries. Second, the invocation of the Establishment Clause, rather than the Free Exercise Clause, puts into play a principle that portends changes in our penal system that are not required, in my view, by the Constitution.

1

I turn first to the consent and causation issues.

This lawsuit is an instance of remarkable gall. Warner voluntarily selected and began attendance at A.A. meetings on the advice of counsel in order to impress the sentencing court with his determination to overcome his alcoholism. Now he complains that a subsequent recommendation of a probation officer that he attend such meetings entitles him to monetary damages.

Although we do not have the minutes of the sentencing hearing, Warner's testimony in the district court stated that his ostensible desire to

attend A.A. meetings was to be used as a plus in his favor in persuading the sentencing court to be lenient. The judge thus imposed a condition of probation embraced by Warner on his own initiative. Warner never indicated to the sentencing court his view that a condition of probation requiring attendance at A.A. meetings rendered the proposed sentence unconstitutional. Nor did Warner appeal from the sentence imposed.

By any measure known to me, Warner's conduct was a waiver, the purposefully planned abandonment of a known right or, in common law tort doctrine, consent to an intentional tort, a full defense under New York law. See *Van Vooren v. Cook*, 273 A.D. 88, 75 N.Y.S.2d 362 (4th Dep't 1947); see also *Prosser and Keeton on the Law of Torts* § 18. I would hold, therefore, that his claim for damages is barred.

Even if the principles relating to injuries caused by negligence relied upon by my colleagues are applied, Warner's claim fails. Warner's initiative in voluntarily selecting and attending A.A. meetings and his failure to bring his present claim to the court's attention were the cause of whatever constitutional harm he suffered from the recommendation of the probation officer. [FN1] As his successful petition for state collateral review under N.Y.Crim. Proc. L. § 440.20(1) and the recent decision in the New York Court of Appeals in *Griffin v. Coughlin*, 1996 WL 317180, --- N.Y.2d ---, ---N.Y.S.2d ---, --- N.E.2d --- (June 11, 1996), demonstrate, relief was his for the asking.

FN1. I do not mean to suggest that, if the constitutional challenge were unsuccessfully brought to the court's attention, Warner's suit against the probation authority would have merit. Rather, an appeal—to the United States Supreme Court if necessary—would have been in order.

I also cannot agree with the "finding" that the sentencing judge did not make the independent judgment required of him by state law, see *People ex rel. Perry v. Cassidy*, 23 A.D.2d 706, 257 N.Y.S.2d 228, 229 (1965), and that that judgment was not, in the jargon of negligence law, a superseding cause of Warner's injuries. In my view and that of others, *215 see *People ex rel. Brown v. La Vallee*, 13 A.D.2d 556, 211 N.Y.S.2d 728, 729 (1961); *Honeycutt v. Ward*, 612 F.2d 36, 41

(2d Cir.1979), cert. denied, 446 U.S. 985, 100 S.Ct. 2969, 64 L.Ed.2d 843 (1980), a heavy presumption of correctness attends proceedings such as the one before us where no error was brought to the attention of the sentencing judge. [FN2] My colleagues, and the district judge, indulge in the contrary presumption, namely, that acceptance of the sentencing recommendation of a probation officer as to sources of treatment is merely "rubberstamping." They do this notwithstanding testimony that New York judges frequently reject special conditions of probation recommended by probation authorities. [FN3] They also ignore the possibility that recommendations of probation officers may be tailored to the known views of judges, creating a false appearance of rubberstamping. [FN4]

FN2. I need not reach the issue given the facts of this case, but there is a strong argument to be made that, where the sentencing judge cannot under state law delegate the power to determine a sentence to probation officers—as in New York—an illegal delegation is itself a superseding cause and a defendant's remedy is an appeal rather than a Section 1983 action.

FN3. My colleagues rely upon N.Y. Penal Law § 65.10(2)(e) regarding the requirement that a court consult with the local probation authority regarding selection of an alcohol abuse program. Because this provision requires that the consultation be with the probation authority "or ... other public or private agency," it does not give any special status to probation authorities over other sources of information.

FN4. I believe this presumption to be rather unfair to state court judges. They lack any practical method of responding to the conclusion that they abdicated responsibility, at least short of asking to testify in the federal proceeding that "I was indeed following the law, just as the record indicates."

Moreover, as noted, the record is not silent as to whether the particular sentencing judge would have imposed the requirement of attendance at A.A. meetings had Warner indicated his concerns about the religious aspects of A.A. In fact, it fairly shouts that the judge would have rejected the condition. After sentencing, Warner complained to the probation officer about the religious aspects of A.A.

At this point, of course, the officer lacked power to alter the sentence. [FN5] Warner then, for the first time, challenged the sentence by filing a petition under N.Y.Crim. Proc. L. § 440.20(1) (McKinney 1995) to set aside the pertinent part of his sentence on the ground that it was invalid. The court ruled that Warner could comply with the conditions of probation by going to a non-religious alcohol counseling program and denied the petition as moot. Indeed, Warner's complaint alleged that "[a]s a result of the Town of Woodbury Justice Court's Decision and Order, plaintiff is currently no longer required by his probation officer to participate in Alcoholics Anonymous but is, instead, required to attend an alternative program." In short, Warner's own papers indicate that as soon as the judge was alerted to Warner's distaste for the religious aspects of A.A., the judge immediately altered that condition of probation. That being the case, the record support for the finding that the judge merely rubberstamped the recommendation of the probation officer is not apparent to me.

FN5. One of Warner's original theories was that the sentence vested discretion in the probation officer to vitiate the requirement of A.A. attendance and that the probation officer's exercise of discretion in requiring continued attendance, rather than the original recommendation, was the basis of liability. The district court and my colleagues focus instead on the recommendation. Because I read the sentence to vest discretion to excuse further A.A. attendance only upon a completed rehabilitation and not for other reasons, such as a probationer's distaste for the religious aspects of the program, I agree that the focus should be on the recommendation.

Furthermore, another finding, not made by my colleagues, is necessary to establish the recommendation of the probation officer as the legal cause of Warner's injuries. To reach my colleagues' conclusion, we would also have to find that an appeal from the sentence would have been fruitless because the New York appellate courts would simply not have given any consideration whatsoever to Warner's constitutional challenge out of blind and unhesitating deference to the recommendation of the Orange County probation officer. Quite the contrary, we now know that relief was available. See Griffin.

Malley v. Briggs, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986), works against *216 Warner. The procuring of a search warrant is not an adversary proceeding, much less one like sentencing, in which the subject has a constitutional right to counsel and a hearing on the merits. Because the magistrate issuing a warrant is not subject to adversary argument revealing flaws in the application and affidavit, the magistrate's intervening decision does not immunize the officer's unreasonable conduct. Malley simply has no application to a proceeding that is adversary and subject to immediate appellate review.

II

I now turn [FN6] to the use of the Establishment Clause to invalidate a condition of probation that requires attendance at A.A. meetings. I will assume that the religious aspects of A.A. are sufficient to trigger a violation of either the Establishment or Free Exercise Clause if the other requisites of such claims are met. Nevertheless, I do not agree that the Establishment Clause provides a basis for relief to Warner.

FN6. I do not reach the immunity issues. I do note, however, that the immunity of probation officers is generally believed to be derived from judicial immunity. See *Dorman v. Higgins*, 821 F.2d 133, 136-37 (2d Cir.1987). My colleagues' attempt in footnote 7 to distinguish a claim of municipal liability for the conduct of judges seems, therefore, somewhat incomplete.

In finding an Establishment Clause violation, my colleagues rely heavily upon the fact the probation authority did not recommend to the sentencing court that Warner have a choice between A.A. and a non-religious rehabilitation program. As a result, he was, in their view, coerced into participation in A.A. (In my view, of course, he freely chose A.A.) Although, as my colleagues point out, coerced participation in religious ceremonies may be a factor in finding an Establishment Clause violation, see *Lee v. Weisman*, 505 U.S. 577, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992), it is not a necessary element of such a claim, and a choice among all available options is not a remedy for a valid Establishment Clause claim.

Relevant Establishment Clause precedent bars

governmental endorsement and support of religion even in contexts in which no coercion exists. The "preservation and transmission of religious beliefs and worship is ... committed to private sphere." Lee at 589, 112 S.Ct. at 2656, and government may not support religious practices even when those engaged in them have freely chosen to do so. Government may not aid "a single religion or religion generally," *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 382, 105 S.Ct. 3216, 3221, 87 L.Ed.2d 267 (1985), but must "maintain a course of neutrality among religions, and between religion and nonreligion." *Id.* A law that merely facilitates citizens in the practice of their religion may, therefore, be invalid even though no non-believer is negatively affected--even as a taxpayer. See *Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, --- U.S. ---, 114 S.Ct. 2481, 129 L.Ed.2d 546 (1994).

If attendance at A.A. meetings as a condition of probation violates the Establishment Clause, it is because such a condition entails governmental sponsorship of religion over nonreligion. Following the logic of Establishment Clause jurisprudence, it would seem to me that such a condition is a violation whether or not the only person directly affected, the probationer, preferred a religiously oriented program over a secular one. The lack of governmental neutrality is precisely what caused the Supreme Court in *Grumet* to strike down a state law establishing a school district for the Village of Kiryas Joel, which was populated only by persons with a common religion. And, in *Lee*, surely the plaintiff's constitutional claim could not be satisfied by an offer of an additional ceremony at the high school graduation allowing speakers of her choice to express whatever spiritual or atheistic views--or disagreements with the spiritual or atheistic views of others--that were congenial to her.

Establishment Clause logic, if followed, therefore, would endanger any number of ubiquitous penal programs that are, in my view, clearly permissible. To take just two common examples, prisons may have chaplains, who systematically offer religious counseling, services, and other programs to prisoners. They may be selected, paid, and even monitored by state officials. Also, sentences to community service may involve service at *217 soup kitchens, many of which are operated by churches where a meal begins with a prayer and religious

tracts are distributed.

None of the programs described above violate the Establishment Clause in my view. Applying the three-part test established in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S.Ct. 2105, 2111, 29 L.Ed.2d 745 (1971), each has a secular purpose in that they all further rehabilitation in one way or another. None have as a principal or primary effect the advancement or inhibition of religion. Any such effect is incidental. Finally, they do not lead to excessive entanglement of the government in religion. I very much doubt that substantial disagreement exists over this point. The state's control over the lives and activities of prisoners certainly justifies its making religious programs available to them. Indeed, under our caselaw, a state must offer some congregational programs of a sectarian nature. See *Salahuddin v. Coughlin*, 993 F.2d 306 (2d Cir.1993); *Young v. Coughlin*, 866 F.2d 567, 570 (2d Cir.), cert. denied, 492 U.S. 909, 109 S.Ct. 3224, 106 L.Ed.2d 573 (1989). However, I also see no difference between the penal programs described above and Warner's sentence so far as the Establishment Clause--in contrast to the Free Exercise Clause--is concerned.

To be sure, my colleagues do not hold that attendance at A.A. meetings can never be a condition of probation. Indeed, they expressly state that Warner should have been given a choice, a statement I take to mean that persons facing a sentence for alcohol-related offenses may constitutionally be offered a choice between A.A. meetings (or other religiously-based rehabilitation programs) and alternative secular programs as a condition of probation. My disagreement is simply over whether such a choice is required, or even permitted, by the Establishment Clause.

I hasten to add that I do not view compulsory activity with a substantial religious component as a valid penal measure, at least where equally effective secular rehabilitative programs are available. [FN7] See *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987) (restriction on free exercise rights must be reasonably related to valid penological interest). Compulsory attendance at religious ceremonies as part of a penal sentence surely raises serious issues under the Free Exercise Clause and might well require the provision of a choice between secular and sectarian programs.

Warner makes no Free Exercise claim, however.

FN7. It is conceivable that in some areas the only rehabilitative program available, e.g., A.A., has some religious content.

III

This is a decision with important ramifications. It transports tort doctrine of proximate cause and foreseeability drawn from the law of negligence to the judicial process. In so doing, it fails to give any recognition to the more appropriate rules governing intentional torts, to the power of a party to a court proceeding to avoid harm by raising objections and taking appeals, or to the role of the judge as an independent decision-maker. It thus may have implications for advocates as well as for those who advise judges. See Note 6, *supra*. It also brings to sentencing, probation, and penal institutions Establishment Clause doctrine that may not be easily cabined.

At a practical level, my colleagues' decision exposes every probation authority in this circuit to suits for damages and attorney's fees in virtually every case in which a recommendation of attendance at A.A. meetings has been made and accepted within the statute of limitations period, if no available alternative was offered and such recommendations were commonly made. Liability will follow no matter whether the defendant ever brought the constitutional issue to the attention of the sentencing court. Other claims of unconstitutional recommendations under Section 1983 will follow notwithstanding failure to make objections to sentencing courts.

I therefore respectfully dissent.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

JADA QUINN and NINA STORM,)
)
 Appellants,)
)
 vs.)
)
 STATE OF ALASKA, DOPS, DMV,)
)
 Appellee.)

Case No. 3AN-95-8805 Civil

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O P I N I O N

This appeal involves the constitutionality of AS 28.15.183, which provides for administrative revocation of a minor's license to drive if a peace officer has probable cause to believe that a person is at least 14 years of age but not yet 21 years of age and possessed or consumed alcohol in violation of AS 04.16.050. Under AS 04.16.050, it is unlawful for a person under the age of 21 years to possess, control, or consume any amount of alcoholic beverage.

The provision of AS 28.15.183 at issue in this appeal does not require that a minor be operating or even be in close proximity to a motorized vehicle, nor does it require the minor to be impaired in any way when said minor is in possession of or consuming alcohol. If an administrative officer finds that a peace officer had probable cause to believe that a minor possessed or consumed alcohol, a mandatory 90 day revocation of the minor's driver's license is imposed for the first incident, one year revocation is imposed for the second incident, and three year's revocation is imposed for the third incident. AS 28.15.183 (d).

FACTS

On July 22, 1995, at approximately 11:30 p.m., Anchorage Police Officer Brown, who was wearing plain clothes, and Officer Rochford, who was wearing a police uniform, approached five persons who were around a campfire on a beach near Point Woronzof Park in Anchorage. The officers observed several opened beer containers and some unopened beers in a 12-pack within the control of the five individuals. Upon arriving on the scene, Brown and Rochford identified themselves as police officers and inquired as to the age of each of the five young women. Jada Quinn and Nina Storm each disclosed that they were 20 years of age. After the officers determined that every one of the five women were under the age of 21 years, each was detained for further questioning. During the detention, each of the five young women was under the control of the officers, as they were not free to leave.

The officers questioned the young women without advisement of any of their Miranda rights. Quinn and Storm were questioned as to the amount of alcohol they had consumed, and they admitted having consumed a small amount of beer. Both were administered a portable breath test which revealed a reading of .003 for Quinn and .006 for Storm. Both readings were substantially below the .10 blood alcohol level required for the commission of the crime of driving while intoxicated under AS 28.35.030.

There was no evidence that any of the minors had been operating a motorized vehicle immediately before or during the detainment, nor that any of them intended to do so at a later time

that evening.

Officer Brown issued citations to each of the five young women charging them with a criminal offense in violation of AS 04.16.050. Quinn was charged with "unlawfully consum[ing] a quantity of alcoholic beverage while less than 21 years old" and Storm was charged with "unlawfully possess[ing] and consum[ing] some quantity of alcoholic beverage while less than 21 years old." The citations issued to both Quinn and Storm included mandatory court appearances, and ordered them to appear in court on August 23, 1995, at 9:00 a.m. to answer the criminal charge.

In addition to the criminal citations, each was given a notice that their driver's license was being revoked for "being in POSSESSION OF OR CONSUMPTION OF ALCOHOL as prohibited by AS 14.16.050." The notices additionally stated "YOUR DRIVER'S LICENSE OR PRIVILEGE TO DRIVE IN THIS STATE IS REVOKED. THIS IS YOUR OFFICIAL NOTICE OF REVOCATION. THIS REVOCATION WILL TAKE EFFECT 7 DAYS AFTER THE DATE SHOWN ABOVE, UNLESS YOU REQUEST AN ADMINISTRATIVE REVIEW OF THE REVOCATION." Both Quinn and Storm made timely requests for administrative review. After an administrative hearing, the hearing officer upheld the revocation of the licenses for the mandated statutory period of 90 days for the first offense.

The criminal citations against both Quinn and Storm were never tried in District Court, as they were dismissed by the Municipal Attorney. Had the charges against Quinn and Storm been tried in District Court, both defendants would have had all of the

constitutional protections of a criminally accused, including the right against self-incrimination, the right of confrontation, and the right to trial by jury. See, State of Alaska v. District Court, Court of Appeals No. 1504 (Alaska App. Dec. 6, 1996). In the District Court decision, the Court of Appeals also upheld the right to court-appointed counsel for indigent minors accused of underage drinking or possession of alcohol (citing Alexander v. Anchorage, 490 P.2d 910, 913 (Alaska 1971)).

As neither Quinn nor Storm were ever tried in a criminal proceeding and found guilty of violating AS 04.16.050, their driver's license revocations were simply administrative revocations on a finding of probable cause. This is important to note, because the cases cited by the state in support of upholding the constitutionality of the section of AS 28.15.183 in question are cases where the subjects have either been found guilty in a companion criminal case or in a juvenile proceeding.

ANALYSIS

The central question presented in this appeal is whether it is constitutional for the state to administratively revoke the driver's license of a person who is under the age of 21 years on the ground that the minor consumed or possessed alcohol at a time unrelated to the operation or control of the minor of a motor vehicle. For the reasons stated below, this court finds that it is a violation of the minor's constitutionally protected rights for the state to administratively revoke the driver's license of the minor for possessing or consuming alcohol at a time that the minor

neither is operating or has control of a motorized vehicle.

A driver's license is a recognized valuable license that cannot be revoked without affording the holder of the license recognized constitutional protections. The Alaska Supreme Court has held that the state must grant a hearing to a driver before his or her license can be revoked. Graham v. State, 633 P.2d 211, 216 (Alaska 1981). In Bell v. Burson, 402 U.S. 553 (1971), the United States Supreme Court ruled that a driver's license is a "property" right for purposes of the Fourteenth Amendment and required state governments to provide procedural due process protections before a person's driver's license can be taken away.

In criminal cases, a defendant is entitled to a jury trial where he or she risks losing his or her driver's license. See, Baker v. Fairbanks, 471 P.2d 386 (Alaska 1970). Minors criminally prosecuted for underage drinking or possession of alcohol are entitled to a jury trial and to court appointed counsel if they are indigent. District Court, Court of Appeals Decision No. 1504. In Baker, the Supreme Court held, however, that a person is not entitled to a jury trial in an administrative proceeding even if it results in loss of a driver's license.

The constitutional challenge to AS 28.15.183 turns on whether the proceeding against Quinn and Storm is in the nature of a criminal matter or in the nature of an administrative proceeding. If the proceeding is found to be in the nature of a criminal

matter, the minor is entitled to all of the well-defined constitutional protections of a criminal defendant. If the proceeding is in the nature of an administrative proceeding, on the other hand, then the minor's driver's license can be revoked, as was done in this case, on a finding of probable cause without affording the subject the constitutional protections of a criminally accused person.

The test for determining whether a proceeding is criminal or administrative in nature was set forth by the Court of Appeals in State v. Zerkel, 900 P.2d 764 (Alaska App. 1995). In Zerkel, the Supreme Court held that if the sanction imposed is "remedial" in nature, the matter is an administrative proceeding; on the other hand, if the sanction is "punitive", then the proceeding is a criminal matter. The constitutional issue in Zerkel was whether the federal double jeopardy clause of the United States Constitution was violated by a driver having his or her license revoked in an administrative proceeding and then subsequently being prosecuted for driving while intoxicated or refusing a breath test. The court held that the administrative revocation of a person's driver's license was no impediment to a later prosecution for driving while intoxicated or refusing the breath test. The court's decision is based on the finding that:

. . . administrative revocation of a driver's license is "remedial" even though it may have a deterrent goal and may achieve some deterrent effect. We hold that, when the government employs a licensing scheme to regulate a profession or an activity that affects the public welfare, administrative revocation or suspension of that license can legitimately serve to deter conduct and still remain "remedial" for double jeopardy purposes so long

as the revocation or suspension is based on conduct that bears a direct relation to the government's regulatory goals or to the proper administration and enforcement of the regulatory scheme.

Id. at 757 (emphasis added).

In his concurring opinion, Chief Judge Bryner stated:

I agree with the court's opinion and I write separately only to emphasize what I see as its core rationale. Whenever the public welfare justifies regulating an activity by implementing and enforcing a licensing requirement, the state will necessarily have a legitimate regulatory -- that is, non-punitive -- interest in encouraging compliance with the regulations upon which the original issuance and continued validity of the license are conditioned. Conversely, the state will necessarily have a legitimate regulatory interest in deterring noncompliance with these regulations. Thus, in the particular context of a licensed activity, enforcement efforts by the state will always play an essentially remedial role, even if one of the avowed purposes of those efforts is deterrence.

This is not to say that all measures aimed at deterring noncompliance with the laws regulating a licensed activity must be deemed non-punitive. The imposition of sanctions having no direct connection to the regulation of the licensed activity certainly might be deemed punitive in some cases. But the sanction of suspending or revoking a license for noncompliance with the conditions governing its very issuance or continued existence necessarily bears an inherent relationship to the remedial goal of restoring regulatory compliance. Indeed, it is difficult to conceive of any sanction that could more directly remedy a licensee's noncompliance with the regulations governing a licensed activity than suspending or revoking the license itself. Accordingly, . . . the sanction at issue in the current cases-- suspension or revocation of a driver's license for violation of the laws governing the licensed activity of driving--is necessarily remedial, not punitive.

Id. at 758 (emphasis added). This court finds that the current case presents the "imposition of sanctions having no direct connection to the regulation of the licensed activity" as alluded to by Judge Bryner in Zerkel.

A driver's license authorizes a person to operate a motor vehicle. When a person's conduct in driving a motor vehicle:

shows that he or she is unwilling to abide by the terms of a driver's license, or shows that he or she cannot be trusted to drive safely, then that person's continuing authorization to drive is itself a hazard to the public welfare, a potential instrument of public harm. Revocation. . . of this authorization is remedial.

Id. at 752, n.5. The revocation of a license serves the purpose of depriving an unsafe or irresponsible driver of his or her authority to continue to operate a motor vehicle.

The above justification has no application to the instant case because the license revocation resulted from conduct that has nothing to do with the operation of a motor vehicle. The license was revoked on the basis of a finding of probable cause that two persons possessed or consumed alcohol at a small social gathering of friends: conduct that had nothing to do with operating a motor vehicle. There is no direct relationship between the conduct resulting in the license revocation and the licensed activity; that is, authorization to drive a motor vehicle.

The state argues that the license revocation of a minor who possesses or consumes alcohol is remedial because it "served the basic purpose of the licensing statutes, which is to ensure that only persons who are personally and morally fit are allowed to engage" in the licensed activity (citing Alaska Board of Fish and Game v. Loesche, 537 P.2d 1122, 1125 (Alaska 1975)). The court is not persuaded by the reference to Loesche or the other cases offered by the state because all of the cases cited involved a nexus between the act committed by the licensed individual and the

conduct that is regulated by the licensing authority.

The state argues that the conduct of a minor possessing or consuming any amount of alcohol "reflects adversely on the minor's moral fitness to drive." In essence, what the state argues is that a minor's mere possession or consumption of any amount of alcohol at a time unrelated to the minor's operation or control of a motor vehicle reflects adversely on the minor's capability to make the distinction between right and wrong sometime in the future in the operation of a motor vehicle. This court finds the state's argument unpersuasive. To base the revocation of a valuable license on such logic would be to accept as a valid proposition that: A person under the age of 21 who possesses or consumes any amount of alcohol is a lawbreaker; because that person is a lawbreaker he or she is not capable of making a distinction between right and wrong; to drive one must be "morally fit"; and because that minor was morally unfit and or irresponsible in one context by breaking the law, that minor should not be allowed to drive. This illogical proposition falls far short of meeting the "direct relationship" principle announced in Zerkel that there be a clear nexus between the conduct that results in a license revocation and the governmental interest in keeping the state's roadways safe from drivers impaired by alcohol.

There is no question that the state has a strong interest in fostering safety by temporarily removing from public thoroughfares those licensees who have exhibited dangerous behavior such as being under the influence of intoxicants while operating a motorized

vehicle. However, the state's strong interest in safety on the public thoroughfares must be accomplished in a constitutional way.

The revocation of the driver's license of a person under the age of 21 who possesses or consumes alcohol at a time when there is no direct connection to the operation or control of a motor vehicle is clearly punitive and not remedial. Because the sanction imposed is punitive and not remedial, the matter is criminal in nature and not administrative. As a criminal matter, a person under the age of 21 is entitled to the constitutional protections of a criminally accused person before his driver's license can be revoked.

The only case cited by either party that has ruled on a similar issue is from the State of Wyoming. In Johnson v. State, 838 P.2d. 158 (Wyo. 1992), the Wyoming Supreme Court declared a statute similar to AS 28.15.183 unconstitutional. The Johnson court found that the administrative revocation of the driver's license of an underage individual for consuming alcohol where no motor vehicle was involved constituted a punitive, not a remedial, measure. This court agrees.

For the above stated reasons, the provision of AS 28.15.183 which provides for the revocation of a minor's license to drive if a peace officer has probable cause to believe that the person is under the age of 21 years and possesses or consumes alcohol is hereby found to be unconstitutional.

PROCEDURAL DUE PROCESS

Quinn and Storm assert that the administrative proceeding

violated procedural due process because the hearing officer: denied their demand for application of the criminal burden of proof; denied their request for exclusion of evidence obtained in violation of their rights against self-incrimination; denied their request for application of the rules of evidence; denied their request for application of the right of confrontation; denied their request for application of their right to effective assistance of counsel; and denied their demand for a jury trial.

Quinn's and Storm's arguments rest on the license revocation proceeding being deemed punitive and thus in the nature of a criminal proceeding. The state's arguments on the other hand, rest on the license revocation being deemed an administrative proceeding and remedial, rather than punitive. As the revocation of the driver's licenses has been found to be punitive and not remedial. This court finds that Quinn's and Storm's procedural due process rights were violated when their licenses were revoked administratively on the sole basis that there was probable cause that they possessed or consumed alcohol.

SUBSTANTIVE DUE PROCESS

Storm and Quinn argue that AS 28.15.183 violates substantive due process. To meet the requirements of substantive due process, age-based legislation affecting an individual's license to drive "must be rationally related to a valid legislative purpose." Allam v. State, 330 P.2d 435 (Alaska App. 1992) (citing State v. Ensearch Alaska Construction, Inc., 787 P.2d 624, 532 n. 12 (Alaska 1989)). Legislation affecting an individual's license to drive is not

subject to the heightened scrutiny of compelling governmental interest under the equal protection clause because a license to drive is not a fundamental right under the federal or our state constitutions.

The state argues that the legislative purpose of the statute is to keep "unfit drivers off the public roadways." The state reasons that since consumption or possession of alcohol "reflects adversely on the minor's fitness to drive" the revocation of the minor's license serves the state's interest. The state's argument is not found persuasive because there is no relationship between the conduct of possessing or consuming alcohol on the one hand, and the operation or control of a motorized vehicle by the minor on the other hand. By analogy, the state could not revoke the driver's license of an adult simply because the adult was intoxicated when that conduct was not related to the adult having control of or operating a motorized vehicle. To accept the state's argument would be akin to concluding that an adult's driver's license can be revoked because of his intoxication at a time when he neither had control of nor operated a motorized vehicle merely because his intoxication "reflects adversely" on the adult's fitness to drive in the future.

Because there is no required relationship in the statute between the minor's conduct of possessing or consuming alcohol and the operation or control of a motor vehicle, this court finds that the provision of AS 23.15.183, which revokes a minor's driver's license on a finding of probable cause that the minor possessed

or consumed alcohol, violates constitutional substantive due process. The legislation is not rationally related to the legislative purpose of maintaining safety on the state's roadways.

EQUAL PROTECTION

Quinn and Storm assert that, as minors, the administrative suspension of their driver's licenses violated their rights to equal protection of the law.

1. The Federal Equal Protection Clause:

Under federal equal protection analysis, where there is no fundamental right at stake, and where there is no suspect or quasi-suspect class at issue, the courts will apply the minimal standard of scrutiny: the rational relationship test. Vance v. Bradley, 440 U.S. 93, 97 (1979). The federal analysis does not recognize driving as a fundamental right. While Quinn and Storm have cited to Graham v. State, 633 P.2d 211, 216 (Alaska 1981), which supports the proposition that a license to drive is a protected property right in Alaska, they have not established that the right to drive is a fundamental right necessitating an elevated level of scrutiny for the sake of an equal protection analysis. The right to drive is not a fundamental right. Neither is a minor's right to consume alcohol a fundamental right such that an elevated level of scrutiny is required.

Under federal equal protection law, age classification is neither suspect nor quasi-suspect. In Alaska, courts have applied the rational basis test for classifications based on age, hence treating the classification as neither suspect or quasi-suspect.

See, Allam, 830 P.2d at 439 (finding that setting the age for marijuana use at 19 years is a "rational" choice). "Within our system of government, subject to constitutional limitations, it is the legislature's prerogative," to establish the age at which a person can be presumed to be trusted with an intoxicating substance. Id. at 438, 439.

Given that no fundamental right is at stake, and given that no suspect or quasi-suspect class is at issue, under the federal analysis, the test this court applies is that invalidation of the statute will only occur where "'varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that . . . the legislature's actions were irrational.'" As the court in Allam found, this "rational basis" test is "essentially the same as Alaska's substantive due process test." Id. (citations omitted).

2. Alaska Constitution's Equal Protection Guarantee:

Article I, Section 1 of the Alaska Constitution provides that "all persons are equal and entitled to equal rights, opportunities, and protection under the law." The Alaska Supreme Court has created a sliding scale test through which to interpret this clause. This sliding scale test, as described in State v. Ensearch Alaska Construction, 787 P.2d 624, 631 (Alaska 1989), "often provides greater protection to individual rights than does the U.S. Constitution." The elements of the test are as follows:

FIRST: "determine the importance of the individual interest impaired by the challenged enactment."

SECOND: "examine the importance of the state interest

underlying the enactment."

NEXT: place the state's interest somewhere on a continuum from mere legitimacy to compelling state interest.

FINALLY: examine the nexus between the state interest and the state's means of furthering that interest, placing the nexus somewhere on the continuum from substantial relationship to least restrictive means.

Id. at 631, 632.

The individual interest at stake here is the right to drive. While Graham recognizes the driver's license as a "property interest," the case does not represent, as appellants' propose, that the right to drive is "an extremely valuable right." Merely because a driver's license constitutes a property interest is not, in of itself, grounds for heightening the standard of review. The right to drive, no doubt, has some importance in our society, but is by no means an absolute right. Age restrictions on the ability to drive are universal. One must pass a written and road test, and maintain an insurance policy on the vehicle driven, as well, in order to "qualify" for the right to drive. Driving is often characterized by governmental agencies as a "privilege" rather than a right in order to highlight that if rules are not obeyed, one could lose qualifications. The right to drive is perhaps its most valuable when utilized as means of getting to and from a place of employment in order to maintain a livelihood. This most important aspect of the right to drive is not eliminated by the statute at issue, since there are provisions for the issuance of a limited license for the purpose of getting to and from work.

Next we must examine the importance of the state's interest

underlying AS 28.15.183. The state's interest is to assure safe roadways, free of dangerous drivers. This is certainly a legitimate state interest. Given the vast numbers of people who drive or ride as passengers in automobiles in Alaska, and given that these people rely almost exclusively on the government for maintaining roadway safety, and given the high incidence of traffic accidents and fatalities, the state's interest to assure roadways free of dangerous drivers is very important.

As an important function of government that affects so many individuals, the state's interest in assuring safe roadways and keeping dangerous drivers off the road is compelling. The nexus required for treating those under 21 differently than those over 21 is that AS 28.15.183 must bear a substantial relationship to the purpose of keeping the streets safe and free of dangerous drivers. This is the lowest nexus requirement on the Ensearch continuum.

Review of case law from other jurisdictions reveals that states have rejected equal protection challenges to laws revoking the driver's licenses of underage drinkers/drug offenders. See, State v. Shawn, 859 P.2d 1220 (Wash. 1993); People v. Valenzuela, 5 Cal.Rptr.2d 492, 493 (Cal. Super. 1991); Matter of Maricopa County, 770 P.2d 394, 395 (Ariz. App. 1989). The only case appellants cite to where a court found equal protection violations in an underage drinker revocation statute was Wyoming's Johnson decision. The statute in that case is dissimilar to the present statute and, for equal protection purposes, is inapplicable as precedent. The Wyoming court found that a statute violates equal

protection where it provided that underage drinkers 18 years and younger would have their driver's licenses suspended; however, underage drinkers 19 and 20 years old would not be subject to license suspension. The Johnson court found that the equal protection right of those 18 years and younger were violated as there was no convincing justification for exempting 19 and 20 year old drinkers from suspension. With the Alaska statute, however, all underage drinkers are treated equally -- no distinction is made between older and younger underage drinkers -- so the Johnson equal protection rationale does not apply here. Given how neighboring jurisdictions have ruled on equal protection challenges to underage drinking distinctions, and given that a mere substantial relationship test need be applied to the question of age based distinctions for underage drinking, this court finds that AS 28.15.183 does not violate the equal protection clause of the Alaska Constitution, Article I, Section 1. Given the foregoing, neither does it violate the equal protection clause of the federal constitution.

CRUEL AND UNUSUAL PUNISHMENT

Quinn and Storm argue that the 90 day revocation of their driver's license for possession or consumption of alcohol when their conduct had no relation to the operation or control of a motorized vehicle constitutes cruel and unusual punishment.

In Alaska, the test to determine whether a statutory penalty

constitutes cruel and unusual punishment is a singular test: a punishment which is so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice is unconstitutional. See, Dancer v. State, 715 P.2d 1174, 1180-81 (Alaska App. 1986).

As a general proposition, a 90 day revocation of a driver's license for an underage person who is in control of or driving a motorized vehicle and is under the influence of alcohol is not cruel and unusual punishment. In this case, however, we do not have an underage person in control of or operating a motorized vehicle at the time the person is in possession of or consuming alcohol. At the time the citations were issued to Quinn and Storm, they were not involved in any way in the operation of or control of a motorized vehicle. They were, in fact, not even in close proximity to a motorized vehicle.

When the conduct being sanctioned, underage possession of or consumption of alcohol, has no relation or connection to the sanction being imposed, the suspension of a driver's license, the end result is unreasonable and arbitrary punishment. Under the facts of this case, the court finds that the statutory penalty is so disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice and, therefore, unconstitutional.

CONCLUSION

For the aforementioned reasons, the administrative decision revoking, for a period of 90 days, the driver's licenses of Quinn

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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/11/97

FURTHER: Finance

Date of 5-Day Notice: 2/13/97
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2/19/97

HESS Committee considered SENATE BILL NO. 84

ASSETS OF THE UNIVERSITY OF ALASKA

and recommends:

- be replaced with _____ CS _____
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Revenue	2/14/97		<input checked="" type="checkbox"/>
University of Alaska	2/13/97		<input checked="" type="checkbox"/>

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Revision Date: _____ Dept. Affected: Revenue
 Title: Assets of the University of Alaska BRU: Revenue Operations
assets of the Univ of Alaska; Component: Treasury
 Sponsor: SENATORS WILKEN, Sharp
 Requestor: (S) HES COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-9.0	-9.0	-9.0	-9.0	-9.0	-9.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-9.0	-9.0	-9.0	-9.0	-9.0	-9.0

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	26.0	26.0	26.0	26.0	26.0	26.0
1005 GF/Program Receipts						
1001 CBRF						
1048 University of AK receipts	-35.0	-35.0	-35.0	-35.0	-35.0	-35.0
TOTAL	-9.0	-9.0	-9.0	-9.0	-9.0	-9.0

Estimate of any current year (FY97) cost \$ 2.0 per month from effective date

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Treasury Division currently manages the University of Alaska Trust Fund. This bill would transfer the \$36.6 million (as of 12/31/96) Trust to the University for management. The division's FY98 budget reflects the Trust Fund as a funding source for a share of the personal service costs and custodial costs of the division. Treasury would still incur these costs. This fiscal note includes the transfer of these costs to general fund funding.

There is also \$9.0 in direct investment management fees and performance measurement consulting fees which are specific to the Trust Fund and will not be incurred by Treasury if the Trust Fund is transferred.

Prepared by: Betty Martin, Comptroller Phone: 465-2350
 Division: Treasury Date: February 14, 1997
 Approved by Commissioner: Ross Kinney, Deputy Commissioner Date: February 14, 1997
 Agency: Department of Revenue

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 84

Revision Date:
Title: An act relating to fiscal management of endowment assets
of the University of Alaska
Sponsor: Senators Wilken, Sharp
Requestor:

Department Affected: University of Alaska
BRU: Systemwide
Component:

COMPONENT SERIAL NO. 1296

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0
TOTAL OPERATING	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0

CAPITAL						
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REVENUE FD SOURCE						
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FUNDING: (Thousands of Dollars)	FY98	FY99	FY00	FY01	FY02	FY03
1002 FEDERAL FUNDS						
1003 GF MATCH						
1004 GENERAL FUND						
1006 GF/MHTIA						
1048 University Receipts	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0
TOTAL FUNDING	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0	1,000.0

POSITIONS:	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)
This bill amends the definition of "university receipts" to include receipts attributable to amounts distributed from university endowments. These distributions, which will be transferred from the endowments to the university operating accounts to be used in support of educational programs, are estimated to be approximately \$1,000.0 annually. Any excess authority will lapse at the end of each fiscal year.

Prepared by: Marylou Burton Phone: 463-3086
Division: Statewide Budget Office Date: 2/12/97
Approved by: Marylou Burton, Director
Agency: JA Statewide Budget Office Date: 2/12/97

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

GARY WILKEN

SENATOR
Districts 29 & 30
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[www: akRepublicans.org/wilken.htm](http://www.akRepublicans.org/wilken.htm)
E-mail: Senator_Gary_Wilken@legis.state.ak.us

Interior:
119 N. Cushman St., Room 213
Fairbanks, Alaska 99701
(907) 452-3421
Fax (907) 452-3426

SPONSOR STATEMENT

SB 84 – Assets of the University of Alaska

Congressional acts of 1915 and 1929 granted the Territory of Alaska approximately 113,000 acres of land. The grants were for the exclusive use and benefit of the Alaska Agricultural College and School of Mines, and its successor, the University of Alaska. All earnings from the sale, lease, or use of these lands has been deposited into a trust fund established under AS 14.40.400. As of June 30, 1996, the fund has grown to approximately \$32.6 million.

Senate Bill 84 transfers management of these funds from the Department of Revenue to the Board of Regents. The University will be able to coordinate management of the investments of these funds with management of its other endowments. This will substantially lower the cost of administration. The transfer will also maximize the fund's earnings potential and permit greater investment diversification.

SB 84 provides a technically sound transfer of control of an endowment fund from the Department of Revenue to the University of Alaska. The University has demonstrated a sound investment history in relation to the University of Alaska Foundation endowment funds. This same expertise will be extended to the Natural Resource Endowment.

February 18, 1997

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


MEMORANDUM

February 8, 1997

SUBJECT: Draft bill relating to fiscal management of the assets of the University of Alaska and for related purposes -- sectional analysis. (Work Order No. 20-LS0561A)

TO: Senator Gary Wilken
ATTN: Robert Knight

FROM: Jack Chenoweth
Legislative Counsel



The bill draft is generally based on information developed by the University of Alaska. In addition to the subject of fiscal management of University assets, the bill includes provisions relating to money and land due the University under applicable federal law.

To emphasize the relationship among provisions that relate to the same topic, I am reviewing these provisions out of numerical order.

Provisions relating to the endowment trust fund involving land granted for the support of the University of Alaska under the Act of January 21, 1929:

From the University's perspective, I understand that the revisions relating to AS 14.40.400, the management of the endowment trust fund involving the management of the land that came to the University under the Act of Congress of January 21, 1929 (conveying land for the financial support of the land grant college) are most important, so let me discuss those first.

Bill section 5: The amendment of AS 14.40.400(a) removes the Department of Revenue as the party having responsibility for the management of the assets of the endowment trust fund established from the land transferred under the Act of Congress of January 21, 1929, and substitutes the Board of Regents in that capacity, and directs that the trust fund shall held as a trust in perpetuity.

Bill section 6: This amendment to AS 14.40.400(b) affirms that the Board of Regents, not the commissioner of revenue, is the fiduciary responsible for management of the trust fund, and specifies that the board "has the same powers and duties with respect to the [trust] fund" as have been assigned by law to the Alaska State Pension Investment Board.

Senator Gary Wilken

February 8, 1997

Page 2

Bill section 7: The amendment to AS 14.40.400(c) substitutes "total return" for "net income" as the measure of the trust fund money earnings that are available for the support of the University.

Bill section 8: The amendment makes drafting changes to AS 14.40.400(d) to conform the provision to current drafting practice. No substantive change is intended.

Bill section 9 supplies definitions for the terms "fund" and "total return" used in AS 14.40.400.

Bill section 13 repeals AS 14.40.400(e), a provision made obsolete by the transfer of responsibility for the management of the assets of the endowment trust fund from the Department of Revenue to the Board of Regents.

Finally, as it relates to the principal asset of the University under the Act of January 21, 1929, **bill section 4**, amending AS 14.40.360, revises the land selection authority of the Board of Regents by deleting the reference to required deposit of receipts into the state treasury and directing that the net income be added to the principal of the endowment trust fund.

Other provisions generally addressing the custody and management of the University's assets:

Bill section 1. Under current law, responsibility for management of assets of the University of Alaska is divided between the Department of Revenue and the University. In this section, the amendment of AS 14.40.280 takes away the authority of the Department of Revenue to take any part of the assets and sets the general rule that the Board of Regents shall take title to land and other property devised, bequeathed, or given to the University.

Bill section 2: Within AS 14.40.280, two new subsections are added --

Subsection (b) directs that gifts to the University for the purpose of the endowment trust fund established in AS 14.40.400 are to be deposited into the endowment trust fund.

Subsection (c) covers the disposition of all other endowment gifts to the University. Under the amendment made in bill section 1, the Board of Regents is made responsible for the receipt and management of these gifts. This provision directs the manner of management and investment of those gifts, directing that board "has the same powers and duties with respect to the [trust] fund" as have been assigned by law to the Alaska State Pension Investment Board.

Bill section 3: This amendment to AS 14.40.290(a) deletes the current first sentence ("The University shall hold all property acquired by it") as redundant--the same point is made in

cited under which money may be paid to the state for the benefit of its land grant college, when money is paid to the state in behalf of the University, the state is to deposit the money in the treasury for subsequent disbursement to the University consistent with the appropriate provisions of law.

Bill section 10: This bill section amends the definition of "university receipts" in AS 14.40.491 to add to that definition receipts attributable to University endowments managed under AS 14.40.280 and distributions from the endowment trust fund established under AS 14.40.400 from activities involving land selected under the Act of Congress of January 21, 1929.^{1/}

Because of the various changes outlined in this bill, as a safeguard, **bill section 14** adds a transitional provision intended to avoid any impairment of outstanding rights, liabilities, or obligations affected by the changes and directs that the assets and liabilities held by the commissioner of revenue in the endowment trust fund established under AS 14.40.400 from activities involving land selected under the Act of Congress of January 21, 1929, transfer to the University of Alaska.

Provisions outside AS 14.40 relating to this subject:

AS 36.30 is the state Procurement Code. AS 36.30.850(b) enumerates instances in which the provisions of the Procurement Code do not apply. One of the exceptions concerns the exercise of investment powers by the commissioner of revenue. In **bill section 11**, since the commissioner of revenue will no longer be responsible for investment of the endowment trust fund derived from land selected under the Act of Congress of January 21, 1929, a cross-reference to AS 14.40.400 set out in the list of statutes under which the commissioner exercises investment powers is deleted.

AS 37.10.070 and the sections that follow set out general law covering investment of surplus money and prescribe the responsibilities of a fiduciary of a state fund. The change proposed by **bill section 12** modifies the list of the sections of state law to bring within the provisions of the Investment article additional provisions involving the exercise of fiduciary responsibilities by the Board of Regents. The changes including adding a reference to "AS 14.40.255," covering the University's investment of its surplus money (this section

^{1/} To appreciate the dimensions of the change in the definition of the term "university receipts," the term is used in AS 14.40.040(3)(A), in conjunction with the ability of the University to leases; in AS 14.40.170(b), enumerating powers of the Board of Regents; and in AS 14.40.210(a) and (b), concerning the authority of the president of the university. Through use of cross-references, the term also is used in AS 36.30.085(f)(2) (lease-purchasing agreements involving the University) and in AS 37.25.010(c) - (e), allowing expenditure of the unexpended balances of one-year appropriations of university receipts.

Senator Gary Wilken
February 8, 1997
Page 4

already declares within itself that the surplus must be invested as set out in AS 37.10.071, so this addition is in the nature of a cross-reference) and adding a reference to "AS 14.40.280(c)," the provision that addresses the disposition of all other endowment gifts to the University. AS 14.40.400(b) is already covered under this provision. But, as earlier noted in the summary of bill section 6, fiduciary responsibility for management of the land grant trust fund switches from the commissioner of revenue to the Board of Regents.

JBC:glc
97-078.glc

Enclosure

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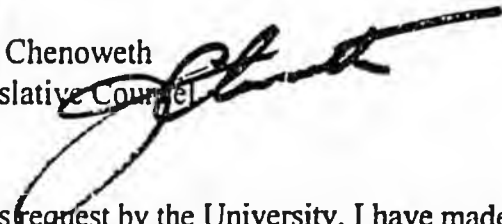
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 11, 1997

SUBJECT: Senate Bill 84, substituted version of bill relating to fiscal management of the assets of the University of Alaska and for related purposes (Work Order No. 0-LS0561\E)

TO: Senator Gary Wilken
ATTN: Robert Knight

FROM: Jack Chenoweth
Legislative Counsel 

To accommodate yesterday's request by the University, I have made a change in bill section 11, adding the material appearing in subparagraph (B). This insertion adds an exception from the Procurement Code for exercise of investment authority by the Board of Regents comparable to that already provided for exercise of investment powers by the commissioner of revenue.

That is the bill's only change from the earlier "A" version.

JBC:lmb
97-025.lmb

Enclosure

UAF
Alumni



Association

The Honorable Gary Wilken
Alaska State Senate
State Capitol
Juneau, AK 99801

201 Constitution Hall
P.O. Box 750126
Fairbanks, Alaska
99775-0126
fyalum@aurora.alaska.edu
http://zorba.uafadm.alaska.edu/alumni/

1-800-770-ALUM
907-474-7081
fax 907-474-6712

February 28, 1997

Re: SB 84

Board of Directors:

Dear Senator Wilken:

Dave Geesin '70
President

Thank you for introducing Senate Bill 84 proposing to transfer the management of the University of Alaska's trust lands from the Dept. of Revenue to the University of Alaska.

Cynthia Klepaski '80
Vice-President

The University of Alaska Fairbanks Alumni Association would like to go on record in support of this transfer. It will save the state money by lightening the work load of an individual in the Dept. of Revenue and it won't generate extra cost for the university because we already have managers in place to perform these duties. The University of Alaska also has a much better track record for return on investments than the state does, because we have more interest in actively managing the land and the monies associated with them. The additional money will help us receive a greater return on our pooled funds currently invested in the Foundation.

Jim Doogan '87
Dale Fox '77
Oscar Kawagaley '58, '68
Bill Mendenhall '76
Laurine Myers Mitchell '63
Merritt Mitchell '50
Pat Osborne '76
Janel Thompson '69, '85
Chip Wagoner '74

The University of Alaska has a proven track record of wise fiscal management of our endowed funds and we believe the same wisdom and expertise will be used to invest this approximately \$32.6 million fund.

The money derived from the wise and active use of these lands is to the benefit of all Alaskans, and helps to support a strong University system which in turn provides an educated and skilled populace.

The University of Alaska Fairbanks Alumni Association is a nonprofit organization representing over 20,000 UAF alumni throughout the world. Nearly two-thirds of them still live, work and vote in Alaska. We possess a unique and personal interest in the continued health of the university. If we can ever be of any further service to you on behalf of the University of Alaska, please do not hesitate to ask. Thank you.

Sincerely,

Merritt Mitchell
Legislative Chair

Dave Geesin
UAFAA President

Post-It™ brand fax transmittal memo 7871		# of pages > /
To: Sen. Wilken	From: B. Wilcox	
Co.	Co. UAFAA	
Dept.	Phone # 474-7081	
Fax # 465-4714	Fax # 474-6712	

James F. Lynch
Associate Vice President for Finance

(907) 474-7448
(907) 474-5140 (FAX)



University of Alaska
Statewide System of Higher Education

207 Butrovich Building
910 Yukon Drive
PO Box 755120
Fairbanks, Alaska 99775-5120

snjll@orca.alaska.edu

Management of UA Endowment Trust Funds

The congressional acts in 1915 and 1929 granted the Territory of Alaska approximately 113,000 acres of land for the exclusive use and benefit of the University of Alaska as the successor institution to the Agricultural College and School of Mines. All earnings from the sale, lease, and use of these lands have been deposited into a trust fund established under AS 14.40.400. From 1917 through June 30, 1996, the fund has grown to approximately \$32.6 million. Based primarily on more active management of its lands by the University, the fund has tripled in size from \$10.0 million in 1983 to the current \$32.6 million.

In accordance with the Board of Regents' policy, earnings from the trust fund are utilized to inflation-proof the principal of the fund, pay the costs associated with maintenance of the University's lands, and fund projects and programs primarily in support of Alaska's natural resources and other economic development. The intention of the land-grant trust fund is to provide a margin of support over and above that available through other funding sources.

The Department of Revenue has invested the funds with good investment results. The average rate of return for the past five years was approximately 10.1 percent. However, the Board of Regents and the president of the University believe that, with a change in investment constraints, a comparable or better return can be obtained, as they have demonstrated with their investment of the University of Alaska Foundation endowment funds. The University intends to coordinate management of the investments with that of its other endowments to lower the cost of administration of both funds, maximize the earnings potential, and lower investment risk through greater diversification.

In summary, the University is requesting the transfer of the University Endowment Trust Funds to the University of Alaska. These funds are adequately protected by law from any expenditure of principal by the University. The University has demonstrated a sound investment history in relation to the University of Alaska Foundation endowment funds, and this same enterprise will be extended to this Natural Resource Endowment.

**University of Alaska
Land Grant Trust Fund Investment Performance**

	<u>FY92</u>	<u>FY93</u>	<u>FY94</u>	<u>FY95</u>	<u>FY96</u>	<u>Average</u>
Land Grant Trust Fund:						
Average Value (millions)	<u>\$ 17.5</u>	<u>\$ 20.8</u>	<u>\$ 26.6</u>	<u>\$ 29.3</u>	<u>\$ 32.6</u>	<u>\$ 25.4</u>
Investment Return	<u>12.9%</u>	<u>13.4%</u>	<u>0.9%</u>	<u>14.5%</u>	<u>8.6%</u>	<u>10.1%</u>
Custom Index (1)	<u>14.1%</u>	<u>13.2%</u>	<u>-0.9%</u>	<u>15.5%</u>	<u>9.0%</u>	<u>10.2%</u>
Median Portfolio (2)	<u>13.2%</u>	<u>13.3%</u>	<u>1.6%</u>	<u>16.4%</u>	<u>16.1%</u>	<u>12.1%</u>
UA Foundation	<u>15.9%</u>	<u>16.1%</u>	<u>-2.3%</u>	<u>16.4%</u>	<u>18.1%</u>	<u>12.8%</u>
Over/under UA Foundation	<u>-3.0%</u>	<u>-2.7%</u>	<u>3.2%</u>	<u>-1.9%</u>	<u>-9.5%</u>	
Excess/Shortfall (millions)	<u>\$ (0.5)</u>	<u>\$ (0.6)</u>	<u>\$ 0.9</u>	<u>\$ (0.6)</u>	<u>\$ (3.1)</u>	

(1) Custom Index @ 20% S&P / 80% Leh. G/C

(2) ICC Universe (5000 portfolios)

TONY KNOWLES, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2388
FACSIMILE: (907) 465-2389

January 23, 1997

The Honorable Gene Therriault
Alaska State Legislature
State Capitol, Room 517
Juneau, Alaska 99801

Dear Representative Therriault:

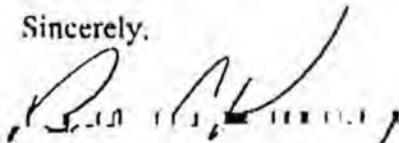
Thank you for your inquiry regarding the management of the University of Alaska Trust Fund (Trust). Transferring the asset management duties of the Trust Fund to the University of Alaska has been an issue for several years. The Department of Revenue has continually stated that we do not object to the transfer.

The Department of Revenue does have one concern. Our concern is a prolonged resolution of this issue will diminish the earning power of the Trust. Prudence dictates that the Trust must be managed conservatively to avoid incurring undue market risk pending passage of legislation that authorizes the transfer. This is necessary because increasing the allocation in the more volatile equity market would expose the Trust to potential volatility and risk of loss in the near term.

Absent quick resolution, we must conclude that this Trust will best be served by Treasury managing the assets in a way that meets the requirements of a long term trust fund.

I would be happy to discuss this matter at your convenience. You can reach me at 465-3669.

Sincerely,



Ross A. Kinney
Deputy Commissioner

cc: Wendy Redman, University of Alaska, Fairbanks

97-006

Report to the Legislature



University of Alaska
1995-1996


January 6, 1997

President of the Senate
and Speaker of the House of Representatives:

On behalf of the University of Alaska Board of Regents, I am submitting the University's *Report to the Legislature* for the fiscal period beginning July 1, 1995, and ending June 30, 1996.

The Board of Regents expresses appreciation to the members of the Alaska Legislature, the Governor, and the people of Alaska for their interest in and continuing support of the University of Alaska.

Sincerely,



Jerome Komisar
President

Land Grant Trust Funds

The university is required to report annually to the legislature on funds derived from lands conveyed to the University of Alaska in settlement of the claim by the university to federal lands granted to the state by the acts of March 4, 1915, and January 21, 1929, as amended. The following statements and schedules represent this report to the legislature for the fiscal year ended June 30, 1996.

Net proceeds derived from sales, leases, exchanges, and transfer of the university's trust lands, as required by law, are deposited with the state Department of Revenue for investment in a trust fund. Investment income from the trust fund is made available quarterly to the university. The expenditure of these funds by the university is governed by regents' policy and university regulation, which provide: (1) that a portion of the annual earnings will be utilized for expenditures to manage the university's lands, (2) that a portion of the annual earnings will be set aside for separate investment in order to "inflation proof" the trust funds, and (3) that the remaining annual earnings be transferred to a Natural Resources Fund primarily for the purpose of funding programs in support of agriculture, fisheries, natural resource management and marketing, and natural resource management education.

For the fiscal year ending June 30, 1996, \$19,268 and \$645,800 net additions to endowment principal were deposited to the Land-Grant Trust Fund and the Inflation Proofing Fund respectively. Expendable earnings on the funds were \$2,657,737. Expenditures for management of university lands and for Natural Resources Fund projects were \$640,619 and \$947,512 respectively. Transfer to the inflation proofing fund was \$601,048 and transfer to the Natural Resources Fund for allocations to specific projects was \$1,402,097.

The schedule of allocated Natural Resources Fund balances represents a summary of expenditures and the allocation of transfers to this fund. This schedule is followed by brief descriptions of funded projects, organized by area of interest. A summary of the new awards made is provided in table below.

	Natural Resources Projects		Other Projects		Total	
	<u>Amount</u>	<u>Awards</u>	<u>Amount</u>	<u>Awards</u>	<u>Amount</u>	<u>Awards</u>
UAA	158,500	9	246,900	10	405,400	19
UAF	369,868	18	334,750	9	704,618	27
UAS	49,000	3	196,500	4	245,500	7
SW			238,770	8	238,770	8
Totals	<u>\$ 577,368</u>	<u>30</u>	<u>\$ 1,016,920</u>	<u>31</u>	<u>\$ 1,594,288</u>	<u>61</u>

Land-Grant Trust Funds

Balance Sheet

June 30, 1996

	<u>Designated Endowment Funds</u>		<u>Unrestricted Funds</u>	
	<u>Land-Grant Trust Fund</u>	<u>Inflation- Proofing Fund</u>	<u>Revenue Fund</u>	<u>Natural Resources Fund</u>
Assets:				
Cash and investments	\$ 31,393,371	\$ 4,093,236	—	\$ 3,250,029
Receivables (net)	3,755,850	1,815,873	—	—
Real estate	38,494,848	3,591,244	—	—
Total assets	<u>\$ 73,644,069</u>	<u>\$ 9,500,353</u>		<u>\$ 3,250,029</u>
Deposit payable	<u>24,150</u>	—	—	—
Fund balance	<u>73,619,919</u>	<u>9,500,353</u>	—	<u>3,250,029</u>
Total liabilities and fund balance	<u>\$ 73,644,069</u>	<u>\$ 9,500,353</u>	—	<u>\$ 3,250,029</u>

Schedule of Changes in Fund Balances

For the Year Ended June 30, 1996

	<u>Designated Endowment Funds</u>		<u>Unrestricted Funds</u>	
	<u>Land-Grant Trust Fund</u>	<u>Inflation- Proofing Fund</u>	<u>Revenue Fund</u>	<u>Natural Resources Fund</u>
Fund balance July 1, 1995	\$ 73,600,651	\$ 8,483,505	—	\$ 2,795,444
Additions to principal	19,268	645,800	—	—
Investment earnings	—	—	2,657,737	—
Expenditures:				
Land management costs	—	—	(640,619)	—
Loan reservation	—	(230,000)	(13,973)	—
Natural Resources Program	—	—	—	(947,512)
Transfers:				
Inflation-Proofing	—	601,048	(601,048)	—
Natural Resources Fund	—	—	(1,402,097)	1,402,097
Fund balance June 30, 1996	<u>\$ 73,619,919</u>	<u>\$ 9,500,353</u>	—	<u>\$ 3,250,029</u>

See accompanying notes to these schedules.

Land Grant Trust Funds

Notes to the Financial Schedules:

1. By Acts of Congress in 1915 and 1929, the university was granted approximately 110,000 acres of land which the territory, and later the state, of Alaska managed on behalf of the university. The university currently holds approximately 81,000 acres of these lands at no basis because fair value at the date of transfer was not determinable. In 1982 and 1988 the university was allowed to select certain state lands, including timber and other rights, as replacement for lands disposed of by the territory and the state. These replacement lands and property interests were recorded at their fair value at the date of transfer.
2. The Land-Grant Trust Fund cash and investments, totaling approximately \$31.4 million at June 30, 1996, are held in trust by the Alaska Department of Revenue and invested in pooled fixed income and domestic equity funds. The associated market value of these funds at June 30, 1996 was approximately \$34.2 million.
3. The Inflation-Proofing Fund represents reinvested earnings of the Land-Grant Trust Fund and net proceeds of nontrust land transactions designated for preservation of the long-term purchasing strength of the endowment. Its assets included investments of approximately \$3.6 million in improved and unimproved real property held for the long-term benefit of the institution's educational activities and advances to the University of Alaska Southeast for construction of housing facilities. The remainder of the principal of the Inflation-Proofing Fund and the revenue funds are invested in pooled investment funds of the Common Fund.
4. The Revenue Fund represents a depository fund for all distributable income of the Land-Grant Trust Fund, the Inflation-Proofing Fund, and the Natural Resources Fund.
5. The Natural Resources Fund represents funds designated by Board of Regents' policy to provide support for agriculture, forestry, fisheries, mineral, and other university programs.
6. Additions to the principal represent the net gains from the sale, lease, or transfer of land, materials, mineral interests, and realized gains on investments. Additions to principal are reported net of recorded basis and development costs in the subject properties. In fiscal year 1996, additions to principal for the Land-Grant Trust Fund were reduced for a change in accounting for timber sales.
7. In accordance with regents' policy, one-third of the investment earnings available for distribution after payment of land management costs and other expenses were transferred to the Inflation-Proofing Fund. The remaining earnings were transferred to the Natural Resources Fund.
8. In fiscal year 1996, \$230,000 was advanced to the University of Alaska Technology Development Corporation, Inc. (UATDC) under loan agreements approved by the Board of Regents. UATDC is a corporation formed in 1994 to license and market the university's inventions. In addition, approximately \$1.8 million was advanced to the University of Alaska Southeast (UAS) as interim financing for a student housing facility. The advance to UAS will be repaid through the issuance of revenue bonds.

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ALASKA STATE BOARD OF EDUCATION

FOUNDATION FUNDING PROPOSAL



Page

- 1 Alaska Quality Schools Initiative
- 2-7 Descriptions of Foundation Funding Proposal
- 8 Estimated allocations under existing funding programs
- 9 Estimated allocations under Foundation Funding Proposal
- 10 Compares existing program allocations to proposal
- 11 Examples of indicators to qualify for incentive grant funding

ALASKA QUALITY SCHOOLS INITIATIVE

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High Student Academic Standards & Assessment

- ★ School districts develop and adopt standards and assessments
- ★ State supports school districts by developing
 - content standards in ten core subject areas
 - student performance standards for basic skills
 - curriculum frameworks and benchmarks
- ★ State supports school districts through statewide assessment of standards
 - California Achievement Test: reading, mathematics, language arts
 - Direct writing assessment
 - National Assessment of Educational Progress

Quality Professional Standards

- ★ Standards-based licensure
 - Initial preparation
 - Continuing professional development
 - National board certified
- ★ University preparation
- ★ Performance-based evaluation

Family, School and Community Network

- ★ Research-based family, school and community partnerships
- ★ Collaborations among education organizations and parent organizations
- ★ Facilitating student transitions throughout their schooling
- ★ Business, agency, community partnerships

School Excellence Standards

- ★ State school accreditation
 - State standards for successful schools
 - School profiling process
 - Northwest Association of Schools and Colleges partnership
- ★ State helps schools reach accreditation standards by providing technical assistance
- ★ Distinguished school recognition

Shirley J. Holloway, Ph.D., Commissioner of Education
801 W. 10th Street, Suite 200, Juneau, Alaska 99801-1894
Phone: (907) 465-2800 www.educ.state.ak.us



Public School Foundation Program

- ◆ **Allocations made on a per student basis**
- ◆ **Eliminates unnecessary identification of students**
- ◆ **Increases local control for pupil transportation services**
- ◆ **Eliminates Alaska's requirement to comply with federal disparity test**
- ◆ **Incentive Grant provides for improved student performance (Quality School Initiatives)**

Public School Foundation Program

- ◆ Level I Base Student Allocation
- ◆ Level II Supplemental Equalization
- ◆ Level III Incentive Grant

Level I

Base Student Allocation

- 1. Student Driven**
- 2. Adjustments**
 - **community size**
 - **transportation weight**
 - **20% special needs factor**
 - **intensive service allocation of \$22,500**
 - **single site school district**
- 3. 7 Area Cost Factors (Study to validate factors)**
- 4. 3 Mill Required Local Effort**

Level II Supplemental Equalization

- ◆ **Total Available = District ADM X
(statewide assessed valuation per ADM X 5 mills)
Equals \$1,719 in FY98**
- ◆ **shared between state and local revenues**
- ◆ **based on districts ability to contribute**
- ◆ **districts with an assessed value per ADM
higher than the statewide value per ADM pay
a greater share**

Hold Harmless

- ◆ **Districts will not receive less than 100% of FY98 state support through Level I and II allocations, FY99 - 98%, FY2000 - 95% & FY01 - 90%**

- ◆ **Hold harmless base includes Foundation, Transportation and Single Site allocations**

- ◆ **Provided city/borough districts contribute:**
 - **4 mills in FY98**
 - **5 mills in FY99**
 - **6 mills in FY00**
 - **7 mills in FY01**

Level III Incentive Grant

- ◆ **Quality school initiative plan submitted**
- ◆ **Requires local commitment by participating districts**
- ◆ **Maximum level of entitlement = ADM X \$150**
- ◆ **Maximum level is split 65% State & 35% Local**
- ◆ **Insufficient funding for the combined entitlements of Level I, II and III, Level III is reduced pro rata**

FY96 Current

	Foundation	Additional District Support (Single Sites)	Pupil Trans	Total State Aid	Budgeted FY97 Local	Total State/Local
ALASKA GATEWAY	5,250,257	0	461,483	5,711,740	60,000	5,771,740
ALEUTIAN REGION	706,639	61,610	0	768,249	5,050	773,299
ALEUTIANS EAST	3,736,207	0	65,761	3,801,968	715,100	4,517,068
ANCHORAGE	183,606,460	0	10,897,003	194,503,463	85,454,418	279,957,881
ANNETTE ISLANDS	1,600,553	161,040	22,671	1,784,264	50,000	1,834,264
BERING STRAIT	17,162,573	0	37,568	17,200,141	1,031,000	18,231,141
BRISTOL BAY	1,884,665	0	217,455	2,102,120	1,179,119	3,281,239
CHATHAM	2,683,802	0	13,142	2,696,944	40,000	2,736,944
CHUGACH	1,872,397	0	0	1,872,397	21,000	1,893,397
COPPER RIVER	5,995,153	0	547,650	6,542,803	85,000	6,627,803
CORDOVA	2,716,894	166,530	52,958	2,936,382	766,297	3,702,679
CRAIG	2,371,072	179,950	21,095	2,572,117	366,828	2,938,945
DELTA/GREELY	4,681,434	0	858,735	5,540,169	49,000	5,589,169
DENALI	2,931,468	0	294,516	3,225,984	825,093	4,051,077
DILLINGHAM	3,741,308	207,390	330,526	4,279,224	814,500	5,093,724
FAIRBANKS	66,604,010	0	5,458,551	72,062,561	27,080,000	99,142,561
GALENA	1,720,646	171,410	38,366	1,930,422	338,533	2,268,955
HAINES	2,186,523	0	167,584	2,354,107	1,288,455	3,642,562
HOONAH	2,038,521	128,100	45,802	2,212,423	451,383	2,663,806
HYDABURG	977,362	98,210	2,683	1,078,255	191,967	1,270,222
IDITAROD	5,277,640	0	71,577	5,349,217	105,430	5,454,647
JUNEAU	20,725,831	0	1,365,978	22,091,809	14,326,000	36,417,809
KAKE	1,324,890	140,910	26,894	1,492,694	302,110	1,794,804
KASHUNAMIUT	2,121,185	154,940	3,119	2,279,244	78,000	2,357,244
KENAI	44,764,794	0	3,377,357	48,142,151	27,730,077	75,872,228
KETCHIKAN	9,438,683	0	926,617	10,365,300	7,300,066	17,665,366
KLAWOCK	1,530,359	155,550	7,298	1,693,207	126,852	1,820,059
KODIAK	13,281,056	0	733,832	14,014,888	4,910,030	18,924,918
KUSPUK	5,577,174	0	133,030	5,710,204	110,000	5,820,204
LAKE AND PENINSULA	6,778,065	0	99,080	6,877,145	1,258,500	8,135,645
LOWER KUSKOKWIM	39,595,060	0	272,221	39,867,281	700,000	40,567,281
LOWER YUKON	14,977,190	0	0	14,977,190	375,000	15,352,190
MAT-SU	58,008,515	0	6,004,672	64,013,187	20,754,732	84,767,919
NENANA	1,487,031	152,500	90,988	1,730,519	74,124	1,804,643
NOME	4,956,453	280,590	213,460	5,450,503	1,473,465	6,923,968
NORTH SLOPE	11,951,605	0	340,752	12,292,357	28,090,000	40,382,357
NORTHWEST ARCTIC	18,099,143	0	0	18,099,143	3,034,920	21,134,063
PELICAN	563,594	51,240	0	614,834	56,794	671,628
PETERSBURG	3,264,527	212,880	124,769	3,602,176	1,715,450	5,317,626
PRIBILOF	2,039,134	0	0	2,039,134	17,000	2,056,134
SITKA	6,291,941	0	381,917	6,673,858	4,096,656	10,770,514
SKAGWAY	734,653	112,850	4,138	851,641	618,953	1,470,594
SOUTHEAST	3,252,406	0	171,098	3,423,504	75,100	3,498,604
SOUTHWEST	7,439,476	0	96,616	7,536,092	526,000	8,062,092
ST. MARY'S	1,433,744	145,790	0	1,579,534	40,000	1,619,534
TANANA	1,185,124	117,120	18,847	1,321,091	128,000	1,449,091
UNALASKA	1,808,944	192,150	172,210	2,173,304	1,634,947	3,808,251
VALDEZ	3,412,771	267,180	302,687	3,982,638	3,739,783	7,722,421
WRANGELL	2,459,957	148,840	138,026	2,746,823	1,096,730	3,843,553
YAKUTAT	1,320,398	139,080	57,079	1,516,557	338,000	1,854,557
YUKON FLATS	6,379,085	0	68,634	6,447,719	366,927	6,814,646
YUKON/KOYUKUK	6,725,649	0	117,076	6,842,725	65,000	6,907,725
YUPIIT	4,279,034	0	0	4,279,034	120,887	4,399,921
ALYESKA CORRES.	4,022,889	0	0	4,022,889	0	4,022,889
Mt. EDGE CUMBE	1,708,000	0	0	1,708,000	0	1,708,000
OTHER	26,903,456	0	341,679	27,245,135	0	27,245,135
TOTAL	659,587,400	3,445,860	35,195,200	698,228,460	246,198,276	944,426,736

FY98 Proposed

	Proposed Level I	Proposed Level II	Hold Harmless	Proposed Level III	Total State Aid	Budgeted FY97 Local	Additional Required Local	Total State/Local
ALASKA GATEWAY	4,076,059	976,392	659,289	55,380	5,767,120	60,000	0	5,827,120
ALEUTIAN REGION	252,963	56,727	458,559	3,218	771,467	5,050	0	776,517
ALEUTIANS EAST	2,790,609	366,759	644,600	35,978	3,837,946	715,100	0	4,553,046
ANCHORAGE	147,634,300	44,036,996	2,832,167	4,562,074	199,065,537	85,454,418	0	284,519,955
ANNETTE ISLANDS	2,191,850	670,410	0	38,025	2,900,285	50,000	0	2,950,285
BERING STRAIT	13,977,855	3,062,158	160,128	173,683	17,373,824	1,031,000	0	18,404,824
BRISTOL BAY	2,012,473	204,386	0	31,298	2,248,157	1,179,119	0	3,427,276
CHATHAM	2,387,515	570,708	0	32,370	2,990,593	40,000	0	3,030,593
CHUGACH	1,251,892	275,040	345,465	15,600	1,887,997	21,000	0	1,908,997
COPPER RIVER	4,136,270	1,305,581	1,100,952	74,051	6,616,854	85,000	0	6,701,854
CORDOVA	2,114,889	476,490	345,003	51,675	2,988,057	766,297	204,328	3,958,682
CRAIG	1,817,263	508,215	246,639	43,583	2,615,700	366,828	177,062	3,159,590
DELTA/GREELY	4,326,056	1,442,241	0	81,803	5,850,100	49,000	0	5,899,100
DENALI	2,212,271	366,459	647,254	38,513	3,264,497	825,093	0	4,089,590
DILLINGHAM	3,084,327	594,124	600,773	56,550	4,335,774	814,500	140,962	5,291,236
FAIRBANKS	54,319,734	16,627,811	1,115,016	1,594,174	73,656,735	27,080,000	0	100,736,735
GALENA	1,382,654	240,574	307,194	17,550	1,947,972	338,533	0	2,286,505
HAINES	1,552,819	374,352	426,936	43,095	2,397,202	1,288,455	0	3,685,657
HOONAH	1,717,446	373,131	121,846	26,715	2,239,138	451,383	0	2,690,521
HYDABURG	700,655	159,365	218,235	10,481	1,088,736	191,967	0	1,280,703
IDITAROD	4,092,975	749,484	506,758	42,510	5,391,727	105,430	0	5,497,157
JUNEAU	15,688,259	4,610,362	1,793,188	545,919	22,637,728	14,326,000	0	36,963,728
KAKE	1,089,825	257,859	145,010	18,525	1,511,219	302,110	0	1,813,329
KASHUNAMIUT	1,991,703	462,411	0	26,228	2,480,342	78,000	0	2,558,342
KENAI	34,129,353	8,996,268	5,016,530	1,031,453	49,173,604	27,730,077	0	76,903,681
KETCHIKAN	7,426,171	2,296,821	642,308	276,120	10,641,420	7,300,066	0	17,941,486
KLAWOCK	1,281,487	312,150	99,570	21,450	1,714,657	126,852	27,659	1,869,168
KODIAK	9,819,948	2,532,025	1,662,915	274,073	14,288,961	4,910,030	106,694	19,305,685
KUSPUK	4,271,889	888,723	549,592	50,408	5,760,612	110,000	0	5,870,612
LAKE AND PENINSUL	4,827,675	631,304	1,418,166	49,725	6,926,870	1,258,500	0	8,185,370
LOWER KUSKOKWIM	23,266,258	6,053,459	10,547,564	343,346	40,210,627	700,000	0	40,910,627
LOWER YUKON	12,605,875	3,171,555	0	179,888	15,957,318	375,000	0	16,332,318
MAT-SU	46,495,179	14,069,029	3,448,979	1,228,988	65,242,175	20,754,732	0	85,996,907
NENANA	1,108,418	227,793	394,308	16,575	1,747,094	74,124	49,205	1,870,423
NOME	3,889,436	838,813	722,254	75,173	5,525,676	1,473,465	0	6,999,141
NORTH SLOPE	9,367,444	191,188	0	198,608	9,757,240	28,090,000	0	37,847,240
NORTHWEST ARCTIC	13,699,883	2,556,522	1,542,738	199,290	18,298,433	3,034,920	0	21,333,353
PELICAN	319,661	32,248	262,925	3,900	618,734	56,794	26,418	701,946
PETERSBURG	2,706,608	731,411	164,157	76,245	3,678,421	1,715,450	0	5,393,871
PRIBILOF	1,782,732	362,709	0	20,573	2,166,014	17,000	0	2,183,014
SITKA	4,917,895	1,527,289	228,674	170,625	6,844,483	4,096,656	0	10,941,139
SKAGWAY	546,085	58,214	247,342	12,675	864,316	618,953	86,435	1,569,704
SOUTHEAST	2,203,730	453,816	765,956	25,740	3,449,244	75,100	0	3,524,344
SOUTHWEST	5,629,095	1,268,622	638,375	71,955	7,608,047	526,000	0	8,134,047
ST. MARY'S	1,124,558	220,300	234,676	13,650	1,593,184	40,000	3,706	1,636,890
TANANA	851,252	146,717	323,122	9,750	1,330,841	128,000	0	1,458,841
UNALASKA	1,795,063	173,017	205,224	36,563	2,209,867	1,634,947	0	3,844,814
VALDEZ	2,740,358	378,885	863,395	87,750	4,070,388	3,739,783	0	7,810,171
WRANGELL	1,898,311	518,382	330,130	51,188	2,798,011	1,096,730	0	3,894,741
YAKUTAT	1,117,545	194,628	204,384	16,965	1,533,522	338,000	0	1,871,522
YUKON FLATS	4,580,377	794,178	1,073,164	45,045	6,492,764	366,927	0	6,859,691
YUKON/KOYUKUK	5,234,323	948,888	659,514	53,820	6,896,545	65,000	0	6,961,545
YUPIIT	2,926,836	715,104	637,094	40,560	4,319,594	120,887	0	4,440,481
ALYESKA CORRES.	3,201,957	0	820,932	0	4,022,889	0	0	4,022,889
MI. EDGE CUMBE	1,412,460	0	295,540	0	1,708,000	0	0	1,708,000
OTHER	27,245,135	0	0	0	27,245,135	0	0	27,245,135

TOTAL 521,225,659 130,058,093 46,974,542 12,301,099 710,559,393 246,198,276 822,469 957,580,138

Compare

	Proposed Total State/Local	Existing Total State/Local	State/Local Difference Proposed less Existing	Proposed Total State Aid	Existing Total State Aid	State Aid Difference Proposed less Existing
ALASKA GATEWAY	5,827,120	5,771,740	55,380	5,767,120	5,711,740	55,380
ALEUTIAN REGION	776,517	773,299	3,218	771,467	768,249	3,218
ALEUTIANS EAST	4,553,046	4,517,068	35,978	3,837,946	3,801,968	35,978
ANCHORAGE	284,519,955	279,957,881	4,562,074	199,065,537	194,503,463	4,562,074
ANNETTE ISLANDS	2,950,285	1,834,264	1,116,021	2,900,285	1,784,264	1,116,021
BERING STRAIT	18,404,824	18,231,141	173,683	17,373,824	17,200,141	173,683
BRISTOL BAY	3,427,276	3,281,239	146,037	2,248,157	2,102,120	146,037
CHATHAM	3,030,593	2,736,944	293,649	2,990,593	2,696,944	293,649
CHUGACH	1,908,997	1,893,397	15,600	1,887,997	1,872,397	15,600
COPPER RIVER	6,701,854	6,627,803	74,051	6,616,854	6,542,803	74,051
CORDOVA	3,958,682	3,702,679	256,003	2,988,057	2,936,382	51,675
CRAIG	3,159,590	2,938,945	220,645	2,615,700	2,572,117	43,583
DELTA/GREELY	5,899,100	5,589,169	309,931	5,850,100	5,540,169	309,931
DENALI	4,089,590	4,051,077	38,513	3,264,497	3,225,984	38,513
DILLINGHAM	5,291,236	5,093,724	197,512	4,335,774	4,279,224	56,550
FAIRBANKS	100,736,735	99,142,561	1,594,174	73,656,735	72,062,561	1,594,174
GALENA	2,286,505	2,268,955	17,550	1,947,972	1,930,422	17,550
HAINES	3,685,657	3,642,562	43,095	2,397,202	2,354,107	43,095
HOONAH	2,690,521	2,663,806	26,715	2,239,138	2,212,423	26,715
HYDABURG	1,280,703	1,270,222	10,481	1,088,736	1,078,255	10,481
IDITAROD	5,497,157	5,454,647	42,510	5,391,727	5,349,217	42,510
JUNEAU	36,963,728	36,417,809	545,919	22,637,728	22,091,809	545,919
KAKE	1,813,329	1,794,804	18,525	1,511,219	1,492,694	18,525
KASHUNAMIUT	2,558,342	2,357,244	201,098	2,480,342	2,279,244	201,098
KENAI	76,903,681	75,872,228	1,031,453	49,173,604	48,142,151	1,031,453
KETCHIKAN	17,941,486	17,665,366	276,120	10,641,420	10,365,300	276,120
KLAWOCK	1,869,168	1,820,059	49,109	1,714,657	1,693,207	21,450
KODIAK	19,305,685	18,924,918	380,767	14,288,961	14,014,888	274,073
KUSPUK	5,870,612	5,820,204	50,408	5,760,612	5,710,204	50,408
LAKE AND PENINSULA	8,185,370	8,135,645	49,725	6,926,870	6,877,145	49,725
LOWER KUSKOKWIM	40,910,627	40,567,281	343,346	40,210,627	39,867,281	343,346
LOWER YUKON	16,332,318	15,352,190	980,128	15,957,318	14,977,190	980,128
MAT-SU	85,996,907	84,767,919	1,228,988	65,242,175	64,013,187	1,228,988
NENANA	1,870,423	1,804,643	65,780	1,747,094	1,730,519	16,575
NOME	6,999,141	6,923,968	75,173	5,525,676	5,450,503	75,173
NORTH SLOPE	37,847,240	40,382,357	(2,535,117)	9,757,240	12,292,357	(2,535,117)
NORTHWEST ARCTIC	21,333,353	21,134,063	199,290	18,298,433	18,099,143	199,290
PELICAN	701,946	671,628	30,318	618,734	614,834	3,900
PETERSBURG	5,393,871	5,317,626	76,245	3,678,421	3,602,176	76,245
PRIBILOF	2,183,014	2,056,134	126,880	2,166,014	2,039,134	126,880
SITKA	10,941,139	10,770,514	170,625	6,844,483	6,673,858	170,625
SKAGWAY	1,569,704	1,470,594	99,110	864,316	851,641	12,675
SOUTHEAST	3,524,344	3,498,604	25,740	3,449,244	3,423,504	25,740
SOUTHWEST	8,134,047	8,062,092	71,955	7,608,047	7,536,092	71,955
ST. MARY'S	1,636,890	1,619,534	17,356	1,593,184	1,579,534	13,650
TANANA	1,458,841	1,449,091	9,750	1,330,841	1,321,091	9,750
UNALASKA	3,844,814	3,808,251	36,563	2,209,867	2,173,304	36,563
VALDEZ	7,810,171	7,722,421	87,750	4,070,388	3,982,638	87,750
WRANGELL	3,894,741	3,843,553	51,188	2,798,011	2,746,823	51,188
YAKUTAT	1,871,522	1,854,557	16,965	1,533,522	1,516,557	16,965
YUKON FLATS	6,859,691	6,814,646	45,045	6,492,764	6,447,719	45,045
YUKON/KOYUKUK	6,961,545	6,907,725	53,820	6,896,545	6,842,725	53,820
YUPIIT	4,440,481	4,399,921	40,560	4,319,594	4,279,034	40,560
ALYESKA CORRES.	4,022,889	4,022,889	0	4,022,889	4,022,889	0
Mt. EDGECUMBE	1,708,000	1,708,000	0	1,708,000	1,708,000	0
OTHER	27,245,135	27,245,135	0	27,245,135	27,245,135	0

TOTAL 957,580,138 944,426,736 13,153,402 710,559,393 698,228,460 12,330,933

12/2/96

District Qualification for Incentive Level Foundation Funding

The following represent the examples of indicators which would be used to determine whether Districts qualify for Incentive Level Foundation Funding:

Quality Student Standards

- The district has adopted standards at the exit (graduate) level and at least one other level (e.g. elementary) which clearly state what students will know and be able to do in Language Arts, Mathematics, Science, Social Studies and other areas as determined by the School Board
- The district has prioritized curriculum content areas, and has developed exit and at least one other level of standards in Language Arts and Mathematics, and has plans to carry this forward into other key content areas
- The district has an assessment system clearly aligned to standards in one or more areas, and uses the assessment system to review student progress and set instructional priorities
- The district has procedures in place to assist students with special needs to achieve standards
- Clear statements of what students are expected to know and be able to do are communicated to students and parents in every class, at every grade level, in every subject area
- Students achieve credit in high school classes based upon competence and mastery, rather than time in class
- An inclusive process is in place to obtain and revise curriculum for students based upon broad agreement about what students should know and be able to do
- Community, business, parents are involved in review of student progress through exhibitions of attainment of standards
- Students are able to report their own progress and parents clearly identify the progress of their student(s) on district student standards

Quality School Standards

- The district uses the School Improvement Process of the Northwest Association of Schools and Colleges, in conjunction with a local process involving staff, students, parents and other community members, to evaluate schools
- The results of the School Improvement Accreditation process are used to make meaningful plans for school and district level improvement
- Schools have a plan for improvement developed through a school profiling process and including elements described in the state's draft accreditation system or the elements of effective schools as published by Northwest Regional Educational Laboratory
- Schools measure their success by the success of all students, feedback from parents and community, and credible follow-up data about students who leave the school

Quality Professional Standards

- A professional development plan is articulated for individual teachers and for the staff as a whole
- Supervision is a demonstrated priority, and involves multiple models depending upon teacher needs
- High performance standards are articulated and monitored for all staff
- Staff development is clearly related to student success, the district planning process, and school improvement plans
- A culture of collaboration exists in the schools

Quality Parent, Family and Community Involvement

- Each school has a plan for comprehensive involvement of parents and community
- Schools welcome parents and community members through multiple methods and can document success beyond numbers of parents volunteering in schools
- National PTA standards for Parent Involvement are met
- Parents and community members are involved in site councils and other decisionmaking structures

FISCAL NOTE

STATE OF ALASKA

BILL NO. _____

1997 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Education

Title: An act relating to the public school funding program; repealing the public school foundation program; relating

BRU: K-12 Support

Sponsor: Rules Committee _____

Component: Foundation Program

Requester: Governor _____

COMPONENT SERIAL NO. 141

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	498.6					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	12,322.4	11,017.8	11,452.9	11,277.2	14,121.0	10,180.3
MISCELLANEOUS						
TOTAL OPERATING	12,821.0	11,017.8	11,452.9	11,277.2	14,121.0	10,180.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF	12,821.0	11,017.8	11,452.9	11,277.2	14,121.0	10,180.3
1005 GF/Program Receipts						
1006 GF/MHTLA						
Other						
TOTAL	12,821.0	11,017.8	11,452.9	11,277.2	14,121.0	10,180.3

POSITIONS:

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

See attached schedule for fiscal note and sectional analysis.

Prepared by: Eddy Jeans, School Finance Manager

Phone: 465-8679

Division: Education Support Services

Date: _____

Approved by Commissioner: [Signature]

Shirley Holloway, Ph. D., Commissioner

Agency: Education

Date: 1-8-97

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Public School Funding Program - 12-31-96

Fiscal Note Analysis

CONTRACTUAL: The department is requesting a one time appropriation of \$498,600 in FY98 to commission an educational cost study. The department believes it will take approximately 18 months to complete the study. Placeholder area cost and transportation factors have been placed in transition sections 18 and 19 of this bill. It is the intent of the department to commission the study and adopt the results in regulation. Elements to consider in an educational cost study may included but are not limited to, certified and classified salaries, benefits, geographic location, transportation, fuel, utilities and supplies.

- * The Department of Administration has requested funding for a geographic differential study for state employees. Should both proposals pass, funding could be coordinated to reduce the total cost of the combined legislation.

GRANTS: The following table lists the assumptions used to prepare the fiscal note.

Bill Reference	Sec. 14.19.275	Sec. 14.19.210(2)	Sec. 20 Transition	
Fiscal Year	Student Allocation	Required Local	Hold Harmless	Enrollment Growth
FY98	\$2,950	3.00 mills	100%	FY98 Projections
FY99	\$3,150	3.25 mills	98%	1.5%
FY00	\$3,250	3.50 mills	95%	1.5%
FY01	\$3,325	3.75 mills	90%	1.5%
FY02	\$3,400	4.00 mills	0%	1.5%
FY03	\$3,400	4.00 mills	0%	1.5%

Sectional Analysis

Section 1- Defines the purpose of the proposed public school funding program.

Section 2 - Amends Alaska statute by adding a new chapter. Chapter 19 is the proposed Public School Funding Program. Listed under Section 2 are sections 14.19.100 through 14.19.900 that outline the proposed Public School Funding Program. Following is a list of the proposed sections and their titles.

- Sec. 14.19.100. Public school account.
- Sec. 14.19.200. State funding for districts.
- Sec. 14.19.210. Equalization funding.
- Sec. 14.19.215. Incentive funding.
- Sec. 14.19.220. Special needs and intensive services funding.
- Sec. 14.19.230. State funding for centralized correspondence study.
- Sec. 14.19.235. State funding for state boarding school.
- Sec. 14.19.240. Local contribution.
- Sec. 14.19.250. Funding communities.
- Sec. 14.19.260. Funding community size factor.
- Sec. 14.19.270. Area cost and transportation factors.
- Sec. 14.19.275. Base student allocation.
- Sec. 14.19.300. Student count estimate.
- Sec. 14.19.305. Fund balance in school operating fund.
- Sec. 14.19.310. Determination of full and true value by Department of Community and Regional Affairs.
- Sec. 14.19.400. Student counting periods.

Public School Funding Program - 12-31-96**Section 2- Cont.**

- Sec. 14.19.410. Distribution of public school funding.
- Sec. 14.19.900. Construction and implementation of chapter.
- Sec. 14.19.910. Restrictions governing receipt and expenditure of district money.
- Sec. 14.19.920. Regulations.
- Sec. 14.19.990. Definitions.

Section 3 - amends AS 14.03.120(g), new reference of district from AS 14.17.250 to AS.14.19.990.

Section 4 - amends AS 14.03.125(e), new reference of district from AS 14.17.250 to AS.14.19.990.

Section 5 - amends AS 14.03.15(c), new reference of public school funding from State Foundation Aid.

Section 6 - repeals and reenacts AS 14.09.010, Transportation of students. Eliminates state reimbursement program for pupil transportation. Allow districts to receive an adjustment in the public school funding program for transportation cost.

Section 7 - amends AS 14.11.008(b), new reference of full and true property value from AS 14.17.025(a)(1) to AS 14.19.310 and district average daily membership from AS.14.17.250 to AS 14.19.990.

Section 8 - amends AS 14.14.115(c)(2), new reference of district from AS 14.17.250 to AS.14.19.990.

Section 9 - amends AS 14.16.050(a)(2), new reference of public school funding from state financial assistance for education. Corrects reference of student count estimates from AS 14.17.080 to AS 14.19.300, school operating fund balance from AS 14.17.082 to AS 14.19.305 and public school funding from AS 14.17.160 - 14.17.220 to AS 14.19.300 - 14.19.910.

Section 10 - amends AS 14.16.080(a), new reference of public school funding from AS 14.17.024 to AS 14.19.235.

Section 11 - amends AS 14.20.177(a), changes reference of basic need to level I need from AS 14.17.021(b) to AS 14.19.210(b)(1). Adds a new sub-section 3 addressing tenure layoff if the districts equalization funding decreased by 3% or more due to proration.

Section 12 - amends AS 14.30.347, clarifies the districts responsibility to provide transportation services for exceptional children. The district is responsible for cost associated with the transportation of exceptional children.

Section 13 - repeals and reenacts AS 14.30.650, changes the funding mechanism for the Special Education Service Agency (SESA). The allocation will be based on 18% of the statewide ADM multiplied by \$85. Currently the allocation is based on 2% of the total foundation special education allocation or \$85 per special education child whichever is greater.

Section 14 - amends AS 29.45.020(a), for the purpose of taxpayer notice, new reference of public school funding from AS 14.17. to AS 14.19.

Section 15 - amends AS 44.47.305(c), for the purpose of day care assistance program, change reference of instructional unit allotments to funding communities from AS 14.17.051 to AS 14.19.270. (area cost differentials)

Public School Funding Program - 12-31-96

Section 16 - repeals all references to AS 14.17 (Fondation Program), AS 14.09.020 (Transportation of Nonpublic Students) and AS 14.30.010(b)(7) (Compulsory Attendance for children living more than two miles from a school or a bus route).

Section 17 - Transition: Incentive Funding, sets the criteria for which a district may apply for an incentive grant for the first two years. Establishes the minimum standards for student achievement, districtwide school improvement or performance-based assessment systems for teachers.

Section 18 - Transition: Area Cost Factors, establishes the area cost factors by funding community for a two year period. By the end of the two year period the department shall establish in regulation the area cost factors based on the results of the cost factor study.

Section 19 - Transition: Student Transportation, establishes the transportation factors by district for a two year period. By the end of the two year period the department shall establish in regulation the transportation factors based on the results of the cost factor study.

Section 20 - Transition: Hold Harmless, establishes the programs and entitlements to be included in the hold harmless base. Establishes the hold harmless percentage year and is eliminated in year 5.

Section 21 - Transition: Regulations, allows the department to utilize existing regulation that conform with the language and purpose of this act.

Section 21 - Establishes July 1, 1997 as the effective date.

School Funding Analysis

Current Foundation Formula	SB 36	Proposed Funding Formula
<ul style="list-style-type: none"> • Allocations are based on instructional units • Categorical revenue based on identification and types of service for students, 4 levels for Special Education, 3 levels for Bilingual Education and 1 level for Vocational Education • Funding for students identified with intensive needs within the 4 levels of Special Education • Community size adjustment, allows funding for schools serving as few as 1 student • No adjustment for single site school districts within formula • Area cost differentials are assigned at the district level • 23 area cost differentials • Area cost differential are based on 1985 state employee salary adjustments and have not been updated • Equalization based on 4 mills local effort • Allows additional local contributions capped at 23% of Basic Need • No incentive for quality schools initiatives • Considers federal impact aid in formula • Pupil transportation reimbursed under separate program 	<ul style="list-style-type: none"> • Allocations are based on instructional units • Categorical revenue for gifted and talented is an allocation based on 4.5% of total students funded separate from Special Education, consolidates Bilingual to 1 level still requiring identification, all other categories remain the same • Funding for students identified with intensive needs within the 3 levels of Special Education • Community size adjustment, minimum size for funding set at 10 ADM • Adds adjustment for single site school districts • Area cost differentials are assigned at the district level • 23 area cost differentials • Area cost differential are based on 1985 state employee salary adjustments and have not been updated • Equalization based on 4.5 mills plus supplemental equalization formula and has recapture of revenue that 4.5 mills generates above Basic Need • Allows additional local contributions capped at 23% of Basic Need • No incentive for quality schools initiatives • Considers federal impact aid in formula • Pupil transportation reimbursed under separate program 	<ul style="list-style-type: none"> • Allocations are based on weighted students • Categorical revenue is an allocation based on 20% of total students enrolled • Funding for students identified with intensive needs in addition to the 20% allocation • Community size adjustment, minimum size for funding set at 10 ADM • Adds adjustment for single site school districts • Area cost differentials are assigned at the funding community level • 7 area cost differentials • Requires area cost differential study to be completed in three years • Equalization based on 3 mills plus supplemental equalization formula • Allows additional local contributions without cap • Additional \$12 million incentive grants for quality schools initiatives • Does not consider federal impact aid in formula • Pupil transportation funds are allocated within proposed program based on weight factors

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____
Title: An act relating to the public school funding program;
repealing the public school foundation program; relating
Sponsor: Rules Committee _____
Requestor: Governor _____

Department Affected: Education
BRU: K-12 Support
Component: Foundation Program

COMPONENT SERIAL NO. 141

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	498.6					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	12,322.4	11,017.8	11,452.9	11,277.2	14,121.0	10,180.3
MISCELLANEOUS						
TOTAL OPERATING	12,821.0	11,017.8	11,452.9	11,277.2	14,121.0	10,180.3

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

CHANGE IN REVENUES						
---------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	12,821.0	11,017.8	11,452.9	11,277.2	14,121.0	10,180.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	12,821.0	11,017.8	11,452.9	11,277.2	14,121.0	10,180.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY97) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

See attached schedule for fiscal note and sectional analysis.

Prepared by: Eddy Jeans, School Finance Manager

Phone: 465-8679

Division: Education Support Services

Date: _____

Approved by Commissioner: *Shirley Holloway*

Shirley Holloway, Ph. D., Commissioner

Agency: Education

Date: 1-8-97

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Public School Funding Program - 12-31-96**Fiscal Note Analysis**

CONTRACTUAL: The department is requesting a one time appropriation of \$498,600 in FY98 to commission an educational cost study. The department believes it will take approximately 18 months to complete the study. Placeholder area cost and transportation factors have been placed in transition sections 18 and 19 of this bill. It is the intent of the department to commission the study and adopt the results in regulation. Elements to consider in an educational cost study may include but are not limited to, certified and classified salaries, benefits, geographic location, transportation, fuel, utilities and supplies.

- The Department of Administration has requested funding for a geographic differential study for state employees. Should both proposals pass, funding could be coordinated to reduce the total cost of the combined legislation.

GRANTS: The following table lists the assumptions used to prepare the fiscal note.

Bill Reference	Sec. 14.19.275	Sec. 14.19.210(2)	Sec. 20 Transition	
Fiscal Year	Student Allocation	Required Local	Hold Harmless	Enrollment Growth
FY98	\$2,950	3.00 mills	100%	FY98 Projections
FY99	\$3,150	3.25 mills	98%	1.5%
FY00	\$3,250	3.50 mills	95%	1.5%
FY01	\$3,325	3.75 mills	90%	1.5%
FY02	\$3,400	4.00 mills	0%	1.5%
FY03	\$3,400	4.00 mills	0%	1.5%

Sectional Analysis

Section 1- Defines the purpose of the proposed public school funding program.

Section 2 - Amends Alaska statute by adding a new chapter. Chapter 19 is the proposed Public School Funding Program. Listed under Section 2 are sections 14.19.100 through 14.19.900 that outline the proposed Public School Funding Program. Following is a list of the proposed sections and their titles.

- Sec. 14.19.100. Public school account.
- Sec. 14.19.200. State funding for districts.
- Sec. 14.19.210. Equalization funding.
- Sec. 14.19.215. Incentive funding.
- Sec. 14.19.220. Special needs and intensive services funding.
- Sec. 14.19.230. State funding for centralized correspondence study.
- Sec. 14.19.235. State funding for state boarding school.
- Sec. 14.19.240. Local contribution.
- Sec. 14.19.250. Funding communities.
- Sec. 14.19.260. Funding community size factor.
- Sec. 14.19.270. Area cost and transportation factors.
- Sec. 14.19.275. Base student allocation.
- Sec. 14.19.300. Student count estimate.
- Sec. 14.19.305. Fund balance in school operating fund.
- Sec. 14.19.310. Determination of full and true value by Department of Community and Regional Affairs.
- Sec. 14.19.400. Student counting periods.

Public School Funding Program - 12-31-96**Section 2 - Cont.**

- Sec. 14.19.410. Distribution of public school funding.
- Sec. 14.19.900. Construction and implementation of chapter.
- Sec. 14.19.910. Restrictions governing receipt and expenditure of district money.
- Sec. 14.19.920. Regulations.
- Sec. 14.19.990. Definitions.

Section 3 - amends AS 14.03.120(g), new reference of district from AS 14.17.250 to AS 14.19.990.

Section 4 - amends AS 14.03.125(e), new reference of district from AS 14.17.250 to AS 14.19.990.

Section 5 - amends AS 14.03.15(c), new reference of public school funding from State Foundation Aid.

Section 6 - repeals and reenacts AS 14.09.010, Transportation of students. Eliminates state reimbursement program for pupil transportation. Allow districts to receive an adjustment in the public school funding program for transportation cost.

Section 7 - amends AS 14.11.008(b), new reference of full and true property value from AS 14.17.025(a)(1) to AS 14.19.310 and district average daily membership from AS 14.17.250 to AS 14.19.990.

Section 8 - amends AS 14.14.115(c)(2), new reference of district from AS 14.17.250 to AS 14.19.990.

Section 9 - amends AS 14.16.050(a)(2), new reference of public school funding from state financial assistance for education. Corrects reference of student count estimates from AS 14.17.080 to AS 14.19.300, school operating fund balance from AS 14.17.082 to AS 14.19.305 and public school funding from AS 14.17.160 - 14.17.220 to AS 14.19.300 - 14.19.910.

Section 10 - amends AS 14.16.080(a), new reference of public school funding from AS 14.17.024 to AS 14.19.235.

Section 11 - amends AS 14.20.177(a), changes reference of basic need to level I need from AS 14.17.021(b) to AS 14.19.210(b)(1). Adds a new sub-section 3 addressing tenure layoff if the districts equalization funding decreased by 3% or more due to proration.

Section 12 - amends AS 14.30.347, clarifies the districts responsibility to provide transportation services for exceptional children. The district is responsible for cost associated with the transportation of exceptional children.

Section 13 - repeals and reenacts AS 14.30.650, changes the funding mechanism for the Special Education Service Agency (SESA). The allocation will be based on 18% of the statewide ADM multiplied by \$85. Currently the allocation is based on 2% of the total foundation special education allocation or \$85 per special education child whichever is greater.

Section 14 - amends AS 29.45.020(a), for the purpose of taxpayer notice, new reference of public school funding from AS 14.17. to AS 14.19.

Section 15 - amends AS 44.47.305(c), for the purpose of day care assistance program, change reference of instructional unit allotments to funding communities from AS 14.17.051 to AS 14.19.270. (area cost differentials)

Public School Funding Program - 12-31-96

Section 16 - repeals all references to AS 14.17 (Fondation Program). AS 14.09.020 (Transportation of Nonpublic Students) and AS 14.30.010(b)(7) (Compulsory Attendance for children living more than two miles from a school or a bus route).

Section 17 - Transition: Incentive Funding. sets the criteria for which a district may apply for an incentive grant for the first two years. Establishes the minimum standards for student achievement, districtwide school improvement or performance-based assessment systems for teachers.

Section 18 - Transition: Area Cost Factors. establishes the area cost factors by funding community for a two year period. By the end of the two year period the department shall establish in regulation the area cost factors based on the results of the cost factor study.

Section 19 - Transition: Student Transportation, establishes the transportation factors by district for a two year period. By the end of the two year period the department shall establish in regulation the transportation factors based on the results of the cost factor study.

Section 20 - Transition: Hold Harmless, establishes the programs and entitlements to be included in the hold harmless base. Establishes the hold harmless percentage year and is eliminated in year 5.

Section 21 - Transition: Regulations, allows the department to utilize existing regulation that conform with the language and purpose of this act.

Section 21 - Establishes July 1, 1997 as the effective date.

*Brain drain
Retiring
teachers*

Pupil transportation decline by 50%

RECEIVED

Alaska State Legislature

FEB 19 1997

Please enter into the record my testimony to the SB 85 / HB 126
(committee name)
committee on School Funding Plan, dated Feb 19, 1997
bill/subject

I My name is Chris Campbell I am a member of the Ketchikan Gateway Borough School Board. I want to address the fiscal

Expect of this bill *Good morning* *the picture is bleak*
initiating an *(Speaking strictly for Ketchikan)* I want to
note that the area cost differential study has is unnecessary
rely on figures compiled by
since we can talk directly with the State Dept of Labor

1996. This truly reflects costs in a region. Basing
a proposed ACD on what it costs to operate a school or
what it costs to educate a child will merely ratify

the status quo. Our ~~material~~ ^{present educational} cost for
lower than other ~~states~~ ^{districts} because we have reduced/

elemental librarians, counselors, P.E., music, nurses,
aides, art, and support staff. This ~~is a~~ ^{is a} ~~loss~~ ^{loss}

equity with what ~~is~~ ^{is} ~~also~~ ^{also}, we are going to be

experiencing a steep local decline due to the closure of
KPC. Unfortunately, the ACD study is proposed to occur

in the year we can predict our local economy will be
reeling severely depressed. This will result in a

negative impact on our district. The answer is
to tie the ACD study to State Dept of Labor

Statistics. T

Hold harmless provisions will not benefit our district in transitioning to new formula because we have consistently provided 7 mils + and there is no reward or incentive for towns. I would suggest building in incentives to rebate local gov'ts who have

I was born & raised in this state, too.

Increased PPE reduced supplies

They will impact us for the next 4 yrs.

for pupil transportation will be reduced by 50% cannot in a 9 mo term we will be able to do this - Outlook very bleak.

Another concern is that our funding for our district cannot in a 9 mo term we will be able to do this - Outlook very bleak.

Alaska State Legislature

Please enter into the record my testimony to the HESS
 (committee name)
 committee on SB 85 / HB 126, dated 2-19-97
 bill/subject

Support this effort to simplify funding to a per capita basis.

I also support the 20% block grant for Special Needs to reduce classification and allow for more flexibility while maintaining coverage for intensive students.

The major oversight I see that impacts Ketchikan is that this current proposal perpetuates an inequitable ACD factor which, ^{even} the transition ACD does not address. Therefore, I strongly support the ACD study. The key is equity and fairness. Ketchikan, arguably, has lost more students services over ^{recent} the ~~past~~ years than comparable districts. We now face a severe financial crisis with the closure of the pulp mill with associated loss of tax base and stumpage fees. ∴ so this inequity is compounded.

Finally, I like the concept of level III funding, Quality Schools initiative if for no other reason it allows for new funding rather than the mere redistribution of ~~more~~ inadequate existing funds.

Signed:

Overall, the basic issue is EQUITY for all districts, for all students.

Testifier

Diane Gubatayao, Member

Phone: 907-225-7851

Representing (Optional)

Po 5915 / Ketchikan

Address

Fax transmitted from Ketchikan Legislative Information Office
 Phone: 225-9675 Fax: 225-8546

Alaska State Legislature

Please enter into the record my testimony to the Senate Hess
 committee on SB 85 (committee name) dated 2/19/97
 bill/subject

The area cost differential study time line is not adequate. The study should take no longer than one year. I would recommend that a request be made to start the study this month and complete by January of 1998. The Dept of labor information is also presently available without the need for a lengthy study. The Dept. of labor presently employs experts to clearly identify area cost differentials. Please shorten the time line and use existing expertise available.

Signed:

Keith W. Tobin Sup't Phone: 225-2118
Ketchikan School District
 Representing (Optional)
Box 7, Ketchikan 99901
 Address

Fax transmitted from Ketchikan Legislative Information Office
 Phone: 225-9675 Fax: 225-8546



TELECOPY COVER SHEET
Ketchikan Legislative Information Office
Office - (907) 225-9675 Fax - (907) 225-8546

TO: Senator Hess

ATTN: _____ FAX: 465-4714 PHONE: 465-3709

FROM: LIO - Ketchikan PHONE: _____

INSTRUCTIONS: Send written testimony

SENT: Date Feb. 19, 1997 Time _____

DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____

NUMBER OF PAGES: 3 (NOT counting cover sheet)

TRANSMITTED BY: _____

HOW THE PROPOSED FUNDING FORMULA WORKS - TWO PAGES
(SB 85 - Governor) (reviewed by DOE for accuracy) (2/11/97)

"Level I - Equalization Formula"

The number of actual students would be multiplied by a variety of "factors" to create an "adjusted" student count (ADM) that would be multiplied times a per student \$ amount to determine Level I funding. Under the formula, each actual student could be counted as up to 6.2 students for the "adjusted" student count. ("ADM" - Average Daily Membership = student count)

Formula:

of actual students

(X times)

"Community Size Factor" (1.00 for over 1000students to 2.75 for 10-20students)

(X times)

"Area Cost Factor" (1.00 urban to 1.55 distant)

(X times)

"Single Site Factor" (only for districts with under 900students) (1.06 to 1.12)

(X times)

"Special Needs Factor" (all students multiplied by 1.20)

(X times)

"Transportation Factor" (1.00 to 1.08)

(= equals)

"Adjusted" Student Count

To determine "Level I" base funding:

"Adjusted" Student Count" (ADM) (X times)	FY 98 \$2,950 per ADM
	FY 99 \$3,150 per ADM
	FY 00 \$3,250 per ADM
	FY 01 \$3,325 per ADM
	FY 02 and beyond \$3,400 per ADM

(Note: Although it might appear that more money will go for students each year, the FY 98 projected funding level starts out \$46,197,604 **Below** actual FY 97 state funding. The increases above essentially bring the state funding level back to the FY 97 level per student in the year 2002, then keep it there indefinitely. There is no provision to increase funding for inflation.)

"Level II - Equalization Funding"

The value of 5 mills of property tax is determined based on the statewide "full and true assessed value". This AV is broken down to a per student AV by dividing by the statewide actual student count. This amount is **added to the "Level I" funding.**

"Level III - Local Match Incentive Funding"

The state may authorize up to an additional \$97.50 times the actual student count if districts agree to implement "quality school initiatives".

Local Taxpayer Contribution (increases from 4 mills to approximately 6.50 mills) as shown below:

Level I - "Equalization" - 3 mills this year, increased back to 4 mills over the next four years (not including REAA's)

PLUS +

Level II - "Equalization" - Each municipality (not including REAA's) **pays a portion of an additional 5 mills.** (The municipal portion of 5 mills is determined by comparing the local per student full and true Assessed Value (AV) to the statewide AV. The local taxpayers pay part of the 5 mills based on the ratio of the local AV to the statewide AV. For example, Juneau's additional contribution would be 52.1% of 5 mills (2.605 mills) because Juneau's AV is a little higher than the statewide average. Kake's share would be 21.05% of 5 mills (1.05 mills) because its AV is considerably lower than the statewide average.)

PLUS +

Level III - "Local Match Incentive" - Each Municipality and REAA **must match at least 35% of "incentive funding"** up to a state/local total of \$97.50 times the adjusted student count. Alternatively, a district may reallocate existing resources to meet the match.

Note: It is critical for municipalities to understand that the legislation provides that:

- the formula amount is reduced pro rata if the state fails to appropriate enough money
- the draft legislation states, "Nothing in this section prohibits a city or borough from contributing to its district amounts in excess of the local contribution required under this section."

Note: A new feature of the proposal is funding by "funding community", instead of by district. This allows a district with both urban and remote schools to utilize different area cost differential factors.

Note: The proposal has a "hold harmless" to avoid any big losses the first three years. The minimum contribution to be eligible for the hold harmless is:

FY 98 - four mills
FY 99 - five mills
FY 00 - six mills
FY 01 - seven mills

Five year State/Local Contribution Projection

The State Board of Education **declined to make five year projections.** However, according to DOE figures, the state contribution per student will indefinitely stay approximately the same as FY 97 with no provision for inflation, **IF** the state "fully funds" the formula.

ONE PAGE OVERVIEW

Long Range Municipal Property Tax Impacts of SB 85 Governor's School Foundation Funding Proposal (2/14/97)

Current:

- **Minimum Required Mill Contribution - 4 mills.**

Note: Due to the fact that municipalities have been required to absorb inflation on the entire school budget, (nearly 30% in the last ten years) the actual mill contribution among the larger school districts has risen to: (Kodiak 5.64; Anchorage 5.99; Ketchikan 6.86; Juneau 7.06; Fairbanks 7.31; Kenai 7.56; Sitka 8.07; Mat-Su 8.10); up to a 33 mill equivalent in the smaller districts.

Proposed:

- **New Minimum Required Mill Contribution - approximately 6.50 mills average**

New Funding Formula: Municipal funding requirements are contained in three complex "levels". Each municipality has a 3 mill requirement which increases to 4 mills over four years under "Level I", plus a "Level II" local requirement to pay approximately half of 5 mills based on the ratio of your municipalities' assessed value vs. the statewide average, plus a discretionary "Level III Incentive" (proposed at \$97.50 per student) of which municipalities pay at least 35%. (A district may also reallocate current resources to meet the Level III match requirement).

Projected Long Term Financial Impacts on Local Taxpayers:

- Although the Department of Education (DOE) has declined to make five year projections, according to DOE figures, at best, the new proposal would permanently keep the total base state contribution per student at approximately the FY 97 dollar level, without any increases for inflation.
- The state proposal would remove any "local funding cap" for schools. impacts:
 1. There would be more local pressure on councils and assemblies to fill state education funding gaps;
 2. The purpose of the "funding cap" is to avoid the creation of "have" and "have-not" school districts. According to the DOE, under the new proposal, the quality of schools would depend more on the ability and willingness of individual communities to pay.
 3. The proposal calls for \$500,000 to re-establish areas cost differentials

Summary:

Over the past ten years, due to the failure of the state to fund the cost of inflation, the local taxpayer contribution for schools has risen twice as fast as state funding increases.

This proposal would likely accelerate the transfer of funding responsibility for schools from the state to local taxpayers.

The proposed changes could create "have and have-not" school districts which could deprive some students of a quality education.

S B

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 94

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act . . . designating flunitrazepam as a BRU: Criminal Division
schedule IVA controlled substance . . ." Component: Criminal Division
 Sponsor: Senator Ellis
 Requester: Senate HESS Committee COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill designates the drug flunitrazepam, the "date-rape" drug, as a schedule IVA controlled substance. Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 2/20/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce Botelho for* Date: 2/20/97
 Agency: Department of Law

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1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: Rohypnol as Schedule IV-A Drug DPS Statewide Support
 Component: Commissioner's Office
 Sponsor: Senator Ellis
 Requestor: S. HESS COMPONENT SERIAL NO. 0523

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

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Code Revenue						

FUNDING: (Thousands of Dollars)

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

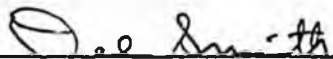
Estimate of current year (FY 97) impact: \$ _____

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.)

No fiscal impact is anticipated to the Department of Public Safety

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner Phone: 465-4322
 Division: Commissioner's Office Date: 1/24/97
 Approved by Commissioner:  Date: 2/21/97
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 94

Revision Date: _____
 Title: "An Act relating to designation flunitrazepam as a schedule IVA controlled substance"
 Sponsor: Senator Ellis
 Requestor: (S) HESS

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The bill makes flunitrazepam a schedule IVA controlled substance and could result in charges ranging in offense level from a class B felony down to an A misdemeanor. The Department of Law has not been made aware of any such cases in Alaska.

Prepared by: Barbara K. Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Alison M. Sela
 Date: 2/21/97

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/14/97

FURTHER: Judiciary

Date of 5-Day Notice: 2/20/97
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/24/97

HESS Committee considered

SENATE BILL NO. 94

"An Act relating to designating flunitrazepam as a schedule IVA controlled substance; and providing for an effective date."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

SIGNING DQ PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
CHAIR: <i>[Signature]</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Law	2/20/97	✓	
Public Safety	2/2/97	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill