

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9703 SENATE RULES

SB

104

Amendment History of SB 104

Senate Finance:

Two amendments were added to SB 104 in Senate Finance.

The most significant amendment was the amendment to include the minimum federal standards in the Health Insurance Portability and Accountability Act of 1996 (Kennedy/Kassebaum legislation). **These minimum standards must become effective in Alaska by July 1, 1997.** If these provisions are not enacted in this legislative session the federal Department of Health and Human Services will take over regulation of these standards in individual and group health insurance market in Alaska. The amendment added almost 50 pages to the bill. However, the provisions in this amendment make only the minimum required changes in order to meet the minimum federal standards. (note section 1 of version CSSB 104(FIN) am outlines the specific sections in the bill relating to this amendment)

The other amendment was sponsored by Senator Donley and has the effect of establishing the payment priority for liability and physical damage under automobile policies for rented motor vehicles. (note this amendment is in section 109 of version CSSB 104(FIN) am)

Senate Floor:

Two amendments were added to CSSB 104(FIN) on the Senate floor.

One amendment was sponsored by Senator Donley. The amendment modified the underinsured/uninsured motorist coverage provisions to require that coverage for uninsured and underinsured motorists be provided even if the limits of liability bonds and policies that apply have not been used up by payments, judgements or settlements. This amendment is in sections 114 and 115 of version CSSB 104(FIN) am.

Another amendment was sponsored by Senator Duncan. The amendment allows an insured to exclude a relative or person living in the same household as the insured from their automobile insurance coverage. This amendment is in section 113 of version CSSB 104(FIN) am.

House Finance:

May 7, 1997 (2:08pm)

Two amendments were made to CSSB 104(FIN) am in House Finance.

One amendment was sponsored by Senator Donley. This amendment was made in order to correct the amendment also sponsored by Senator Donley which was added on the Senate floor relating to underinsured/uninsured motorist coverage. This amendment clarifies the intent of the sponsor which is that underinsured motorist coverage be excess coverage. This means that an injured party would be entitled to collect the minimum of the actual amount of damage or the sum of the injured party's coverage and the underinsured motorist's coverage. This amendment is in Sec. 114 and 115 of HCS CSSB 104(FIN).

The other amendment was requested by Mike Lessmeier representing State Farm Insurance. The amendment changes the time period for maintenance of records from 10 years to 5 year.

May 7, 1997 (2:08pm)

Sponsor Statement HCS CSSB 104(FIN)

This bill was requested by the Division of Insurance and contains numerous provisions that will enhance the effectiveness, efficiency and quality of insurance regulation for the Alaskan consumer and industry. The majority of the provisions in this bill implement the minimum federal standards for individual and group health insurance plans as established under the federal Health Insurance Portability and Accountability Act of 1996 (commonly referred to as the Kassebaum/Kennedy bill) which **must become effective in Alaska by July 1, 1997**. If these provisions are not enacted in this legislative session the federal Department of Health and Human Services will take over regulation of these standards in individual and group health insurance market in Alaska.

Summary of the federal Health Insurance Portability and Accountability Act of 1996 minimum standards in this bill:

- In August 1996 the Health Insurance Portability and Accountability Act of 1996 was signed into federal law. The Act received wide bipartisan support in Congress and many organizations including the American Medical Association, the Independent Insurance Agents of America, U.S. Chamber of Commerce, American Hospital Association and many others.
- The federal law establishes minimum standards for all individual and group health care plans that must become effective July 1, 1997. These standards ensure that health coverage is portable, available and renewable for many individuals.
- **If Alaska fails to enact the federal reforms or otherwise provide for enforcement of the federal reforms, the federal government will enforce compliance in Alaska beginning January 1, 1998.**
- Alaska has the option to implement an alternative to the minimum individual health insurance standards in the federal law. This legislation provides for the necessary amendments to the insurance code to implement such an alternative as well as other amendments necessary to implement the minimum group reforms.
- This bill provides for a federally acceptable alternative by modifying the eligibility requirements for the Comprehensive Health Insurance Association(CHIA). This alternative is the least disruptive to Alaska's small individual health insurance market.
- **Alternatively, without this legislation the more restrictive federal individual market reforms will be enforced on all health insurers writing business in the Alaska individual market including the CHIA.**
- By the required federal deadline of April 1, 1997 Alaska filed with the U.S.

Department of Health and Human Services that it intends to enact the necessary legislation to provide an alternative.

- **The minimum standards proposed in this bill have wide support by both insurers and consumers and result in no additional cost to the state.**
- **Again, if Alaska wants to avoid federal regulation of the health insurance market in Alaska, legislation must be passed in this session.**

The miscellaneous insurance provisions in this bill will:

- Establish procedural requirements designed to ensure that insurers conducting the business of insurance in this state are solvent, records are properly maintained, and appropriate reports are made to the division.
- Eliminate unintentional barriers to companies seeking to transact business in this state
- Clarify licensing statutes which are consistent with child support enforcement legislation enacted in 1996
- Require insurers and licensees to report any suspected producer defalcation or embezzlement immediately to the director.
- Require insurers to report any pertinent corporate changes.
- Clarify joint insurance arrangement reporting and risk based capital filings
- Require insurers to maintain records at its principal place of business regarding assets, transactions, complaints and other corporate affairs for all lines of business
- Establish minimum reserve and premium rate standards for all health insurers thereby providing for a more level playing field in the health insurance market in Alaska as well as eliminating archaic hospital and medical service corporation health reserve standards.
- Add stop-loss insurance to the definition of health insurance in order to allow life and health insurers to write this coverage in the state. Under current law only property and casualty insurers may write this coverage.
- Provide that the superior court shall review and adopt the receiver's report on claims by using the substantial evidence standard and extend the period for disapproving claims to 120 days, which will reduce litigation over claims and expedite the closure of a receivership estate.

- Establish the payment priority for liability and physical damage under automobile policies for rented motor vehicles.
- Allow an insured to exclude a relative or person living in the same household as the insured from their automobile insurance coverage.
- Modify the definition of underinsured motor vehicle in order to provide that a party injured by an underinsured motorist would be entitled to collect the minimum of the actual amount of damage or the sum of the injured party's coverage and the underinsured motorist's coverage.

SECTIONAL ANALYSIS HCS CSSB 104(FIN)

Section 1. PURPOSE. The purpose of sections 3, 11, 12, 31-34, 43-57, 59-90, 99-102, 108, 111-112, 115-119, and 122 of this Act is to implement the minimum federal standards for health care insurance enacted under P.L. 104-191 (Health Insurance Portability and Accountability Act of 1996).

Sec. 2. AS 21.06.030. Deputies and assistants.

This section reaffirms that persons participating on division advisory committees do not receive payment for transportation or per diem expense. The Division of Insurance has routinely secured public input on insurance regulatory issues using a variety of advisory committees. Volunteers, including many insurance professionals providing technical input, have served without compensation from the state, recognizing that if transportation or per diem expenses were paid by the division the costs would be passed back to them through higher licensee fees or higher insurance premiums reflecting increased administrative costs. The possibility that payment might be required under AS 39.20.180 has recently been brought to the division's attention.

Sec. 3. AS 21.06.085. Uniform data and procedures for health claims.

The changes to this section make the terms consistent with the newly defined health insurance terms under the federal law(HIPAA)

Sec. 4. AS 21.06.110. Director's annual report.

Updates information required to be included in the division's annual report to reflect current practices regarding issuance of certificates of authority and primary regulation of domestic insurers.

Sec 5. AS 21.06.160(a). Examination Cost.

Clarifies this subsection to allow the calculation of a reasonable per hour charge for examination services to include approximated division overhead expenses such as word processing services, facilities and supplies, computer systems, etc. and that out-of-pocket expenses including travel costs shall be paid by the person being examined.

Sec 6. AS 21.09.210(b). Premium Tax Payment - Admitted Insurers.

Allows the director to determine the method of payment of premium taxes to reflect technology changes such as electronic payments and to collect premium taxes quarterly.

Sec 7. AS 21.09.210(d). Premium Tax Payment - Admitted Wet Marine and Transportation Insurers.

Allows the director to determine the method of payment of premium taxes to reflect technology changes such as electronic payments and to collect premium taxes quarterly.

Sec 8. AS 21.09.245. Amendments to Certificate of Authority.

This is a new section that requires an authorized insurer to file with the division within

30 days a name change, domiciliary state change, or other information on its certificate of authority. Amendment to the insurer's articles of incorporation or bylaws, a change of business address or phone number, and other information as designated by the director must be filed within 90 days, and provide for penalties for noncompliance.

Sec 9. AS 21.09.320. Maintenance of Records.

This new section identifies which records are required to be kept by admitted insurers domiciled in another state. Retention times are specified. Domestic insurers are subject to existing and unchanged provisions. The lack of requirements for other admitted insurers has impeded the division's regulatory oversight including examinations and other investigations.

Sec 10. AS 21.12.020(a)(4)(A)(iii). Accredited Reinsurer Qualifications.

This section removes a requirement for a certification of insurer solvency from an insurer's domiciliary regulator because some foreign countries do not provide such certifications. Certification will still be required from the insurer's public accountant.

Sec. 11. AS 21.12.050. Health insurance defined.

This section defines "health care insurance" which is consistent with the definition of "health insurance coverage" in P.L. 104-191 adding Sec. 2791(b) (42 U.S.C. 300gg-91(b)). The federal definition differs from the current state definition and since Alaska's definition is more broad, the federal definition was defined as a subset of the Alaska definition. This section all adds stop loss insurance to the definition of health insurance to affirm that life and health insurers are permitted to write stop loss coverage.

Sec 12. AS 21.12.050.

Definition of health care insurance and stop-loss insurance as referenced in Sec. 11 AS 21.12.050.

Section 13. AS 21.14.010(a). Risk Based Capital Filing.

Clarifies that a domestic insurer must submit its risk based capital report to the director without a specific request.

Section 14. AS 21.14.200(18). Risk Based Capital Instructions.

Clarifies that instructions can be adopted by order of the director after an open meeting since the complexity of the calculation, its continual refinement, and insurer need for nationwide consistency, regulations are an inappropriate way to provide instructions to insurers.

Section 15. AS 21.18.050(4). Capital stock and liabilities charged against assets.

Requires that the minimum reserves for health insurance established in AS 21.18.080-21.18.086 be charged against an insurer's admitted assets for the purpose of determining the insurer's statutory financial condition.

Section 16. AS 21.18.080. Reserve standards for health insurance.

Adopts a more well defined and appropriate standard for minimum reserves for health insurance. Requires that reserve adequacy be determined by a gross premium valuation considering the sum of policy reserves, claims reserves, and premium reserves established under AS 21.18.082-AS 21.18.086.

Section 17. New sections are added to provide for minimum health insurance reserve standards.

AS 21.18.082. Policy reserves for health insurance.

This section defines which policies require a policy reserve and how to calculate the reserve based on minimum standards relating to interest rates, policy termination, morbidity, and reserve method.

AS 21.18.084. Claim reserves for health insurance.

This section establishes that claim reserves are required for all incurred and unpaid claims, including associated expenses, on health insurance policies.

AS 21.18.086. Premium reserves for health insurance.

This section establishes premium reserve requirements that include standards for accounting, discounting, methodology, and minimums levels of unearned premium reserves as they relate to policy reserves.

Section 18. AS 21.21.410. Custodian Agreements.

Requires that a written agreement exist between an insurer and the custodian of its assets, securities, or investments. The agreement must require that the custodian will indemnify for losses if loss results from theft, mysterious disappearance, damage or destruction, or negligence or dishonesty of the custodian's officers, employees, or agents. The agreement must require the custodian to promptly replace an asset or value of the asset. A bank, trust company, or securities firm may serve as custodian if authorized by the insurer and approved by the director.

Section 19. AS 21.27.010(f)(2)(B). License required.

Editorial revision to make "or" the appropriate connector consistent with identical language in (g)(1) of the section.

Section 20. AS 21.27.010(I). Attorney-in-fact License Exemption.

Clarifies that an attorney-in-fact of a reciprocal insurer who meets the qualifications to be exempt from licensure as an attorney-in-fact is not required to be licensed under AS 21.27 as a managing general agent.

Section 21. AS 21.27.040(a). Application for License.

Codifies current procedure that requires an applicant to certify under oath that the information provided on a license application is true and correct.

Section 22. AS 21.27.370(b). Shared Commissions.

Reaffirms that an unlicensed person may not share or receive a commission or any form of remuneration for business transacted in this state, nor may a licensee share commission or other form of remuneration with an unlicensed person.

Section 23. AS 21.27.390(b). Temporary License.

Conforms AS 21.27 with the requirement to issue a temporary license under AS 25.27.244 (Welfare Reform).

Section 24. AS 21.27.405(b). Investigation; cease and desist order.

Updates procedures to allow the director the flexibility to provide service of notice to a person in the most effective and efficient way.

Section 25. AS 21.27.440(a). Fines.

Provides authority for the director to fine an unlicensed person who illegally transacted the business of insurance and received a commission or other form of remuneration.

Section 26. AS 21.27.640(b)(5)(D). Third Party Administrator License Application.

Gives a third-party administrator applicant an option to submit certified financial statements for its period of operation if operations have been for less than two years in order to remove a barrier to start up operations for an applicant who would otherwise be qualified to act as a third-party administrator.

Section 27. AS 21.34.040(c)(4). Unauthorized Insurers - Lloyd's Syndicates.

Establishes solvency requirements for each syndicate or insurer of Lloyds or a similar operation.

Section 28. AS 21.34.040(c)(5). Unauthorized Insurers - Insurance Exchange.

Establishes solvency requirements for each syndicate of an insurance exchange created by the laws of another state.

Section 29. AS 21.34.180(b). Premium Tax Payment - Unauthorized.

Allows the director to determine the method of payment of premium taxes to reflect technology changes such as electronic payments and to collect premium taxes quarterly.

Section 30. AS 21.34.190(a). Unauthorized Filing Fee.

Clarifies that the one percent fee on gross premiums is calculated on the gross premiums reported on the statement of surplus lines tax required under AS 21.34.180(b), which has been amended to allow the director to require reporting more often than annually.

Sec. 31 - Sec. 34., Sec. 43. - Sec. 56. Required Coverages or Offers of Coverage.

References to health insurance terms in these sections were changed to be consistent with the new definitions, "health care insurance" in AS 21.12.050 and "health care insurer" in

AS 21.54.900.

Use of the terms "health care insurance plan" and "health care insurer" generally clarifies that the applicability of these sections include MEWAs and, in three provisions, HMOs. This results from the use of the term "health care insurer" which is defined very broadly to include all entities that transact health care insurance. Note that the definition of "health care insurance plan" excludes limited benefit policies and supplemental coverages. In the cases where the provision is to apply to these types of policies it is explicitly added.

The changes to these sections were intended to make the sections consistent with each other in terms of applicability and with the newly defined health insurance terms under the federal law.

Note that:

Sec. 43. AS 21.42.345 was modified to conform with the minimum federal standards pursuant to P.L. 104-191 amending the Public Health Service Act (PHSA) to add Sec. 2701(f) (42 U.S.C. 300gg(f)) regarding enrollment periods for dependents. The current provision applies to both individual and group plans while the federal law applies only to group plans. However, for simplicity the changes made to conform to the federal law were made to both individual and group policies.

Sec. 45. - Sec. 46. AS 21.42.347 relating to costs of childbirth was modified to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec 2751 to PHSA (42 U.S.C. 300gg-51).

Sec. 35. AS 21.36.185. Maintenance of complaint handling records.

Establishes a requirement based on the NAIC Model Unfair Trade Practices Act for an insurer to maintain records regarding the complaints it receives. The record will assist the division in evaluating an insurer's consumer practices.

Sec. 36. AS 21.36.240. Failure to renew.

Clarifies that an insurance policy may only be non-renewed on its annual anniversary. This only applies to personal property and casualty insurance.

Sec. 37. AS 21.36.290. Policy period.

In conjunction with AS 21.36.240, clarifies the annual policy period and assures that rates for personal auto insurance may only be changed once every 6 months, even if the policy is written for a shorter time period.

Sec. 38. AS 21.36.390. Notice to director.

Adds a requirement that insurers and other licensees report producer defalcations, embezzlements, or violations to the director in much the manner as currently is required for reporting claim fraud. Lack of timely reports to the division has resulted in situations

in which harm to the public or other insurers has been exacerbated. Requires licensees as well as insurers to report fraudulent claims.

Sec. 39. AS 21.39.045(b)-- Risk classification: construction industry.

Clarifies that the credit scale recognizing differences in wages paid applies only to the construction industry.

Sec. 40. AS 21.42.130(5). Disapproval of forms.

Clarifies that rates for individual health insurance are not subject to approval consistent with current statutes that do not provide a mechanism or guidelines for such rate review.

Sec. 41. AS 21.42.205. Coordination of benefits.

Requires that benefits provided under health insurance contracts be coordinated. This coordination is applicable only when an individual is covered under more than one health insurance contract.

Sec. 42. AS 21.42.265. Effective date of coverage.

Clarifies that insurance coverage changes required by a law change become effective at renewal unless the law provides an earlier effective date for the changes.

Sec. 57. Sec. 21.53.090. Required regulations.

Under federal law long term care contracts with certain federally defined characteristics may receive favorable tax treatment. Since this creates a separate class of long term care policies and need for additional protections, the amendments to this section expand the director's authority to write specific regulations for this purpose.

Sec. 58. AS 21.54.015. Rate requirements.

Requires that rates for group health insurance contracts not be excessive, inadequate, or unfairly discriminatory to provide a consistent standard for all group health insurers.

Sec. 59.

This section adds several new sections to AS 21.54 to conform with the minimum federal standards for health care insurance in the group market as follows:

Sec. 21.54.100. Unfair discrimination.

This section is added to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec. 2702 to PHSA (42 U.S.C. 300gg-1) regarding unfair discrimination in the offer of or enrollment under a health care insurance plan.

Sec. 21.54.110. Preexisting condition exclusion.

This section is added to conform with the minimum federal standards pursuant to P.L. 104-191 Sec. 2701(a)-(b) to PHSA (42 U.S.C. 300gg(a)-(b)) relating to preexisting condition exclusions.

Sec. 21.54.120. Creditable coverage.

This section is added to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec. 2701(c)-(e) to PHSA (42 U.S.C. 300gg(c)-(e)) relating to

creditable coverage. Creditable coverage is used in determining the allowable preexisting condition waiting period or exclusion. Note that the federal law allows the states discretion in determining an allowable break in coverage in determining creditable coverage. AS 21.56 allowed a 90 day break in coverage for small employer groups and this was maintained in this section and as a result would apply to large employers as well.

Sec. 21.54.130. Renewability, termination, and modification of coverage.

This section is added to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec. 2712 to PHSA (42 U.S.C. 300gg-12) relating to guaranteed renewability, modification and termination of coverage. Subsection (f) of this section was added to allow an insurer to terminate an individual's coverage if the individual has committed fraud or intentional misrepresentation. This is not part of the federal law but was considered an oversight by the NAIC and HCFA.

Sec. 21.54.140. Renewability of coverage for a multiple employer welfare arrangement.

This section is added to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec. 703 to ERISA (29 U.S.C. 1183) relating to guaranteed renewability for MEWA plans.

Sec. 21.54.150. Mental health benefits.

This section is added to conform with the minimum federal standards relating to mental health benefits parity pursuant to the amendment to P.L. 104-191 adding Sec. 2705 to PHSA (42 U.S.C. 300gg-5).

Sec. 21.54.160. Excepted benefits defined.

This section defines the health plans that are not subject to the minimum federal standards and are termed "excepted benefits" in the federal law. These "excepted benefits" are explicitly defined in P.L. 104-191 adding Sec. 2791(c) to PHSA (42 U.S.C. 300gg-91(c)). These health plans are basically limited benefit and supplemental health insurance plans. The definition of "health care insurance plan" as proposed in this bill excludes "excepted benefits".

Sec. 21.54.170. Determination of size of employer.

This section describes how the size of an employer is to be determined as described in P.L. 104-191 adding Sec. 2791(e)(6) to PHSA (42 U.S.C. 300gg-91(e)).

Article 3. Sec. 21.54.500. Definitions.

This section adds new definitions necessary to conform with the minimum federal standards. The definitions are consistent with the definitions in P.L. 104-191 adding Sec. 2701(b), Sec. 2701(e), Sec. 2705(e) and Sec. 2791 to PHSA (42 U.S.C. 300gg(b), 42 U.S.C. 300gg(e), 42 U.S.C. 300gg-5(e), 42 U.S.C. 300gg-91 respectively)

Sec. 60. - Sec. 68. Comprehensive Health Insurance Association.

These sections amend AS 21.55 relating to the Comprehensive Health Insurance Association. P.L. 104-191 adding Sec. 2744 to PHSA (42 U.S.C. 300gg-44) allows a state to use a qualified high risk pool to guarantee portability of health insurance coverage to federally eligible individuals. The amendments to this section allow a "federally defined

eligible individual" defined in P.L. 104-191 adding Sec. 2741(b) to PHSA (42 U.S.C. 300gg-41(b)) to participate in the CHIA. Use of Alaska's high risk pool (CHIA) would be the least disruptive mechanism allowed under the federal law to reform the individual health insurance market in Alaska and therefore was the selected mechanism. Experience in other states such as Washington, New Jersey, and New York relating to the alternative mechanisms allowed in the federal law has resulted in significant increases in claims and premiums and decreases in the number of individuals insured and the number of insurance companies writing individual health insurance.

Sec. 69. - Sec. 90 Small Employer Health Reinsurance Association.

These sections amend AS 21.56 relating to health insurance coverage for small employers to remove any conflicts with the minimum federal requirements under P.L. 104-191. Certain sections of AS 21.56 were repealed and reenacted under AS 21.54 because under federal law those provisions apply to both large and small employer groups. The sections in AS 21.56 relating to guaranteed issue were amended to conform with the federal minimums for small employer groups pursuant to P.L. 104-191 adding Sec. 2711 to PHSA (42 U.S.C. 300gg-11). To the extent possible the provisions in AS 21.56 were not modified unless they would prevent application of the federal minimums.

Also, several sections are amended to change the term "association" to "reinsurance association" in order to avoid confusion with a "bona fide association" as defined in the federal law.

Sec. 77. AS 21.56.075. Premium report.

This is a new section that requires members of the Small Employer Reinsurance Association to report to the director on an annual basis the total amount of small employer health insurance premiums written in the state. While not required by federal law, this section will significantly improve the ability of the Association to assess Association members for losses.

Sec. 91. AS 21.66.110(a). Premium Tax Payment - Title Insurance.

Allows the director to determine the method of payment of premium taxes to reflect technology changes such as electronic payments and to collect premium taxes quarterly.

Sec. 92. AS 21.66.390(a). Making of rates.

Adds investment income as one of the elements to be considered when evaluating the rates charged by title insurers.

Sec. 93. AS 21.69.310(a). Annual Meeting Location.

Allows the director upon show of good cause to approve a domestic insurer's request to hold its required annual meeting in a city outside of the location of its principal office or place of business.

Sec. 94. AS 21.69.520(a). Borrowed Funds.

Requires director approval for an insurer to borrow funds when a written agreement requires that the money be repaid only out of the insurer's excess surplus and removes permission for an insurer to borrow money in this manner for any purpose of the insurer's business.

Sec. 95. AS 21.75.045(a). Attorney-in-fact License Exemption.

Expands the exception for being licensed as an attorney-in-fact to all reciprocal insurers. The exemption is allowed when the attorney-in-fact is a wholly-owned subsidiary of the reciprocal insurer who only acts for the one reciprocal. Attorneys-in-fact who operate more than one reciprocal insurer must be licensed under this section.

Sec. 96. AS 21.76.020(b). Joint Insurance Arrangement Reporting.

Specifies that the report prepared by a joint insurance arrangement and filed with the legislative budget and audit committee shall also be filed with the director.

Sec. 97. AS 21.76.080(e). Joint Insurance Arrangement Reporting.

Allows for the report filed by the joint insurance arrangement with its board of directors and the director to be an audit based on generally accepted accounting principles rather than requirements established by the director. A report filed with the director is open to public inspection unless specifically precluded by statute.

Sec. 98. AS 21.78.293(b). Receiver's recommendation to the court.

In order to reduce litigation over claims and thereby expedite the closure of a receivership estate (to the benefit of insurance policyholders and other claimants), the superior court shall review and adopt the receiver's report on claims by using the substantial evidence standard. The period of disapproving claims is extended to 120 days.

Sec. 99. AS 21.84.590. Other provisions applicable.

This amendment clarifies that the minimum federal standards apply to Fraternal Benefit Societies.

Sec. 100. - Sec. 102. Health Maintenance Organizations.

These sections amend AS 21.86 relating to HMOs in order to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec. 2701(g) to PHSA (42 U.S.C. 300gg(g)).

Sec. 103. AS 21.87.140(c)(1). Medical service agreements.

Updates terminology of participant provider contract requirements to reflect managed care compensation arrangements as well as traditional indemnity reimbursement.

Sec. 104. AS 21.87.150(c)(1). Hospital service agreements.

Updates terminology of participant hospital contract requirements to reflect managed care compensation arrangements as well as traditional indemnity reimbursement.

Sec. 105. AS 21.87.180(a). Filing and approval of agreements and contracts.
Conforms form filing requirements for medical and hospital service corporations to similar requirements for other insurers subject to form filing.

Sec. 106. AS 21.87.190(b). Subscription rates, fees, and payments.
Clarifies rate filing requirements. Allows the director discretion to protect medical and hospital service corporations from competitive disadvantage that may arise from disclosing rating formulas when other health insurers are not required to file rates for approval and disclose rating formulas.

Sec. 107. AS 21.87.200. Reserves.
Requires that hospital or medical service corporations have minimum reserve standards and reporting consistent with other health insurers.

Sec. 108. AS 21.87.340. Other provisions applicable.
Amendments in this section clarify that the minimum federal standards apply to Hospital and Medical Service Corporations.

Sec. 109. AS 21.89.020(f). Minimum coverages for automobile liability insurance.
The amendment to this section clarifies the priority in which liability and physical damage payments under automobile insurance policies for rented motor vehicles are made. The required priority would be that payments would first be made from the operator's policy purchased from the person renting the vehicle, then from any other policy covering the operator but not purchased from the person renting the vehicle, and finally from a policy of the person renting the vehicle.

Sec. 110. AS 21.89.020(g) -- Short term auto policy.
Clarifies that the requirements of AS 21.36.210 - 21.36.310 do not apply to seven-day policies.

Sec. 111. AS 21.90.900(29). Definitions for title.
The definition of policy is modified to extend to group certificates issued in Alaska when the group policy is issued and delivered outside of Alaska to ensure consistency in application of state law to all group health care plans covering individuals resident in Alaska. The new minimum federal standards apply to such certificates and without this amendment Alaska may have difficulty asserting regulatory authority over such certificates. Failure to regulate group certificates could result in the federal government determining that Alaska is not substantially enforcing the minimum federal standards resulting in federal regulation of Alaska's health insurance market.

Sec. 112. AS 21.90.900. Definitions for title.
This section adds two new definitions. The term "certified financial statement" is added to clarify its meaning in relation to licensing requirements. This term "medical care" as defined in P.L. 104-191 adding Sec. 2791(a)(2) to PHSA (42 U.S.C. 300gg-91(a)(2)) is

added since it is needed in order to define "health care insurance".

Sec. 113. AS 28.20.440

This is a new section that would allow an insured upon request to exclude from their auto insurance coverage a person who resides in the same household as the insured or a person who is a relative of the insured.

Sec. 114. AS 28.40.100(a)(22).

This section modifies the definition of underinsured motor vehicle in order to provide that a party injured by an underinsured motorist would be entitled to collect the minimum of the actual amount of damage or the sum of the injured party's coverage and the underinsured motorist's coverage.

Sec. 115. Repeal.

This section repeals the sections in AS 21.56 relating to small employer health insurance that conflict with federal law. As stated above many of the provisions were modified and moved to AS 21.54 since they apply to both large and small groups under the federal law.

AS 21.42.375(d) (mammography) and AS 21.42.395(d) (prostate and cervical cancer screening) exclude limited and supplemental benefit plans from the applicability of the provisions and since these are excluded by use of the newly defined term "health care insurance plan" these sections were repealed.

Also this section corrects an oversight by repealing Chapter 81 that was superseded by legislation enacted in 1995 (AS 21.09.310).

AS 28.20.445(h) and AS 28.22.211 are repealed as related to underinsured motorists coverage in Sec. 114.

Sec. 116, Sec. 119, and Sec. 122. Mental health insurance effective dates.

These sections establish the effective date of January 1, 1998 and sunset on September 20, 2001 of the mental health insurance provisions required under the federal law.

Sec. 117. and Sec. 118. Repeal of sunset provisions.

These sections repeal the sunset provisions in AS 21.56 relating to Small Employer Health Insurance and the Dental, Vision and Hearing provision in AS 21.42.385. The repeal of AS 21.56 is necessary since the availability provisions in AS 21.56 are required by federal law which do not sunset.

Sec. 120. and Sec. 121. Effective dates.

Sec. 6, 7, 27-30, and 91 take effect on January 1, 1998. All other sections take effect on July 1, 1997.

SECTIONAL ANALYSIS CSSB 104(FIN)

Section 1. PURPOSE. The purpose of sections 3, 11, 12, 31-34, 43-57, 59-90, 99-102, 108, 110-116, and 119 of this Act is to implement the minimum federal standards for health care insurance enacted under P.L. 104-191 (Health Insurance Portability and Accountability Act of 1996).

Sec. 2. AS 21.06.030. Deputies and assistants.

This section reaffirms that persons participating on division advisory committees do not receive payment for transportation or per diem expense. The Division of Insurance has routinely secured public input on insurance regulatory issues using a variety of advisory committees. Volunteers, including many insurance professionals providing technical input, have served without compensation from the state, recognizing that if transportation or per diem expenses were paid by the division the costs would be passed back to them through higher licensee fees or higher insurance premiums reflecting increased administrative costs. The possibility that payment might be required under AS 39.20.180 has recently been brought to the division's attention.

Sec. 3. AS 21.06.085. Uniform data and procedures for health claims.

The changes to this section make the terms consistent with the newly defined health insurance terms under the federal law(HIPAA)

Sec. 4. AS 21.06.110. Director's annual report.

Updates information required to be included in the division's annual report to reflect current practices regarding issuance of certificates of authority and primary regulation of domestic insurers.

Sec 5. AS 21.06.160(a). Examination Cost.

Clarifies this subsection to allow the calculation of a reasonable per hour charge for examination services to include approximated division overhead expenses such as word processing services, facilities and supplies, computer systems, etc. and that out-of-pocket expenses including travel costs shall be paid by the person being examined.

Sec 6. AS 21.09.210(b). Premium Tax Payment - Admitted Insurers.

Allows the director to determine the method of payment of premium taxes to reflect technology changes such as electronic payments and to collect premium taxes quarterly.

Sec 7. AS 21.09.210(d). Premium Tax Payment - Admitted Wet Marine and Transportation Insurers.

Allows the director to determine the method of payment of premium taxes to reflect technology changes such as electronic payments and to collect premium taxes quarterly.

Sec 8. AS 21.09.245. Amendments to Certificate of Authority.

This is a new section that requires an authorized insurer to file with the division within

30 days a name change, domiciliary state change, or other information on its certificate of authority. Amendment to the insurer's articles of incorporation or bylaws, a change of business address or phone number, and other information as designated by the director must be filed within 90 days, and provide for penalties for noncompliance.

Sec 9. AS 21.09.320. Maintenance of Records.

This new section that identifies which records are required to be kept by admitted insurers domiciled in another state. Retention times are specified. Domestic insurers are subject to existing and unchanged provisions. The lack of requirements for other admitted insurers has impeded the division's regulatory oversight including examinations and other investigations.

Sec 10. AS 21.12.020(a)(4)(A)(iii). Accredited Reinsurer Qualifications.

Removes a requirement for a certification of insurer solvency from an insurer's domiciliary regulator because some foreign countries do not provide such certifications. Certification will still be required from the insurer's public accountant.

Sec. 11. AS 21.12.050. Health insurance defined.

This section defines "health care insurance" which is consistent with the definition of "health insurance coverage" in P.L. 104-191 adding Sec. 2791(b) (42 U.S.C. 300gg-91(b)). The federal definition differs from the current state definition and since Alaska's definition is more broad, the federal definition was defined as a subset of the Alaska definition. This section all adds stop loss insurance to the definition of health insurance to affirm that life and health insurers are permitted to write stop loss coverage.

Sec 12. AS 21.12.050.

Definition of health care insurance and stop-loss insurance as referenced in Sec. 11 AS 21.12.050.

Section 13. AS 21.14.010(a). Risk Based Capital Filing.

Clarifies that a domestic insurer must submit its risk based capital report to the director without a specific request.

Section 14. AS 21.14.200(18). Risk Based Capital Instructions.

Clarifies that instructions can be adopted by order of the director after an open meeting since the complexity of the calculation, its continual refinement, and insurer need for nationwide consistency, regulations are an inappropriate way to provide instructions to insurers.

Section 15. AS 21.18.050(4). Capital stock and liabilities charged against assets.

Requires that the minimum reserves for health insurance established in AS 21.18.080-21.18.086 be charged against an insurer's admitted assets for the purpose of determining the insurer's statutory financial condition.

Section 16. AS 21.18.080. Reserve standards for health insurance.

Adopts a more well defined and appropriate standard for minimum reserves for health insurance. Requires that reserve adequacy be determined by a gross premium valuation considering the sum of policy reserves, claims reserves, and premium reserves established under AS 21.18.082-AS 21.18.086.

Section 17. New sections are added to provide for minimum health insurance reserve standards.

AS 21.18.082. Policy reserves for health insurance.

This section defines which policies require a policy reserve and how to calculate the reserve based on minimum standards relating to interest rates, policy termination, morbidity, and reserve method.

AS 21.18.084. Claim reserves for health insurance.

This section establishes that claim reserves are required for all incurred and unpaid claims, including associated expenses, on health insurance policies.

AS 21.18.086. Premium reserves for health insurance.

This section establishes premium reserve requirements that include standards for accounting, discounting, methodology, and minimums levels of unearned premium reserves as they relate to policy reserves.

Section 18. AS 21.21.410. Custodian Agreements.

Requires that a written agreement exist between an insurer and the custodian of its assets, securities, or investments. The agreement must require that the custodian will indemnify for losses if loss results from theft, mysterious disappearance, damage or destruction, or negligence or dishonesty of the custodian's officers, employees, or agents. The agreement must require the custodian to promptly replace an asset or value of the asset. A bank, trust company, or securities firm may serve as custodian if authorized by the insurer and approved by the director.

Section 19. AS 21.27.010(f)(2)(B). License required.

Editorial revision to make "or" the appropriate connector consistent with identical language in (g)(1) of the section.

Section 20. AS 21.27.010(I). Attorney-in-fact License Exemption.

Clarifies that an attorney-in-fact of a reciprocal insurer who meets the qualifications to be exempt from licensure as an attorney-in-fact is not required to be licensed under AS 21.27 as a managing general agent.

Section 21. AS 21.27.040(a). Application for License.

Codifies current procedure that requires an applicant to certify under oath that the information provided on a license application is true and correct.

Section 22. AS 21.27.370(b). Shared Commissions.

Reaffirms that an unlicensed person may not share or receive a commission or any form of remuneration for business transacted in this state, nor may a licensee share commission or other form of remuneration with an unlicensed person.

Section 23. AS 21.27.390(b). Temporary License.

Conforms AS 21.27 with the requirement to issue a temporary license under AS 25.27.244 (Welfare Reform).

Section 24. AS 21.27.405(b). Investigation; cease and desist order.

Updates procedures to allow the director the flexibility to provide service of notice to a person in the most effective and efficient way.

Section 25. AS 21.27.440(a). Fines.

Provides authority for the director to fine an unlicensed person who illegally transacted the business of insurance and received a commission or other form of remuneration.

Section 26. AS 21.27.640(b)(5)(D). Third Party Administrator License Application.

Gives a third-party administrator applicant an option to submit certified financial statements for its period of operation if operations have been for less than two years in order to remove a barrier to start up operations for an applicant who would otherwise be qualified to act as a third-party administrator.

Section 27. AS 21.34.040(c)(4). Unauthorized Insurers - Lloyd's Syndicates.

Establishes solvency requirements for each syndicate or insurer of Lloyds or a similar operation.

Section 28. AS 21.34.040(c)(5). Unauthorized Insurers - Insurance Exchange.

Establishes solvency requirements for each syndicate of an insurance exchange created by the laws of another state.

Section 29. AS 21.34.180(b). Premium Tax Payment - Unauthorized.

Allows the director to determine the method of payment of premium taxes to reflect technology changes such as electronic payments and to collect premium taxes quarterly.

Section 30. AS 21.34.190(a). Unauthorized Filing Fee.

Clarifies that the one percent fee on gross premiums is calculated on the gross premiums reported on the statement of surplus lines tax required under AS 21.34.180(b), which has been amended to allow the director to require reporting more often than annually.

Sec. 31. - Sec. 34., Sec. 43. - Sec. 56. Required Coverages or Offers of Coverage.

References to health insurance terms in these sections were changed to be consistent with the new definitions, "health care insurance" in AS 21.12.050 and "health care insurer" in

AS 21.54.900.

Use of the terms "health care insurance plan" and "health care insurer" generally clarifies that the applicability of these sections include MEWAs and, in three provisions, HMOs. This results from the use of the term "health care insurer" which is defined very broadly to include all entities that transact health care insurance. Note that the definition of "health care insurance plan" excludes limited benefit policies and supplemental coverages. In the cases where the provision is to apply to these types of policies it is explicitly added.

The changes to these sections were intended to make the sections consistent with each other in terms of applicability and with the newly defined health insurance terms under the federal law.

Note that:

Sec. 43. AS 21.42.345 was modified to conform with the minimum federal standards pursuant to P.L. 104-191 amending the Public Health Service Act (PHSA) to add Sec. 2701(f) (42 U.S.C. 300gg(f)) regarding enrollment periods for dependents. The current provision applies to both individual and group plans while the federal law applies only to group plans. However, for simplicity the changes made to conform to the federal law were made to both individual and group policies.

Sec. 45. - Sec. 46. AS 21.42.347 relating to costs of childbirth was modified to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec 2751 to PHSA (42 U.S.C. 300gg-51).

Sec. 35. AS 21.36.185. Maintenance of complaint handling records.

Establishes a requirement based on the NAIC Model Unfair Trade Practices Act for an insurer to maintain records regarding the complaints it receives. The record will assist the division in evaluating an insurer's consumer practices.

Sec. 36. AS 21.36.240. Failure to renew.

Clarifies that an insurance policy may only be non-renewed on its annual anniversary. This only applies to personal property and casualty insurance.

Sec. 37. AS 21.36.290. Policy period.

In conjunction with AS 21.36.240, clarifies the annual policy period and assures that rates for personal auto insurance may only be changed once every 6 months, even if the policy is written for a shorter time period.

Sec. 38. AS 21.36.390. Notice to director.

Adds a requirement that insurers and other licensees report producer defalcations, embezzlements, or violations to the director in much the manner as currently is required for reporting claim fraud. Lack of timely reports to the division has resulted in situations

in which harm to the public or other insurers has been exacerbated. Requires licensees as well as insurers to report fraudulent claims.

Sec. 39. AS 21.39.045(b)-- Risk classification: construction industry.

Clarifies that the credit scale recognizing differences in wages paid applies only to the construction industry.

Sec. 40. AS 21.42.130(5). Disapproval of forms.

Clarifies that rates for individual health insurance are not subject to approval consistent with current statutes that do not provide a mechanism or guidelines for such rate review.

Sec. 41. AS 21.42.205. Coordination of benefits.

Requires that benefits provided under health insurance contracts be coordinated. This coordination is applicable only when an individual is covered under more than one health insurance contract.

Sec. 42. AS 21.42.265. Effective date of coverage.

Clarifies that insurance coverage changes required by a law change become effective at renewal unless the law provides an earlier effective date for the changes.

Sec. 57. Sec. 21.53.090. Required regulations.

Under federal law long term care contracts with certain federally defined characteristics may receive favorable tax treatment. Since this creates a separate class of long term care policies and need for additional protections, the amendments to this section expand the director's authority to write specific regulations for this purpose.

Sec. 58. AS 21.54.015. Rate requirements.

Requires that rates for group health insurance contracts not be excessive, inadequate, or unfairly discriminatory to provide a consistent standard for all group health insurers.

Sec. 59.

This section adds several new sections to AS 21.54 to conform with the minimum federal standards for health care insurance in the group market as follows:

Sec. 21.54.100. Unfair discrimination.

This section is added to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec. 2702 to PHSA (42 U.S.C. 300gg-1) regarding unfair discrimination in the offer of or enrollment under a health care insurance plan.

Sec. 21.54.110. Preexisting condition exclusion.

This section is added to conform with the minimum federal standards pursuant to P.L. 104-191 Sec. 2701(a)-(b) to PHSA (42 U.S.C. 300gg(a)-(b)) relating to preexisting condition exclusions.

Sec. 21.54.120. Creditable coverage.

This section is added to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec. 2701(c)-(e) to PHSA (42 U.S.C. 300gg(c)-(e)) relating to

creditable coverage. Creditable coverage is used in determining the allowable preexisting condition waiting period or exclusion. Note that the federal law allows the states discretion in determining an allowable break in coverage in determining creditable coverage. AS 21.56 allowed a 90 day break in coverage for small employer groups and this was maintained in this section and as a result would apply to large employers as well.

Sec. 21.54.130. Renewability, termination, and modification of coverage.

This section is added to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec. 2712 to PHSA (42 U.S.C. 300gg-12) relating to guaranteed renewability, modification and termination of coverage. Subsection (f) of this section was added to allow an insurer to terminate an individual's coverage if the individual has committed fraud or intentional misrepresentation. This is not part of the federal law but was considered an oversight by the NAIC and HCFA.

Sec. 21.54.140. Renewability of coverage for a multiple employer welfare arrangement.

This section is added to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec. 703 to ERISA (29 U.S.C. 1183) relating to guaranteed renewability for MEWA plans.

Sec. 21.54.150. Mental health benefits.

This section is added to conform with the minimum federal standards relating to mental health benefits parity pursuant to the amendment to P.L. 104-191 adding Sec. 2705 to PHSA (42 U.S.C. 300gg-5).

Sec. 21.54.160. Excepted benefits defined.

This section defines the health plans that are not subject to the minimum federal standards and are termed "excepted benefits" in the federal law. These "excepted benefits" are explicitly defined in P.L. 104-191 adding Sec. 2791(c) to PHSA (42 U.S.C. 300gg-91(c)). These health plans are basically limited benefit and supplemental health insurance plans. The definition of "health care insurance plan" as proposed in this bill excludes "excepted benefits".

Sec. 21.54.170. Determination of size of employer.

This section describes how the size of an employer is to be determined as described in P.L. 104-191 adding Sec. 2791(e)(6) to PHSA (42 U.S.C. 300gg-91(e)).

Article 3. Sec. 21.54.500. Definitions.

This section adds new definitions necessary to conform with the minimum federal standards. The definitions are consistent with the definitions in P.L. 104-191 adding Sec. 2701(b), Sec. 2701(e), Sec. 2705(e) and Sec. 2791 to PHSA (42 U.S.C. 300gg(b), 42 U.S.C. 300gg(e), 42 U.S.C. 300gg-5(e), 42 U.S.C. 300gg-91 respectively)

Sec. 60. - Sec. 68. Comprehensive Health Insurance Association.

These sections amend AS 21.55 relating to the Comprehensive Health Insurance Association. P.L. 104-191 adding Sec. 2744 to PHSA (42 U.S.C. 300gg-44) allows a state to use a qualified high risk pool to guarantee portability of health insurance coverage to federally eligible individuals. The amendments to this section allow a "federally defined

eligible individual" defined in P.L. 104-191 adding Sec. 2741(b) to PHSA (42 U.S.C. 300gg-41(b)) to participate in the CHIA. Use of Alaska's high risk pool (CHIA) would be the least disruptive mechanism allowed under the federal law to reform the individual health insurance market in Alaska and therefore was the selected mechanism. Experience in other states such as Washington, New Jersey, and New York relating to the alternative mechanisms allowed in the federal law has resulted in significant increases in claims and premiums and decreases in the number of individuals insured and the number of insurance companies writing individual health insurance.

Sec. 69. - Sec. 90 Small Employer Health Reinsurance Association.

These sections amend AS 21.56 relating to health insurance coverage for small employers to remove any conflicts with the minimum federal requirements under P.L. 104-191. Certain sections of AS 21.56 were repealed and reenacted under AS 21.54 because under federal law those provisions apply to both large and small employer groups. The sections in AS 21.56 relating to guaranteed issue were amended to conform with the federal minimums for small employer groups pursuant to P.L. 104-191 adding Sec. 2711 to PHSA (42 U.S.C. 300gg-11). To the extent possible the provisions in AS 21.56 were not modified unless they would prevent application of the federal minimums.

Also, several sections are amended to change the term "association" to "reinsurance association" in order to avoid confusion with a "bona fide association" as defined in the federal law.

Sec. 77. AS 21.56.075. Premium report.

This is a new section that requires members of the Small Employer Reinsurance Association to report to the director on an annual basis the total amount of small employer health insurance premiums written in the state. While not required by federal law, this section will significantly improve the ability of the Association to assess Association members for losses.

Sec. 91. AS 21.66.110(a). Premium Tax Payment - Title Insurance.

Allows the director to determine the method of payment of premium taxes to reflect technology changes such as electronic payments and to collect premium taxes quarterly.

Sec. 92. AS 21.66.390(a). Making of rates.

Adds investment income as one of the elements to be considered when evaluating the rates charged by title insurers.

Sec. 93. AS 21.69.310(a). Annual Meeting Location.

Allows the director upon show of good cause to approve a domestic insurer's request to hold its required annual meeting in a city outside of the location of its principal office or place of business.

Sec. 94. AS 21.69.520(a). Borrowed Funds.

Requires director approval for an insurer to borrow funds when a written agreement requires that the money be repaid only out of the insurer's excess surplus and removes permission for an insurer to borrow money in this manner for any purpose of the insurer's business.

Sec. 95. AS 21.75.045(a). Attorney-in-fact License Exemption.

Expands the exception for being licensed as an attorney-in-fact to all reciprocal insurers. The exemption is allowed when the attorney-in-fact is a wholly-owned subsidiary of the reciprocal insurer who only acts for the one reciprocal. Attorneys-in-fact who operate more than one reciprocal insurer must be licensed under this section.

Sec. 96. AS 21.76.020(b). Joint Insurance Arrangement Reporting.

Specifies that the report prepared by a joint insurance arrangement and filed with the legislative budget and audit committee shall also be filed with the director.

Sec. 97. AS 21.76.080(e). Joint Insurance Arrangement Reporting.

Allows for the report filed by the joint insurance arrangement with its board of directors and the director to be an audit based on generally accepted accounting principles rather than requirements established by the director. A report filed with the director is open to public inspection unless specifically precluded by statute.

Sec. 98. AS 21.78.293(b). Receiver's recommendation to the court.

In order to reduce litigation over claims and thereby expedite the closure of a receivership estate (to the benefit of insurance policyholders and other claimants), the superior court shall review and adopt the receiver's report on claims by using the substantial evidence standard. The period of disapproving claims is extended to 120 days.

Sec. 99. AS 21.84.590. Other provisions applicable.

This amendment clarifies that the minimum federal standards apply to Fraternal Benefit Societies.

Sec. 100. - Sec. 102. Health Maintenance Organizations.

These sections amend AS 21.86 relating to HMOs in order to conform with the minimum federal standards pursuant to P.L. 104-191 adding Sec. 2701(g) to PHSA (42 U.S.C. 300gg(g)).

Sec. 103. AS 21.87.140(c)(1). Medical service agreements.

Updates terminology of participant provider contract requirements to reflect managed care compensation arrangements as well as traditional indemnity reimbursement.

Sec. 104. AS 21.87.150(c)(1). Hospital service agreements.

Updates terminology of participant hospital contract requirements to reflect managed care compensation arrangements as well as traditional indemnity reimbursement.

Sec. 105. AS 21.87.180(a). Filing and approval of agreements and contracts.
Conforms form filing requirements for medical and hospital service corporations to similar requirements for other insurers subject to form filing.

Sec. 106. AS 21.87.190(b). Subscription rates, fees, and payments.
Clarifies rate filing requirements. Allows the director discretion to protect medical and hospital service corporations from competitive disadvantage that may arise from disclosing rating formulas when other health insurers are not required to file rates for approval and disclose rating formulas.

Sec. 107. AS 21.87.200. Reserves.
Requires that hospital or medical service corporations have minimum reserve standards and reporting consistent with other health insurers.

Sec. 108. AS 21.87.340. Other provisions applicable.
Amendments in this section clarify that the minimum federal standards apply to Hospital and Medical Service Corporations.

Sec. 109. AS 21.89.020(g) -- Short term auto policy.
Clarifies that the requirements of AS 21.36.210 - 21.36.310 do not apply to seven-day policies.

Sec. 110. AS 21.90.900(29). Definitions for title.
The definition of policy is modified to extend to group certificates issued in Alaska when the group policy is issued and delivered outside of Alaska to ensure consistency in application of state law to all group health care plans covering individuals resident in Alaska. The new minimum federal standards apply to such certificates and without this amendment Alaska may have difficulty asserting regulatory authority over such certificates. Failure to regulate group certificates could result in the federal government determining that Alaska is not substantially enforcing the minimum federal standards resulting in federal regulation of Alaska's health insurance market.

Sec. 111. AS 21.90.900. Definitions for title.
This section adds two new definitions. The term "certified financial statement" is added to clarify its meaning in relation to licensing requirements. This term "medical care" as defined in P.L. 104-191 adding Sec. 2791(a)(2) to PHSA (42 U.S.C. 300gg-91(a)(2)) is added since it is needed in order to define "health care insurance".

Sec. 112. Repeal.
This section repeals the sections in AS 21.56 relating to small employer health insurance that conflict with federal law. As stated above many of the provisions were modified and moved to AS 21.54 since they apply to both large and small groups under the federal law.

AS 21.42.375(d) (mammography) and AS 21.42.395(d) (prostate and cervical cancer

screening) exclude limited and supplemental benefit plans from the applicability of the provisions and since these are excluded by use of the newly defined term "health care insurance plan" these sections were repealed.

Also this section corrects an oversight by repealing Chapter 81 that was superseded by legislation enacted in 1995 (AS 21.09.310).

Sec. 113, Sec. 116, and Sec. 119. Mental health insurance effective dates.

These sections establish the effective date of January 1, 1998 and sunset on September 20, 2001 of the mental health insurance provisions required under the federal law.

Sec. 114. and Sec. 115. Repeal of sunset provisions.

These sections repeal the sunset provisions in AS 21.56 relating to Small Employer Health Insurance and the Dental, Vision and Hearing provision in AS 21.42.385. The repeal of AS 21.56 is necessary since the availability provisions in AS 21.56 are required by federal law which do not sunset.

Sec. 117. and Sec. 118. Effective dates.

Sec. 6, 7, 27-30, and 91 take effect on January 1, 1998. All other sections take effect on July 1, 1997.

EXECUTIVE SUMMARY
KASSENBAUM/KENNEDY BILL

Presented by
Marianne K. Burke, Director
Division of Insurance

Health Insurance Portability and Accountability Act of 1996 (HIPAA, or Kassenbaum/Kennedy)

- signed by the President on August 21, 1996
- most sweeping health care legislation since passage of Employee Retirement Income Security Act (ERISA) in 1974

General Structure of HIPAA:

- 1) amendments to ERISA. One reason the law is so sweeping is it affects self-funded plans, and helps level the playing field by imposing standards on plans over which the states have no jurisdiction
- 2) parallel amendments to the Public Health Service Act (PHSA) that affect health carriers
- 3) amendments to the tax code for long-term care insurance, medical savings accounts and deductibility for the self-employed

Our bill focuses on number 2 - amendments to our insurance code.

Insurance Code amendments fall into three areas:

- **small group market reforms**
- **large group market reforms**
- **individual market reforms**

Essential elements of HIPAA:

Small group market:

- 1) **guaranteed issue to**
 - **all small employers** (defined as those having an average number of employees during the prior year of 2-50)
 - **all eligible employees**
 - **all products** offered by a carrier in the small group market, not just the standard and basis plans as in current law

- 2) **guaranteed renewability** of all policies with certain enumerated exceptions
- 3) **preexisting condition exclusion limitations** - limited to 6/12 (lookback/exclusion) with credit for prior coverage as long as there has been no gap in coverage greater than 63 days; current Alaska law allows a gap no longer than 90 days

Large Group market:

- 1) **guaranteed renewability** of all policies with certain enumerated exceptions
- 2) **preexisting condition exclusion limitations** - limited to 6/12 (lookback/exclusion) with credit for prior coverage as long as there has been no gap in coverage greater than 63 days

The bill calls for a study of availability in the large group market; no guaranteed issue requirements in this market.

Individual market:

- 1) **guaranteed issue** to eligible individuals (those with 18 months creditable coverage, most recently in a group plan, with no break in coverage greater than 63 days)
- 2) **guaranteed renewability** of all policies with certain enumerated exceptions
- 3) **no preexisting condition exclusions** may be imposed on eligible individuals

Pregnancy and genetic testing in absence of the condition are not allowed as preexisting conditions in the group market, and are not allowed for eligible individuals in the individual market.

HIPAA creates federal standards in the area of health insurance by essentially creating a floor in certain areas, below which state standards may not fall.

- however, state flexibility exists
- certain state laws are specifically preempted if not in compliance with the federal standards, for example preexisting condition exclusion provisions

With respect to the individual market, the federal standards will not apply if the state enacts what is called an **acceptable alternative mechanism**. There is a four-pronged test for an acceptable alternative mechanism, and the states are given many options as to how to comply.

HIPAA requires that an **acceptable alternative mechanism** meet four requirements:

1. It must provide eligible individuals with a **choice** of coverage;

2. It cannot impose any **preexisting condition exclusions** for eligible individuals;
3. The choice must include **at least one policy form** that is:
 - (i) comparable to **comprehensive coverage** in the individual market in the state; **or**
 - (ii) comparable to the **standard** plan under the state's small group or individual laws;

-AND-

4. The state must be implementing **one of three things**:
 - (a) one of **two specified NAIC models** laws on individual market reform;
 - (b) a qualified **high risk pool** as defined in the law; or
 - (c)
 - (i) a mechanism providing for **risk adjustment, risk spreading**, or a risk spreading mechanism or otherwise provides for some **financial subsidization** of eligible individuals; or
 - (ii) a mechanism allowing eligible individuals a **choice of all available** individual health insurance coverage.

OVERVIEW
KASSEBAUM/KENNEDY BILL

Presented by
Marianne K. Burke, Director
Division of Insurance

I. General Points

Overview: P.L. 104-191, commonly called Kassebaum/Kennedy (K/K), creates federal standards for both the individual and group health insurance markets, but it does permit substantial state flexibility for compliance. The law requires insurers to offer coverage to **all small employers** that apply for coverage and to **individuals** meeting certain requirements (**guaranteed issue**); to guarantee renew coverage in both the group and individual markets (**guaranteed renewal**); and to **limit the use of preexisting condition exclusions in the group market and eliminate them in the individual market for eligible individuals**. However, the federal law does not limit the premiums that issuers can charge for any type of coverage.

Preemption: The test for preemption in all cases EXCEPT for provisions relating to preexisting condition exclusions is: whether the state's standards and requirements would **prevent the application of the federal law**.

The test for preemption for provisions affecting **preexisting condition exclusions** is: The federal law DOES "supersede any provision of State law which establishes, implements, or continues in effect a standard or requirement applicable to imposition of a preexisting condition exclusion specifically governed by the law (in ERISA section 701 or PHSA section 2701) which differs from the standards or requirements in those sections, UNLESS the State provision meets one of seven **specific exceptions**.

II. Group Market

K/K requires **guaranteed issue of all products in the small group market**. This is a relatively radical requirement for a number of states. The federal law is also very specific that a **small group is a group of 2 to at least 50**. States may extend the law's guaranteed issue protection to larger groups, and include groups of 1 if they cover the self-employed in the small group rather than the individual market.

The **guaranteed renewability** requirement applies to **groups of all sizes**.

The rules restricting the use of **preexisting conditions exclusions** and prohibiting the use of **health status-related factors** for purposes of issuing and renewing coverage apply to **groups of all sizes**.

NAIC 1992 Small Group Model

Alaska adopted a modified version of the NAIC's 1992 Small Group Model.

The 1992 Small Group Model only requires guaranteed issue of a basic and standard health benefit plan by all health carriers doing business in a state's

small group market. A state with this model will therefore need to expand the guaranteed issue requirement to all products offered by the insurer. K/K requires guaranteed issue of all products in the small group market.

The 1992 Small Group Model requires guaranteed renewability, subject to certain exceptions. In general these exceptions are consistent with the federal law, but need the revisions suggested by the P.L. 104-191 States Implementation Working Group.

The 1992 Small Group Model allows a preexisting condition exclusion of twelve months. This is consistent with K/K, except that the model requires certain revisions to prohibit preexisting condition exclusions based on pregnancy as a preexisting condition and to extend the permissible period for a gap in coverage to 63 days.

Another key issue is the definition of "small employer." The federal law is very specific that there is guaranteed issue for groups of 2 to at least 50, and it sets forth the method of calculating that group. The 1992 Model must be modified as suggested to conform to the federal requirements.

The 1992 Model must also be revised to ensure that its concept of "qualifying previous coverage" and "qualifying existing coverage" are consistent with the federal law's concept of "creditable coverage."

III. Individual Market

We would like to review the possible scenarios for implementing an acceptable alternative mechanism to meet the requirements of K/K for the individual market.

The law requires that an **acceptable alternative mechanism** meet **four requirements**:

1. It must provide eligible individuals with a **choice** of coverage;
2. It cannot impose any **preexisting condition exclusions** for eligible individuals;
3. The choice must include at least one policy form that is:
 - (i) comparable to **comprehensive coverage** in the individual market in the state; **or**
 - (ii) comparable to the **standard** plan under the state's small group or individual laws;

-AND-

4. The state must be implementing **one of three** things:
 - (a) one of the **two NAIC models** laws on individual market reform;
 - (b) a qualified **high risk pool** as defined in the law; or
 - (c) (i) a mechanism providing for **risk adjustment, risk spreading**, or a risk spreading mechanism or otherwise provides for some **financial subsidization** of eligible individuals; or
 - (ii) a mechanism allowing eligible individuals a **choice of all available** individual health insurance coverage.

Under the federal law, an eligible individual:

- (1) has had, in the aggregate, at least 18 months of creditable coverage;
- (2) the most recent coverage is under a group, governmental, or church plan including a self insured group;
- (3) is not eligible for any other coverage, including Medicare, Medicaid, etc.;
- (4) has not had coverage terminated for nonpayment of premiums or fraud;
- (5) has exhausted a COBRA continuation option if one was available;
- (6) has had no gap in coverage exceeding 63 days.

Given these requirements, what are a state's options?

Option 1: Guaranteed issue of all products in the individual market.

States that already have guaranteed issue of all products in the individual market will have to do little to comply with the federal law's requirements. However, even these states must ensure that any state restrictions limiting the individuals eligible for guaranteed issue do not prevent those individuals who are eligible for guaranteed issue under the federal law from obtaining coverage. The state must also ensure that its high risk pool does not impose any preexisting condition exclusions for federally defined eligible individuals.

Option 2: High risk pool.

The federal law defines a qualified high risk pool as one that:

- (1) Provides coverage to all eligible individuals.
- (2) Does not impose a preexisting condition on an eligible individual;
- (3) Provides for premium rates and covered benefits for such coverage consistent with the NAIC's Model Health Plan for Uninsurable Individuals Model Act (i.e., premium rates do not exceed 200 percent of standard risk rates);

States that choose this option will have to make sure that their risk pool meets the requirements above. Other issues raised by the high risk pool:

- (1) Can state residency requirements stand?
- (2) Must the high risk pool provide a choice of more than one policy? Will one policy with a choice of deductibles suffice?
- (3) What is a "comprehensive" policy with respect to a state's individual market?

Option 3: Adopt one of the two NAIC individual market models.

K/K references the two NAIC models addressing individual market reform: (1) the Small Employer and Individual Health Insurance Availability Model Act, as it relates to the individual market ("Availability" Model); and (2) the Individual Health Insurance Portability Model Act ("Portability" Model).

Adoption of one of these models will constitute an acceptable alternative mechanism, provided that the other three criteria are met: a choice of coverage for all federally defined eligible individuals, which includes a choice of a comprehensive policy, and no preexisting condition exclusions for these individuals.

These two models are being reviewed and revised by the NAIC P.L. 104-191 States Implementation Working Group to make the revisions required for compliance with K/K.

General Structure of the Availability Model

In the small group market, the Availability Model requires guaranteed issue of all products, including a standard and basic plan. In the individual market it also requires guaranteed issue of all products, including a standard and basic plan, but sets out two options: a year-round guaranteed issue requirement, or a rolling open enrollment option which guarantees an individual one-month each year in which to obtain a product. It requires adjusted community rating, with variations allowed only for geographic area, family composition, and age.

It requires guaranteed renewability for both small group and individual products, subject to standard exceptions such as fraud or misrepresentation, nonpayment of premiums, etc. In general these exceptions are consistent with the requirements of the federal law, subject to some deviations.

In general the Availability Model's provisions for preexisting condition exclusions, definition of preexisting condition, eligible individual, etc. are similar to the requirements of the federal law. However, it allows a twelve-month preexisting condition exclusion and therefore must be modified to prohibit any exclusions for federally defined eligible individuals. Also, the concept of "crediting" coverage and shortening preexisting condition exclusions accordingly differs somewhat, as do some slight elements of the phrasing of the definitions. Because of the very preemptive language of the federal law for state provisions that address preexisting condition exclusions, some revisions have been made to the language of this model.

General Structure of the Portability Model

The Portability Model addresses only the individual market. It requires guaranteed issue of a basic and a standard plan by all health carriers doing business in the state's individual market. The director establishes by regulation the form and level of coverage of the basic and standard health benefit plans. It permits rating bands, subject to certain requirements.

The Portability Model requires guaranteed renewability of individual health benefit plans.

It allows a twelve-month preexisting condition exclusion and therefore must be modified to prohibit any exclusions for federally defined eligible individuals.

Option 4: Mandatory group conversion policies.

Some states have mandatory group conversion policies. These policies will not apply to individuals covered by self-funded ERISA plans. Therefore, such laws alone will not enable a state to comply with K/K because they will not protect many individuals who are entitled to protection under the federal law. Alaska does not have mandatory group conversion policies.

Option 5: Open enrollment by one or more health insurance issuers.

States that have implemented open enrollment by one or more insurers have in place a broader protection than that afforded by the rolling open enrollment option of the NAIC Availability Model. However, the rolling open enrollment option as set forth in the revised NAIC model is sufficient for compliance with K/K's guaranteed issue requirements because it would allow federally defined eligible individuals to have 63 days to obtain coverage and would not require them to wait until the month of their birthday. Under the NAIC model, other individuals with previous coverage could obtain coverage within 31 days of the termination of the previous coverage. Not available in Alaska.

Option 6: Some combination of the 4 options above.

The federal law permits states to have some combination of permissible mechanism. (Section 2744(a)(2).) The law does not specify whether a state must offer every eligible individual the same choices, or whether it may provide different groups with different choices.

Another point is that some mechanisms already contained in state law will not protect individuals whose previous coverage was in a self-funded ERISA plan. This is a problem with mandatory conversion laws, as noted above.

Option 7: Rely on federal fallback standards instead of implementing an alternative mechanism.

Guaranteed Availability: Federal standards apply if there is No State Alternative Mechanism. (Section 2741(c)). Therefore, in states that do NOT implement an acceptable alternative mechanism under Section 2744, the following standards and exceptions apply:

- A. The **health insurance issuer** may elect to limit coverage to eligible persons to a **choice of only two different policy forms** (Section 2741(c)), both of which must:
- (1) be designed for, made generally available to, are actively marketed to, and enroll both eligible and other individuals; **and**
 - (2) Either:
 - (a) be the "most popular policy forms:" The forms with the largest and second largest **premium volume** in the state or applicable marketing or service area (as defined in regulation); **or**
 - (b) be "policy forms with representative coverage:" Be a lower level and a higher level form, each of which contains benefits substantially similar to other individual coverage offered by the issuer **AND** each of which is covered under some risk spreading mechanism.
 - (i) Lower level coverage is defined as having an actuarial value of 85--100% of the weighted average;
 - (ii) Higher level coverage is defined as having an actuarial value of at least 15% greater than lower level coverage and between 100--120% of the weighted average;

(iii) A risk spreading mechanism must provide for risk adjustment, risk spreading, or a risk spreading mechanism (either among issuers or among the policies of an issuer); or must otherwise provide for some financial subsidization for eligible individuals, including through assistance to participating issuers. (Sec. 2744(c)(3)(A).)

(3) For purposes of Section 2741(c), policy forms which have different cost-sharing arrangements or different riders shall be considered different policy forms.

B. Special Rules for Network Plans: (These apply if the state does not implement an alternative mechanism):

(1) A network plan may limit enrollees to those who live, reside or work in the service area;

(2) A network plan may deny coverage based on the plan's enrollment capacity limits, as long as coverage is denied uniformly without regard to health status-related factors;

(3) If coverage is denied based on service capacity, the issuer is suspended from offering new coverage in the service area for 180 days;

C. Exception for Financial Capacity: (This applies if the state does not implement an alternative mechanism.)

(1) Health insurance issuer may deny health insurance coverage in the individual market to an eligible individual if the issuer demonstrates to the director that:

(a) It lacks financial reserves necessary to underwrite additional coverage; AND

(b) Is applying this denial uniformly to all individuals in the state's individual market, consistently with state law and without regard to health status-related factors and without regard to whether individuals are eligible individuals.

(2) If an issuer denies coverage based on financial capacity, it is suspended from offering coverage in the individual market in that service area for the later of: 180 days from the date of denial; or until the issuer demonstrates to the director, if required under state law, that it has sufficient financial reserves to underwrite additional coverage.

Guaranteed Renewability

A. Federal Standards apply REGARDLESS of whether the state is implementing an alternative mechanism for guaranteed issue.

B. All individuals enjoy guaranteed renewability, not just individuals eligible for guaranteed issue.

C. Exceptions to guaranteed renewability requirement:

- (1) Nonpayment of premiums;
- (2) Fraud or intentional misrepresentation of a material fact by an individual;
- (3) Termination of a product: Issuer must provide notice to enrollee 90 days before termination, offer option to purchase any other individual product offered by the issuer, and act uniformly without regard to health status-related factors;
- (4) Discontinuance of all individual coverage: Issuer must provide notice to the director and enrollees 180 days before termination, and is prohibited from market reentry for 5 years after date of last discontinuation due to nonrenewal.
- (5) Network plans: Issuer may nonrenew if the individual no longer resides, lives, or works in the service area, provided that the issuer nonrenews uniformly, without regard to health status-related factors.
- (6) Association membership ceases: Issuer may nonrenew if the individual ceases to be a member of the association through which coverage is obtained, provided that the issuer nonrenews uniformly, without regard to health status-related factors.
- (7) Modification of coverage: At the time of coverage renewal, issuer may modify the policy form consistent with state law and provided that modification is effective on uniform basis among all individuals having that policy form.

IV. Other Issues

Mandatory Maternity Coverage

The Newborns' and Mothers' Health Protection Act of 1996 is an amendment to the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191). It applies to health care coverage sold in both the small and large group markets and the individual market.

The Act prohibits group health plans and health insurance issuers from restricting hospital coverage in connection with childbirth to less than 48 hours for a normal vaginal delivery and less than 96 hours for a cesarean section. It also prohibits plans from requiring the provider to obtain authorization for stays of this length. However, these exceptions do not apply to any case in which the decision to discharge the mother earlier than these minimum periods is made "by an attending provider in consultation with the mother."

The law also prohibits a group health plan or health insurance issuer from denying coverage to a mother or child to avoid the law's requirements, or from offering them financial incentives to reduce the length of stay. Nor may group health plans and health insurance issuers penalize attending providers for complying with the law or create financial incentives for providers that are inconsistent with the law.

The law contains three broad exceptions to the preemption of state law addressing hospital stays for childbirth. State law is NOT preempted if: (1) the state law requires coverage for a minimum of 48 hours for normal vaginal delivery and 96 hours for cesarean section; or (2) the state law requires coverage for maternity and pediatric care in accordance with guidelines issued either by the American College of Obstetricians and Gynecologists, or the American Academy of Pediatrics, "or other established professional medical associations"; or (3) the state law requires that, in connection with coverage for maternity care, the decision about the hospital length of stay is left to (or required to be made by) the attending provider in consultation with the mother.

The law also directs the Secretary of the U.S. Department of Health and Human Services to appoint an advisory panel to review studies that the Act requires the Secretary to undertake and to develop a consensus about the appropriateness of the Act's requirements. The advisory panel is to include representation from number of specified entities, including states and entities having expertise in consumer issues.

Because this Act is an amendment to P.L. 104-191 (Kassenbaum-Kennedy), the enforcement provisions of that act also apply to this law. States will enforce the maternity provisions against insurance carriers and entities under state jurisdiction unless the HHS Secretary determines that a state has failed to substantially enforce a provision, in which case the HHS Secretary will enforce the law. The Secretary of the U.S. Department of Labor will enforce the law with respect to ERISA plans.

The Act is effective January 1, 1998.

Mental Health Parity

The Mental Health Parity Act of 1996 is an amendment to the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191). It applies only to health care coverage sold through the large group market (groups of 51 or more).

The law provides that if a group plan does **not impose an aggregate lifetime limit on medical and surgical benefits**, it may **not impose such a limit on mental health benefits**. If the plan does impose an aggregate lifetime limit, the Act requires the plan to include mental health benefits with medical/surgical benefits in the aggregate limit and not distinguish between the two; or in the alternative, to offer an aggregate limit for mental health benefits that is not less than the aggregate limit for medical/surgical benefits. For plans that categorize among different types of medical and surgical benefits for the purpose of applying limits, the Secretary of the U.S. Department of Health and Human Services (or, for self-funded ERISA plans, the Secretary of the U.S. Department of Labor) is authorized to promulgate regulations for determining the aggregate lifetime limit. The law specifies the method for computing this limit.

The Act imposes **identical rules for annual limits**. If a plan does not include an annual limit on medical and surgical benefits, it may not impose such a limit on mental health benefits. If the plan does impose an annual limit, it must either include mental health benefits in the aggregate and not distinguish between medical/surgical and mental health benefits, or in the alternative, not impose any limit on mental health benefits that is less than the medical/surgical benefits limit. Again, for plans that categorize medical/surgical benefits and apply different limits per category, the HHS Secretary (or Labor Secretary) is required

to promulgate regulations for computing the aggregate annual limit as specified in the Act.

The Act does not require a group health plan to offer any mental health benefit, and does not affect the terms and conditions relating to the scope of any mental health benefit that is provided, except as described above with respect to limits.

The scope of this Act is limited by four of its provisions. First, as noted above, there is an exemption for small employers, defined as those having two to fifty employees. Second, there is an exemption if a group health plan experiences "an increase in the cost under the plan (or for such coverage) of at least 1 percent." The law does not make clear how this provision would be determined or enforced. Third, mental health benefits as defined in the law do not include substance abuse or chemical dependency services. Fourth, there is a sunset provision.

Without additional Congressional action, this law is only in effect from Jan. 1, 1998 through Sept. 30, 2001.

Because this Act is an amendment to P.L. 104-191 (Kassenbaum-Kennedy), the enforcement provisions of that act also apply to this law. States will enforce the mental health parity provisions against insurance carriers and entities under state jurisdiction unless the HHS Secretary determines that a state has failed to substantially enforce a provision, in which case the HHS Secretary will enforce the law. The Secretary of the U.S. Department of Labor will enforce the law with respect to ERISA plans.

SB

105

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

1. 6
Bill Version: CSSB105(FIN)
(S) Publish Date: 4/16/97

| | |
|--|--|
| Revision Date: _____ | Dept. Affected: <u>Department of Law</u> |
| Title: <u>"An Act relating to legislative and executive branch ethics; relating to the conduct of lobbyists . . ."</u> | BRU: <u>Civil Division</u> |
| Sponsor: <u>Senate Rules Committee</u> | Component: <u>General Legal Services</u> |
| Requester: <u>Senate Finance Committee</u> | COMPONENT SERIAL NO. <u>2087</u> |

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)

| FUND SOURCE | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 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

| POSITIONS | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

CSSB 105 (STA) makes numerous amendments to the legislative and executive branch ethics acts, expands the reporting requirements of lobbyists, requires exempt and partially exempt state employees above range 19 to file reports under the conflict of interest statutes (AS 39.50), and makes a conforming amendment to the definition of "public official" for employment security statutes. In amending the executive branch ethics act, the bill transfers certain responsibilities for enforcing the act from the Attorney General to the Personnel Board. The Attorney General retains prosecutorial authority in formal proceedings before the Board, and responsibility for enforcing the Board's decisions. CSSB 105 (STA) also adds new prohibitions, new reporting requirements, new disclosures, and expands list of persons affected by the act.

This bill will have no fiscal impact on the Department of Law. When the Executive Ethics Act was passed in 1986, the legislature did not provide funding to the Department of Law to perform its new responsibilities. Consequently, the department has largely relied on ethics supervisors in the appropriate state agencies to

| | |
|---|------------------------|
| Prepared by: <u>Joan M. Kasson</u> <i>Joan M. Kasson</i> | Phone: <u>465-5370</u> |
| Division: <u>Administrative Services Division</u> | Date: <u>4/9/97</u> |
| Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u> <i>Bruce M. Botelho for</i> | Date: <u>4/9/97</u> |
| Agency: <u>Department of Law</u> | |

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

ANALYSIS CONTINUATION:

perform investigations; where possible, charged other agencies through interagency agreements for work performed under the act on their behalf; and when necessary to undertake the department's duties with scarce general funds, performed them at the expense of other work.

The Department of Law retains responsibility for certain functions under the State Affairs Committee Substitute including prosecuting ethics violations before the Board, seeking civil and criminal penalties, where appropriate, and as a practical matter, continuing to provide informal advice on the Ethics Act to agencies as well. The department hopes to continue to largely rely on interagency agreements to fund these activities.

Alaska State Legislature

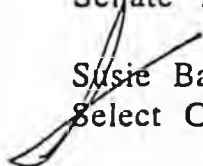
Select Committee on Legislative Ethics

716 W. 4th, Suite 230
Anchorage AK
(907) 258-8172
FAX: 258-2106

Mailing Address:
P.O.Box 101468
Anchorage, AK
99510 - 1468

DATE: April 16, 1997

TO: Senator Tim Kelly, Chair
Senate Rules Committee

FROM:  Susie Barnett, Staff
Select Committee on Legislative Ethics

RE: Review of Ethics Bill, CSSB 105 (FIN)

An Act relating to legislative and executive branch ethics; relating to campaign finances for candidates for the legislature; relating to the conduct of lobbyists with respect to public officials; relating to the filing of disclosures by certain state employees and officials; making a conforming amendment to the definition of 'public official for employment security statutes and providing for an effective date.

This document is intended to supplement the bill, relating to changes to the Legislative Ethics Code, AS 24.60, the Executive Branch Ethics Act, AS 39.52 and the State Personnel Act, AS 39.25, the State Elections Act, AS 15.13. The purpose of this document is to provide an ethics committee analysis of the bill. (Herein, "committee" refers to ethics committee.)

The following sections were amended by the Senate Finance Committee: 1, 2, 3, 6, 8, 24, 45, 60, 63, 65, 111, 112, 113. Note comment re: Section 78.

SECTION 1: AS 15.13.072.(d) RESTRICTIONS ON SOLICITATION AND ACCEPTANCE OF CONTRIBUTIONS. Amends the State Elections Act to allow incumbent legislators and certain legislative employees to solicit and accept contributions for non-legislative campaigns during session. This amendment corresponds to the restrictions set out in AS 24.60.031(a), session fundraising restrictions in the legislative ethics code, and, with the exception of not allowing the governor or Lt. governor to fundraise for any state office during session, corresponds to the proposed executive branch session fundraising restrictions set out in AS 39.52.132 of this bill. (Added in Sen. Fin.)

SECTION 2: AS 15.13.116(a) **DISBURSEMENT OF CAMPAIGN ASSETS** As amended by the Senate Finance Committee, the language increases the portion of the unused campaign contribution that may be transferred to a future election account, from \$10,000 to \$30,000 for candidates for senate and from \$5,000 to \$15,000 for candidates for the house. Secs. 111 and 112 allow this section and the section below to take effect immediately and to be retroactive to December 31, 1996. (Added Sen. Fin.)

SECTION 3: AS 15.13.116 **DISBURSEMENT OF CAMPAIGN ASSETS** New subsection (d) allows, but does not require, a legislator-elect to transfer \$5000 per year from the future election account to a legislative office account. Current law 15.13.116 (9)(D) allows a one time transfer of funds to an office account at \$5000 multiplied by the number of years in the term (\$20,000 per senator, \$10,000 per representative). Secs. 111 and 112 allow this section and the section above to take effect immediately and to be retroactive to December 31, 1996. (Added by Sen. Fin.)

SECTION 4: AS 23.20.526(d) **EXCLUSIONS FROM DEFINITION OF EMPLOYMENT.** Conforming amendment based on changes in this bill to the executive branch employment security statutes to ensure that the people who are not eligible for unemployment compensation remain ineligible.

SECTION 5: AS 24.25.010(e) **SUBPOENA POWERS:** The ethics code specifically grants the ethics committee the authority to subpoena witnesses under AS 24.60.150(b)(2). The statute to be amended by this bill sets out general authority for legislative subpoenas and includes a reference requiring the concurrence of the Senate President or Speaker of the House. Subsection(e) currently provides that the section does not apply to the Legislative Council or the Legislative Budget and Audit Committee. Like the ethics committee, both the council and LBA are permanent interim committees and both have express grants of authority to subpoena witnesses. It is the opinion of the ethics committee and the committee's legal counsel, that not including the ethics committee in the AS 24.25.010(e) exemption was an oversight, given the specific grant of authority to subpoena witnesses in the ethics code itself.

SECTION 6: AS 24.45.041(b) **LOBBYING: REGISTRATION.** The new language, as amended by Senate Finance at the request of APOC, would streamline the reporting requirements set out in AS 24.60.070(d) and AS 39.52.155 of this bill, for legislators, legislative employees and state officials. This language adds a requirement that the lobbyist report on the lobbyist's registration form, whether their spouse or spousal equivalent is a legislator, legislative employee or state official. (Added by Sen. Fin.)

SECTION 7: AS 24.45.171(12) **DEFINITIONS.** Adds "another legislative employee subject to disclosure" to the definition of public official or public officer in relation to lobbying statutes. (see AS 24.60.990(a)(15) in this bill)

SECTION 8: AS 24.60.030 **PROHIBITIONS/Legislative Ethics Code**

Sub-para: (a)2)(A): As amended by Senate Finance, the use of state resources for personal purposes would be allowed if the use does not interfere with the performance of public duties and either the cost is nominal or the user reimburses the state for the cost. (Amended by Sen. Fin.)

Sub-para: (a)2)(C): As amended by Senate Finance, allows "facsimile" use for a nongovernmental use or private benefit if the use does not carry a special charge. (Amended by Sen. Fin.)

Sub-para:(a)(5)(A): As amended by Senate Finance, the use of state resources for political fundraising or campaigning purposes would be allowed if the use does not interfere with the performance of public duties and either the cost is nominal or the user reimburses the state for the cost. (Amended by Sen. Fin.)

Sub-para:(a)(5)(C): As amended by Senate Finance, allows "facsimile" use for political fundraising or campaign uses if the use does not carry a special charge. (Amended by Sen. Fin.)

Sub-para:(a)(5)(D): Allows storing and maintaining campaign records (such as APOC reports) in a legislator's office. The Senate Finance Committee deleted the language in the Sen. State Affairs CS which set out that the records could not be displayed publicly. (Amended in Sen. Fin.)

SECTION 9: AS 24.60.030(c) MASS MAILING: The ethics code currently prohibits use of state funds to print or distribute a mass mailing from or about *a legislator who is a candidate for state office*, during the period 90 days before the primary and ending the day after the general election. The proposed language expands the prohibition to include legislators and legislative employees who are candidates for federal and municipal offices or to telephone and electric cooperatives. While other sections of the ethics code clearly prohibit use of state funds for campaign purposes, this section highlights what are considered to be a critical periods and provides a guideline for those who issue mailings during those times. *This prohibition does not apply to a legislator's office allowance.*

SECTION 10: AS 24.60.030(d) CAMPAIGN LITERATURE: The proposed change adds fundraising notices to the list of current prohibitions on distributing or posting campaign literature in state facilities. The prohibitions currently apply only to legislators or someone acting on behalf of a legislator. This expands that prohibition to include legislative employees. Allows legislators to post materials related to a past election in his/her private legislative office.

SECTION 11: AS 24.60.030(f) BOARD MEMBERSHIP: The amendment would change the board membership disclosure period from 30 days to 60 days and would require the committee to publish the disclosures in the journal.

SECTION 12: AS 24.60.030(g) CONFLICTS OF INTERESTS: The amendments to this section have the effect of changing the *prohibition* on taking legislative, administrative or political action to a *disclosure requirement* prior to taking action if one has any of the "interests" listed in the amendment, which are expanded beyond equity or ownership interest to include employment, contracts and membership on a board. It also sets out that the disclosure is to be publicly announced if the action is being taken in a committee meeting or on the floor. Actions being taken other than in committee or on the floor, e.g. drafting a bill or testifying in an administrative hearing, would be disclosed, in writing to the ethics committee within 7 days. Disclosures, whether oral or written, must include the nature of the financial interest and a short description of how the action affects the interest.

SECTION 13: AS 24.60.030 GOVERNMENT TIME Under the proposed language, when determining in a complaint proceeding whether an employee was performing a task on government time, the committee would consider the schedule set by the employee's supervisor. Requires an employee to take leave for the period of time he/she is engaged in political campaign activities, other than incidental campaign activities. Political campaign activities are permissible on government time if the activities are part of the normal legislative duties, including answering phone calls and handling incoming correspondence.

SECTION 14: AS 24.60.031(a) FUNDRAISING DURING SESSION The proposed language clarifies that the restrictions on fundraising during session are in effect on a day when either house is in regular or special session. (This would change the committee's current interpretation of "gavel to gavel") The proposed language retains the restrictions on fundraising during session for state legislative political purposes and by eliminating the term "campaign purposes", it makes clear it is limited to state legislative political purposes.

SECTION 15: AS 24.60.039 EMPLOYMENT DISCRIMINATION The Ethics Committee shares jurisdiction with the Human Rights Commission on complaints filed against a legislator or legislative employee concerning violations of the employment discrimination statute, AS 18.80.220. Current law requires the committee to deal with a complaint alleging a violation of that statute in the same manner they would deal with any other complaint. The proposed language gives the committee the option to refer those who file a complaint of employment discrimination to the Human Rights Commission and defer consideration of the complaint until after the commission has completed its proceedings.

SECTION 16: AS 24.60.040(a) CONTRACTS AND LEASES The proposed language broadens the contract and lease criteria beyond the current code, which restricts a legislator or legislative employee from having a financial interest in a state contract or lease unless:

- it is let through competitive bidding in accordance with the Procurement Code or
- it is worth \$1000 or less annually or
- it is standardized, under publicly established guidelines and generally available to the public at large.

The new language allows participation in contracts or leases that are let under AS 36.30, the State Procurement Code, which addresses a variety of award methods, including sole-source. It also allows participation in contracts and lease that are let under similar procedures to those in AS 36.30 which addresses such agencies as the University, the railroad and the legislature. The new language sets a new reporting threshold at \$5000, changed from the previous \$1000.

This bill eases the 'family member' disclosure requirement to generally read: A legislator or legislative employee who knows, or reasonably ought to know, that a family member is participating in a state contract or lease must disclose that participation.

This relaxing of prohibitions is balanced by the new disclosure requirement. Currently a legislator or legislative employee does not disclose to the ethics committee participation in contracts or leases permitted by the code. The proposed language requires disclosure by the legislator, legislative employee and family members of participation in any state contract or lease over \$5000 annually.

SECTION 17: AS 24.60.040, CONTRACTS AND LEASES. The new subsection clarifies that a grant, contract or lease that falls under one of the State Loan or Benefit Programs in AS 24.60.050, is not subject to this section. (The committee publishes a list of programs that do not meet the criteria in AS 24.60.050 and requires disclosure of participation in any of the listed programs.) It also clarifies that for the purposes of complying with the ethics code, a grant that results in a contract is subject to this section.

SECTION 18: AS 24.60.050(c) REFRAIN FROM PUBLICATION Allows the committee to protect an individual's right to privacy concerning participation in state loan and benefit programs and sets confirming disclosure date. This follows an advisory opinion issued by the committee in 1994 explaining that it chose to not publish the name of a person who received a benefit from the Violent Crimes Compensation Committee but did publish that a person covered by the ethics code had received a benefit.

SECTION 19: AS 24.60.060(b) PROTECTIVE ORDER The subject of an ethics complaint would be in violation of the code for releasing information deemed confidential under a protective order issued by the committee. This change would allow the committee to broaden discovery by the subject while still protecting any innocent, or 'not involved' parties.

SECTION 20: AS 24.60.070(b) DEADLINE FOR CLOSE ECONOMIC ASSOCIATION: The current code required disclosure of close economic associations but did not set a deadline. New deadline is set deadlines in AS 24.60.105 of this bill. The February 15 deadline is in line with others and the 60 day disclosure for new associations matches the new language for disclosures throughout the bill.

SECTION 21: AS 24.60.070. SPOUSAL/SPOUSAL EQUIVALENT LOBBYIST. This new section would require legislators and legislative employees who are married to or who are the spousal equivalents of a lobbyist, to disclose, under Close Economic Association, the name and address of each of the lobbyist's clients and the total monetary value received from each client annually. Changes to the list would have to be reported within 48 hours.

SECTION 22: AS 24.60.080(a): GIFTS The bill increases the gift limit from \$100 to \$250 annually. The language also clarifies that those gifts that come under subsection (c); hospitality, discounts, food shared as a cultural norm, travel/hospitality for obtaining information on legislative matters, gifts from immediate family and gifts not connected to legislative status are exceptions to the general prohibition on accepting gifts. Gifts on behalf of a charitable organization (new subsection (h)) are exempted from both "accepting and soliciting" prohibitions. New language has been added that restricts legislators and legislative employees from accepting, from a lobbyist during

session, anything of monetary value other than food or beverage for immediate consumption.

SECTION 23: AS 24.60.080(c) GIFT EXEMPTIONS The amendment to sub-paragraph(1)(A) clarifies that a stay in a vacation home located outside the state, is not an exempted gift. Amendment to sub-paragraph (2)(B) would allow legislators and legislative employees to accept discounts while on state business if the discount benefits the state. Paragraph (7) allows legislators and personal staff of legislators (not other legislative employees) to accept discounts and welcoming gifts in the capitol city during session.

SECTION 24: AS 24.60.080(d) GIFT REPORTING The changes in this section correspond to those made in previous sections e.g. \$250 limit and changing reporting date for gifts not related to legislative status to February 15 deadline and the change from reporting gifts to APOC.

Currently, a legislator or legislative employee who receives a gift of over \$100 "not related to legislative status" is required to report, confidentially, the name of donor and description of the gift received under this category. If the gift has a value of over \$250, the actual value must also be reported. The new language requires reporting, confidentially, only the name of donor and description of gift for all gifts over \$250 not related to legislative status.

Proposed changes to Sections 200-260 (discussed further down in this document) of the ethics code, remove APOC out from under the responsibility of dealing with reports of gifts received by legislators and legislative directors. This is an effort to ease confusion over what is reported to whom. Under the proposed changes, all gifts would be reported to the ethics committee. Copies of the non-confidential gift disclosures will be forwarded to APOC. Senate Finance, at the request of APOC, added the disclosures of gifts of "legislative employees" who are required to file financial disclosure statement to those that the ethics committee must provide copies of to APOC. (As amended by Sen. Fin.)

SECTION 25: AS 24.60.080(e) Low Budget Campaigns This is a technical change in response to the new campaign finance reform law, to allow certain contributions to "small budget" campaigns to fall within the "contribution" definition.

SECTION 26: AS 24.60.080(f) Government Gifts Allows acceptance of gift from a foreign government, the U.S. government or another state government for protocol purposes so long as the gift is delivered to the legislative council within 60 day. This bill increases the threshold to \$250 to correspond with other changes relating to gifts.

SECTION 27: AS 24.60.080(g) FAMILY Defines the terms in the Gifts Section "Immediate family or family member", which includes cohabitators, when used in relation to gifts received from immediate family and the new subsections in AS 24.60.080: inheritance from a family member (i) or gifts received by a family member (k).

SECTION 28: AS 24.60.080 GIFTS. New Subsections

(h) Permits soliciting and accepting gifts on behalf of charitable organizations, which is in accordance with an advisory opinion issued by the

committee. Allows the committee to set guidelines concerning these types of gifts.

(i) Requires reporting of receipt, but not value of, an inheritance from a person other than a family member. The current statute does not address inheritance. This information is currently required under APOC reporting of gifts. The bill reflects the change from reporting gifts to APOC.

(j) Sets out that gifts of volunteer services for legislative purposes may be accepted by a legislator, legislative committee or legislative agency as a gift to the state, so long as the person donating the services is not paid by another source. Allows a legislator, legislative committee or legislative agency to accept a UA Intern or JTPA trainee as well as any other educational trainees the committee approves. To maintain confidentiality, the ethics committee is not permitted to accept volunteer services.

This subsection requires volunteers, interns, and educational trainees to generally comply with the ethics code, with the exceptions of the following sections: contracts and leases, close economic associations, nepotism or representation before state agencies. The nepotism exemption allows family members to volunteer their time to legislative offices.

(k) The current law does not specifically address whether gifts, from another source, to a family member or spousal equivalent of a legislator or legislative employee fall within the restrictions and/or reporting requirements. The proposed language requires disclosure by a legislator or legislative employee who knows, or reasonably ought to know, that a family member has received a gift because of the family member's connection to the legislator or legislative employee. The bill provides this guideline: if the gift was given directly to the legislator or employee and if it would have to be reported by the legislator or employee, then the same gift, if the gift was given to a family member because of his/her connection to a legislator or legislative employee, would require disclosure. In other words, gifts of travel for matters of legislative concern given to allow the spouse to travel with the legislator, would have to be reported. The same holds true for gifts that legislators or legislative employees would be prohibited from accepting, that are received by family members. For example, gift of over \$250 given to the spouse of a legislator, primarily because of the connection to the legislator, would have to be reported.

The language, "or reasonably ought to know", concerning family members reduces the burden on those covered by the ethics code to research gifts provided to family members with whom there is little or no contact.

(l) Sets out that the value of the gift is fair market value, to the extent that fair market value can be determined. An example of how this might apply is; a tourism company provides a one hour helicopter ride to show a legislator the area in which they would like to expand their tours. The legislator would use the rate charged to helicopter passengers for a one hour tour in reporting the gift.

SECTION 29: AS 24.60.085(a) EARNED INCOME AND HONORARIA The amendments in this section would allow legislators and legislative employees to accept compensation that is less than fees generally charged. The effect of this change would be to allow an attorney to do pro bono work or an engineer to charge a reduced rate for review of plans for a non-profit organization.

SECTION 30: AS 24.60.100 REPRESENTATION Current law does not set reporting deadlines for representation before a state agency. This change

corresponds to the other changes of February 15 and 60 days for new representation, see new section 24.60.105 of this bill.

SECTION 31: AS 24.60.105 DEADLINES FOR FILING DISCLOSURES Sets out a reporting deadline of February 15 for disclosures of interests in state contracts, leases, programs and loans, representations of clients, close economic associations and membership on a board. Interests begun or acquired during the regular session (except for the last 30 days) must be reported within 30 days.

SECTION 32: AS 24.60.130(f). COMMITTEE PER DIEM AND TRAVEL The language corrects a drafting oversight by formalizing the public members' entitlement to receive per diem and travel compensation, as has been customary with legislative committees that have non-legislative members, such as the Code Revision Committee. The public members are not entitled to be paid for their time in service to the committee. AS 39.20.180 sets the rates and terms for per diem and travel for state boards and commissions. The change would apply those rates and terms to the public members of the committee.

SECTION 33: AS 24.60.130(h). MEMBER DISQUALIFICATION The new language prohibits an ethics committee member from participating in a complaint proceeding against a subject of a complaint who is supervised by the member. The process for appointing a new member to serve on the ethics committee in the place of a disqualified member is in new subsection AS 24.60.130(o) of this bill.

SECTION 34: AS 24.60.130(o) APPOINTMENT OF COMMITTEE ALTERNATES The current law sets out that if a member is disqualified during session, the presiding officer, with 2/3 concurrence, appoints another member for that proceeding. If disqualification is during interim, the presiding officer appoints a new member with the concurrence of that house's subcommittee. Involving either body of the legislature defeats confidentiality and allows public knowledge that the disqualified member may be the subject of the complaint. The new language directs the presiding officers to appoint alternates to the committee who will serve when the chair of the committee or subcommittee designates them, due to a legislative member being disqualified in a complaint proceeding. The designation of the alternate by the chair is confidential.

SECTION 35: AS 24.60.134(a). RESTRICTIONS ON THE COMMITTEE. The proposed language strengthens the political restrictions on the public members, staff to the committee and those under contract to the committee, by clarifying that prohibitions of participation in political management or in a political campaign extend to ballot initiatives and to campaigns for federal, state and local offices, regardless of whether the campaign is partisan or nonpartisan. A public member, employee or contractor to the committee may not attend a fundraiser or make a contribution to a political party, a candidate for the legislature, an incumbent legislator or legislative employee who is a candidate for another public office or a person running for another office against an incumbent legislator or legislative employee. The restriction on lobbying activities also remains the same as current law.

SECTION 36: AS 24.60.134(c) RESTRICTIONS: NEW SUBSECTION The proposed language permits a contractor with the ethics committee to request

the committee to exempt some members of the corporation or partnership from having to comply with some or all prohibitions against political activity. The committee has contracted for outside legal counsel with an attorney who is part of a large firm with branch offices outside of Alaska. A strict reading of current law might mandate all employees of that law firm to comply with the restrictions in the Alaska legislative ethics code.

SECTION 37: AS 24.60.150(b) GUIDELINES Permits the committee to adopt guidelines to implement this entire chapter under a public process. A person who acted within the guidelines could not be penalized for violating the ethics code. The current procedure of issuing Advisory Opinions allows interpretations based only on the facts presented by a requester. Situations have come up wherein the committee feels guidelines, based on a broad set of circumstances and an interpretation of the law, would assist those covered by the code in avoiding inadvertent violations.

SECTION 38: AS 24.60.160 ADVISORY OPINIONS The proposed language in this section allows the committee to issue an advisory opinion to a person who anticipates becoming a legislative employee, 45 days prior to employment. Current law restricts the committee to issuing advisory opinions to those already in legislative employment, legislators and legislators-elect. Current law sets 30 days as the response time for the committee to a request for an advisory opinion. The proposed change allows the committee 60 days to respond.

The new language in subsection(b) clarifies that the committee retains the authority to restrict attendance during deliberations in executive session on an advisory opinion.

SECTION 39: AS 24.60.170(a) COMPLAINTS: COMMITTEE JURISDICTION Current law requires the committee to process a complaint received, even if against all members of the legislature or all members of one house of the legislature. The proposed change, prohibiting the committee to consider a complaint of that nature, would allow the committee to return the complaint without action. Current law prohibits considering a complaint against a terminated legislative employee. Proposed language would allow the committee to reinstate a complaint that was closed upon an employee's termination, if the employee was rehired within five years of date the complaint was filed. In other words, if an employee quit to avoid complaint proceedings and the employee was rehired 6 months later, the committee may take up the initial complaint again. New language also allows the committee to follow the same procedure with a former legislator who resumes legislative service within five years of the date of the complaint. This change would affect former staffers who have been elected to the legislature and former legislators who have been employed as staffers.

SECTION 40: AS 24.60.170(b) COMPLAINANT New language clarifies that the complainant must sign a statement that he/she has reason to believe that a violation has occurred and places a responsibility on the committee to notify the complainant that he/she may have to testify during proceedings.

SECTION 41: AS 24.60.170(c) COMPLAINTS: PRELIMINARY EXAM/DISMISSAL The proposed change would put into law the current adopted procedure of the committee, which is to assign complaints to staff for preliminary examination for legal sufficiency and credibility of information.

Staff would then make a recommendation to the committee based on information and evidence contained in the complaint. Staff and the committee would be specifically permitted to solicit additional information from the complainant and the subject. The subject is not obligated to provide information. The new language clarifies that the committee is permitted to dismiss frivolous complaints and complaints that lack credible information. Further clarifies, as is current practice, that proceedings under this subsection are confidential and that confidentiality may be waived by the subject in compliance with AS 24.60.170(i), the subsection dealing with discovery by the subject.

SECTION 42: AS 24.60.170(f) LACK OF PROBABLE CAUSE Clarifies that the deliberations and vote on the dismissal order and decision on a finding of "lack of probable cause that a violation of the ethics code occurred" are not open to the public or to the subject of the complaint.

SECTION 43: AS 24.60.170(g) CORRECTIVE ACTIONS: Clarifies procedures in the event a person, after a finding of probable cause of a violation of the ethics code, agrees to comply with the committee's recommended corrective actions but later fails to complete the corrective action. Under the new language the committee may formally charge the person or refer the matter to the appropriate house of the legislature or appointing authority. It empowers the legislature or the appointing authority to enforce the actions or to decline to enforce and refer the matter back to the committee. If it is referred back to the committee, the committee retains the power to formally charge the person.

SECTION 44: AS 24.60.170(h) CORRECTIVE ACTIONS Conforms subparagraph (h) to the new language in AS 24.60.170(g), empowering the committee to formally charge a person who fails to complete corrective actions.

SECTION 45: AS 24.60.170(i) DISCOVERY Subsection (i) in current law is unclear as to when the subject of a complaint may engage in discovery. The committee feels the appropriate time for discovery and what seems to be the intent of the code, is at the point a person is formally charged. The change from subsection (b) to subsection (h) would clarify that intent. However, the new language permits the committee to adopt procedures concerning discovery which include allowing discovery at an earlier stage than formal charges and imposing reasonable restrictions on release of information to the subject of a complaint, to protect the privacy of persons not under investigation. The Senate Finance Committee amended subsection (i)(3) by adding a requirement that the committee could not impose restrictions on discovery by the subject unless the person agreed to be bound by similar restrictions concerning release of information and the person has not made public the information in or about the complaint or the filing of the complaint. The committee notes that they usually do not have jurisdiction over the complainant nor is the complainant involved in discovery. (Amended by Sen. Fin.)

SECTION 46: AS 24.60.170(l) ATTENDANCE AT EXECUTIVE SESSIONS and WAIVER OF CONFIDENTIALITY. The Uniform Rules set out that a legislator may not be excluded from an executive session. The proposed language clarifies that all meetings of the committee concerning complaints are closed to the public and to legislators who are not committee members. Under this

amendment, the committee may permit the subject of a complaint to attend a meeting, unless the committee is in deliberations on probable cause that a violation occurred. The language limits the power of the complainant to waive confidentiality for others.

SECTION 47: AS 24.60.174(a) TIMETABLE FOR SANCTIONS This sets out a procedure for the ethics committee and the legislature to follow concerning sanctions on legislators. The committee must include a timetable for compliance reports when it submits a report recommending sanctions to a legislative body to consider imposing on a legislator who was found in violation of the ethics code. The report may also include recommended fines that the legislative body may impose if the legislator does not comply in a timely manner.

SECTION 48: AS 24.60.174 TIMETABLE FOR SANCTIONS This subsection requires the legislative body to report to the committee the sanctions and timetable for compliance it has adopted. It further requires the legislator to report compliance with the sanctions according to the timetable to the committee. If the committee determines the legislator or former legislator has not complied fully and in a timely manner, the committee may recommend that the legislative body impose a fine or additional sanctions.

SECTION 49: AS 24.60.176: RECOMMENDATIONS WHERE VIOLATOR IS A LEGISLATIVE EMPLOYEE. The current code sets out that the "appointing authority" determines sanctions to be imposed on a violator who is an employee. (Appointing authority is defined in AS 24.60.176(b) of this bill.) The proposed language in this section establishes that those listed in AS 24.60.176(b) have the authority to impose sanctions on violators who are legislative employees.

SECTION 50: AS 24.60.176(b): APPOINTING AUTHORITY. This new subsection defines which body or person is the appointing authority for each set of legislative employees.

SECTION 51: AS 24.60.178 SANCTIONS Current law does not set out possible sanctions that could be recommended by the committee. The new section lists sanctions the committee may make to the legislature for violations of the ethics code. The list includes; fines on members who violated the code, divestiture of specified assets or withdrawal from certain associations, additional disclosure, suspension or termination from legislative employment (if an employee), restitution or reimbursement, public or private written reprimand, censure, removal from committee positions, probation, expulsion or any other appropriate measure. Subsection (c) clarifies that the committee may recommend that the subject be required to pay all or some of the costs related to the investigation or adjudication of a complaint. The committee's intent is to allow those covered by the code to be aware of possible sanctions and to empower the legislature to impose or require any of the above sanctions on legislators, including fines.

SECTION 52: AS 24.60.200 FINANCIAL DISCLOSURE BY LEGISLATORS, LEGISLATIVE DIRECTORS AND RANGE 19 AND ABOVE LEGISLATIVE EMPLOYEES Under current law, legislators and legislative directors are required to annually file a complete financial disclosure statement to APOC. This statement is similar to the conflict of interest statements filed by statewide

and local elected officials. The proposed changes to the APOC Legislative Financial Disclosure statement deal only with gifts. All other reporting under this section remains the same and remains the responsibility of APOC. The new language removes the responsibility for dealing with reports of any gifts from APOC. The corresponding change described above in AS 24.60.080(d) places that responsibility solely with the ethics committee. The amendment adds the same reporting requirements for Range 19 and above legislative employees and public members of the ethics committee and adds the requirement that spousal equivalent income is also reported.

SECTION 53: AS 24.60.210 DEADLINES FOR FILING. Adds Range 19 and above employees and public members of the ethics committee to the reporting deadline, and changes the deadline from April 15 to February 15. For those employees hired at a Range 19 after January 1, the reporting deadline is 60 days from date of being hired, or promoted, to a Range 19.

SECTION 54: AS 24.60.240. CIVIL PENALTY FOR LATE FILING. Adds Range 19 and above employees and public members of the ethics committee to those subject to civil penalties for late filing.

SECTION 55: AS 24.60.250 FAILURE TO FILE. Adds Range 19 and above employees and public members of the ethics committee to those who could forfeit nomination to office for failure to file report. (See 2/18/97 Cramer memo for discussion of this section)

SECTION 56: AS 24.60.260(a) FINES Current law does not include any penalty for late disclosures to the ethics committee. The proposed changes in this subsection and the new subsection AS 24.60.260(c) in this bill, would allow a person to file a late disclosure but that person would be subject to a fine or to having a complaint filed against them.

SECTION 57: AS 24.60.260(c) FINES Permits the committee to impose fines for late disclosures. Fines are not to exceed \$2 per day to a maximum of \$100 per late disclosure.

SECTION 58: AS 24.60.990(a)(5) IMMEDIATE FAMILY The change to the definition of immediate family affects, in current law, the contracts and leases section (24.60.040) and the section on nepotism, AS 24.60.090. The changes here conform with changes made in AS 24.60.080(g) of this bill.

SECTION 59: AS 24.60.990 - LEGISLATIVE EMPLOYEE AND SPOUSAL EQUIVALENT Adds Range 19 employee and public members of the ethics committee to the definitions of who is required to file the annual Legislative Financial Report to APOC. Adds spousal equivalent to the list of those whose income must be reported if the reporter is required to file the annual Legislative Financial Report to APOC.

SECTION 60: AS 39.25.070: POWERS AND DUTIES OF THE PERSONNEL BOARD. Reflects the changes made in later sections of this bill, which replace the Attorney General with the Personnel Board for many of the duties related to handling executive branch ethics complaints. (Added in Sen. Fin at suggestion of the drafter.)

SECTION 61: AS 39.25.160 New subsection:(j) STATE PERSONNEL ACT. Amends the State Personnel Act by adding a specific prohibition on state employees engaging in campaign activities on behalf of political candidate on government time. Clarifies that Division of Election employees may carry out duties related to elections and members and employees of the Commission on Judicial Conduct may carry out duties related to evaluation of judges.

SECTION 62: AS 39.50.020 REPORT OF FINANCIAL AND BUSINESS INTERESTS. Subsection (a) Amends the non-legislative Conflict of Interest statutes. This section sets out that the public officials listed in AS 39.50.200 must file a financial report within 30 days after taking office as a public official. In reference to filing requirements for candidates, deletes the 30 day grace period for a "person who becomes a candidate by any other means" thereby requiring immediate filing. Subsection (b) sets out that public officials are to file with APOC.

SECTION 63: AS 39.50.030(a) CONTENTS OF FINANCIAL STATEMENTS. Deletes the unnecessary reference to assets or liabilities under \$500, household goods and personal effects, to clarify that only those items listed in subsection (b) and (d) are to be reported. (Amended by Sen. Fin to include (d))

SECTION 64: AS 39.50.030(b) CONTENTS OF FINANCIAL STATEMENTS. Changes the reporting requirements for the executive branch public officials to the same level of legislators; interests over \$1000. Previous reporting level was \$100 for most income/interests and \$500 for loans. Adds requirement for public officials to report any income of over \$250 that is a *gift*. Deletes requirement for reporting of a state contract or natural resource lease held, bid or offered by the official's mother or father, adds reporting of state contract held, bid or offered by a partnership or professional corporation of which the official is a member. Adds official's spouse to the list of those the official must report if the spouse holds a natural resource lease.

SECTION 65: AS 39.50.030 CONTENTS OF FINANCIAL STATEMENTS. Added by Senate Finance at the request of APOC, this language provides a way for state officials to report a close economic association (as required in AS 39.52.155 of this bill) along with their conflict of interest statements on April 15, as opposed to filing a separate report on February 15. (Added by Sen. Fin.) Note overlap with Sections 6 and 78

SECTION 66: AS 39.50.070 FAILURE TO REPORT BY CERTAIN STATE EMPLOYEES. Amends language to conform with changes on who must report, in Sections AS 39.50.020 and AS 39.50.200.

SECTION 67: AS 39.50.080 FAILURE TO REPORT BY A COMMISSION OR BOARD CHAIR OR MEMBER. Amends language to conform with changes on who must report, in Sections AS 39.50.020 and AS 39.50.200.

SECTION 68: AS 39.50.200((a)(8) DEFINITIONS. Combined with following section, changes the definition of who must file a financial report. Adds to the current list, all state employees in the executive branch in the exempt or partially exempt service who are at a Range 19 or above or who earn more than \$4200 per month.

SECTION 69: AS 39.50.200(a)(10) DEFINITIONS. Combined with above section, changes the definition of who must file a financial report. Adds to the current list, all state employees in the executive branch in exempt or partially exempt service who are at a Range 19 or above or who earn more than \$4200 per month.

SECTION 70: AS 39.52.010(a) FINDINGS AND PURPOSE. Generally adds the findings of the legislative ethics act to those in the executive branch ethics code.

SECTION 71: AS 39.52.110(c) SCOPE OF CODE. Conforming change related to removal of Attorney General from certain actions related to administering the executive ethics code.

SECTION 72: AS 39.52.120(b) MISUSE OF OFFICIAL POSITION. This section clarifies that the Governor and Lt. Governor may accept campaign contributions and that public officers and Lt. Governor and Governor may accept lawful gifts.

SECTION 73: AS 39.52.125 MISUSE OF OFFICIAL POSITION BY STATE OFFICIALS. New section. Adds a new section to the executive branch ethics code which sets out additional prohibitions for state officials (as defined at the end of this bill), as generally found in the legislative ethics act, and includes changes made to the legislative ethics act through this legislation.

SECTION 74: AS 39.52.130(c). GIFTS This section and other sections change the reporting, advising and enforcing authority relating to gifts for the executive branch from the Attorney General's office to the Personnel Board.

SECTION 75: AS 39.52.130(e-n) GIFTS . New subsections. Changes language regarding state officials to match legislative gift restrictions and reporting. Sets out the list of gifts that are exempted from restrictions, including voluntary services, to the executive branch. The list matches the exempt list for the legislature, as proposed in this bill. Gifts from another government to be delivered to the Office of the Governor.

SECTION 76: AS 39.52 RESTRICTIONS ON FUNDRAISING. New Subsections. Section 39.52.132: Sets restrictions on campaign fundraising during session for state officials including the governor and lieutenant governor. Section 39.52.134 prohibits a state official, other than the Governor or Lt. Governor, in the exempt or partially exempt service from filing a letter of intent or declaration of candidacy for the legislature. Section 39.52.136 adds state officials to those that must comply with the open meetings law.

SECTION 77: AS 39.52.150(d) IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, LOANS. Requires reporting to the Personnel Board as well as to supervisor, a report of participation in state contracts, grants, leases, loans.

SECTION 78: AS 39.52.155 DISCLOSURE OF CLOSE ECONOMIC ASSOCIATIONS. New Section: Requires state official to disclose, to supervisor and APOC, close economic associations with those listed in this

section. Sets disclosure deadlines to conform with legislative ethics act. Subsection (c) requires state officials who are married to or living with a lobbyist to report the name of each employer of the lobbyist and the total monetary value received from the employer. Changes must be reported within 48 hours. APOC shall maintain a public record of the disclosures. Note overlap with Section 6 and 65.

SECTION 79: AS 39.52.170 OUTSIDE EMPLOYMENT RESTRICTED. (a) Adds a clause that restricts state officials from accepting outside employment if the compensation is significantly greater than the value of the services. Conforms with legislative ethics language. (b) Requires those who receive compensation for another job to report to both supervisor and Personnel Board.

SECTION 80: AS 39.52.170 (c) OUTSIDE EMPLOYMENT. Adds an honorarium restriction for state officials which matches legislative ethics act restriction.

SECTION 81: AS 39.52.180(b) RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. This references change in new subsection (d) below, restricting agencies from contracting with a former state official for lobbying services before a state agency or the legislature.

SECTION 82: AS 39.52.180(c) RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. References new subsection (d) below and sets a one year limit on waiving restrictions set out in this section regarding lobbying.

SECTION 83: AS 39.52.180 RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE. New subsection. (d) restricts agencies from contracting with a former public officer for services which would include lobbying before a state agency or the legislature.

SECTION 84: AS 39.52.210(a-c) DECLARATION OF POTENTIAL VIOLATIONS. Requires public employees to report potential violations to Personnel Board as well as to supervisor. Requires supervisor to provide a copy of written determination of potential violation to public employee and personnel board.

SECTION 85: AS 39.52.220 DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS AND COMMISSIONS. Requires members of boards or commissions to disclose a matter that may result in a violation on the public record and in writing to supervisor and to the personnel board. Replaces AG office with Personnel Board as advisors in matters of potential violation.

SECTION 86: AS 39.52.230 REPORTING OF POTENTIAL VIOLATIONS. A complaint against a state official is filed with the supervisor. The supervisor is required to file a copy of the complaint with the personnel board.

SECTION 87: AS 39.52.240(a) ADVISORY OPINIONS. Adds state officials to those that may request an advisory opinion and sets the personnel board as the body to issue the opinion.

SECTION 88: AS 39.52.240(b) ADVISORY OPINIONS. Replaces the AG office with the personnel board as the body offering oral advice.

SECTION 89: AS 39.52.240(c) ADVISORY OPINIONS. Replaces the AG office with the personnel board as the advising body.

SECTION 90: AS 39.52.240(e) ADVISORY OPINIONS. Replaces the AG office with the personnel board as the advising body

SECTION 91: AS 39.52.240(h) ADVISORY OPINIONS. Replaces the AG office with Personnel Board for purpose of publishing advisory opinions.

SECTION 92: AS 39.52.250 ADVICE TO FORMER PUBLIC OFFICERS. Replaces the AG office with the personnel board as the advising body.

SECTION 93: AS 39.52.260 DESIGNATED SUPERVISOR'S REPORT AND PERSONNEL BOARD REVIEW. Replaces the AG office with the personnel board as the body accepting reports of potential violations.

SECTIONS 94 -103: AS 39.52.310, 320,330,340. COMPLAINTS: The changes in these sections have the effect of removing the AG from handling complaints and placing that responsibility with the Personnel Board.

SECTION 104: AS 39.52.350: PROBABLE CAUSE FOR A HEARING Changes the current role of the AG from determining probable cause and initiating hearings to that of "prosecutor" in the hearing. Establishes the Personnel Board as the body to conduct the preliminary review, determine probable cause and initiate hearings.

SECTION 105: AS 39.52.920 AGENCY POLICIES Replaces the AG office with the Personnel Board as the body which reviews and approves agency policies that restrict a public officers acquisition of personal interest in certain entities and acceptance of gifts.

SECTION 106: AS 39.52.950. REGULATIONS. Limits the AG office to adopting regulations relating to complaints (for this act) and sets out that the personnel board may adopt regulations necessary to interpret and implement sections other than complaints,

SECTION 107: AS 39.52.960(11) DEFINITION OF IMMEDIATE FAMILY. Changes definition in the executive act to match the legislative act, as proposed in this bill.

SECTION 108: AS 39.52.960 (23) DEFINITION OF STATE OFFICIAL. Means governor, lieutenant governor, a person hired or appointed as the head or deputy head of a department in the executive branch or as the director of a division in a department in the executive branch, the chair or member of a state commission or board, the executive director of the Alaska Tourism Marketing Council, an assistant to the governor or lieutenant governor, a state investment officer, the state comptroller in the Department of Revenue, and a state employee who is not otherwise listed in this definition who is employed in a position in the executive branch of state government in the exempt or

partially exempt service and who is compensated at Range 19 A or above on the state salary schedule or at more than \$4200 per month. (This may affect people at lower ranges who are further out in step) Does not include an employee who is a member of collective bargaining unit e.g. state ferry workers.

SECTION 109: AS 44.62.175(a) ALASKA ADMINISTRATIVE JOURNAL. Adds advisory opinions of the personnel board to the list of those things to be published in the journal.

SECTION 110: Temporary Law: AG OPINIONS. Sets out that a public officer or former public officer may rely upon the opinion of the AG's office prior to this act taking effect.

SECTION 111: Temporary Law: DISBURSEMENT OF UNUSED CAMPAIGN CONTRIBUTIONS Allows current legislators to transfer \$5000 per year from unused campaign contributions to a legislative office account and requires the money transferred to be accounted for under AS 15.13.110(a)(4).

SECTION 112: Temporary Law. Retroactive Date for Secs. 1, 2 and 111. Allows the increase in transfer to future election account and subsequent transfer of a portion of that increase to the office account to be retroactive to December 31, 1996.

SECTION 113: Temporary Law. Immediate Effective Date for Secs. 1, 2, 111 and 112.

SECTION 114: EFFECTIVE DATE: APOC has recommended that a January 1 effective date would correspond to their calendar year reporting and would avoid confusion for those who have to file the financial disclosure to APOC for the period of time between January 1 and whatever other date might be selected.

SB

106

FISCAL NOTE

No. 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SB 106
(S) Publish Date: 3/10/97

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Notary Public Bond BRU: Trial Courts
 Component: _____
 Sponsor: Judiciary by request
 Requestor: _____ COMPONENT SERIAL NO. 768

| 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 (| | | | | | | |

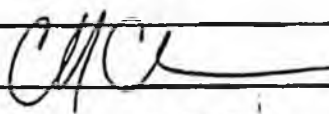
| Fund Source | | (Thousands of Dollars) | | | | | |
|--------------------------|------------|------------------------|------------|------------|------------|------------|--|
| 1002 Federal Receipts | | | | | | | |
| 1003 GF Match | | | | | | | |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | |
| 1005 GF/Program Receipts | | | | | | | |
| 1037 GF/Mental Health | | | | | | | |
| Other | | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | |

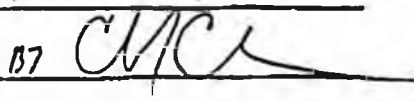
Estimate of any current year (FY 97) cost: None

| Positions | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-Time | | | | | | | |
| Part-Time | | | | | | | |
| Temporary | | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 264-8228
 Agency: Alaska Court System Date: 03/06/97

Approved by: Stephanie J. Cole, Administrative Director  Date: 03/06/97
 Agency: Alaska Court System

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

CORRECTION

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



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

No. 1
BILL NO. Bill Version: SB 106
(S) Publish Date: 3/10/97

Revision Date: _____ Dept. Affected: Alaska Court System
Title: Notary Public Bond BRU: Trial Courts
Sponsor: Judiciary by request Component: _____
Requestor: _____ COMPONENT SERIAL NO. 768

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 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 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: None

Positions

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-Time | | | | | | |
| Part-Time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CSC* Phone: 264-8228
Agency: Alaska Court System Date: 03/06/97
Approved by: Stephanie J. Cole, Administrative Director *SJC* Date: 03/06/97
Agency: Alaska Court System

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



ALASKA COURT SYSTEM
State of Alaska
Office Of The Administrative Director

820 West 4th Avenue
Anchorage, Alaska 99501
(907) 264-8265
FAX (907) 264-8291

Doug Wooliver
Administrative Attorney

March 11, 1997

Dear Senator Kelly;

The Alaska Court System respectfully requests that SB 106 be calendared for floor debate at your earliest convenience.

This bill will benefit those citizens submitting applications to be notaries public by removing the requirement that the required bond applications be signed by the clerk of the superior court. Although this bill will provide a small time savings to the court system, its primary purpose is to save notary applicants an extra and unnecessary step and to remove 1 to 2 weeks from the appointment process.

Currently, by statute, the Lieutenant Governor is charged with accepting applications from and appointing notaries. However, a law enacted shortly after statehood requires that the clerk of the superior court approve the \$1,000 bond that is part of the application. This means that rather than sending their applications directly to the Lieutenant Governor, applicants must first take or mail them to the superior court. The court clerk merely looks at the bond to make sure that it is filled out properly and signed. There is no analysis done and no verification that the information is accurate. This function is not something that the clerk is uniquely qualified to do or has any particular expertise in.

This bill allows notary applications to be sent directly to the Lieutenant Governor, thus removing one layer of bureaucracy and 1 to 2 weeks of time from the notary application process.

Very truly yours,

Doug Wooliver
Administrative Attorney

SB

109

ALASKA STATE LEGISLATURE

Interim:

600 East Railroad Avenue
Wasilla, Alaska 99654
(907) 376-3370
(907) 376-3157 Fax



Session:

State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600
Fax (907) 465-3805

SENATOR LYDA GREEN

SENATE DISTRICT N

SPONSOR STATEMENT SB109, Rights to Agricultural Land

SB109 is similar to legislation passed last year as SB162. Last session the reform measure passed by huge majorities, was vetoed by the Governor and then the Governor's veto was overridden. However, the override vote, according to Judge Larry Weeks of Juneau, came a day late.

This session SB109 has been heard in Senate Finance and was amended in an effort to accommodate some concerns of the Department of Natural Resources. While there is not total agreement on the bill with the Administration, we are working together to promote more freedom for farmers, encourage the creation and preservation of the family farm, and to allow private financing for agricultural land while maintaining a restriction for agricultural use.

The key provisions are:

- (1) The State of Alaska will be taken off the title to the land. This is absolutely essential if farmers with agricultural land are to have an opportunity to finance their operations with private financing.
- (2) Numerous regulations are repealed that provided for micro-management of private farms by the state. It is our understanding that the Department of Natural Resources has no objection to repealing this regulations.
- (3) An original agricultural parcel can now be subdivided into any number of parcels as long as they are no smaller than 40 acres. The subdivisions do not include the ability to build a home on the property. However, current law provides for a home site to go along with any subdivision of an original parcel as long as the parcel is at least 640 acres.

SB109 would allow an original parcel to be subdivided into no more than four parcels of at least 40 acres that could include home sites.

(4) For a subdivided parcel that includes a home site, is under 640 acres, and is conveyed to someone outside the owner's immediate family, there are two options. Option 1 provides an increased value fee of \$6,000 that is payable to the state. Option 2 allows the owner to do an appraisal and pay the difference in the increased value, if any, from agricultural land with a home site and agricultural land without a home site.

(5) Agricultural use would be protected by a perpetual covenant running with the land. Any citizen, municipality or the State could bring suit in civil court to enforce the covenant. However, a 90 day cooling off period is mandated by requiring that the complaint first be presented in writing to the local Soil and Water Conservation Board. This process should reduce or eliminate frivolous suits.

(6) A limited liability report is required to indemnify the State during the transfer of title.

(7) Existing requirements for a cadastral survey before the state can offer agricultural land are amended to allow the Commissioner of the Department of Natural Resources to waive that expensive process.

This legislation will remove unnecessary regulations, promote family farming, allow farmers the option of private financing, promote more offering of agricultural land, allow a limited number additional home sites on agricultural land and guarantee continued agricultural use of the land.

Pinkelman & McCollum
P.O. Box 336
Delta Jct., Alaska 99737

April 3, 1997

To: Senate & House Representatives

Re: Agriculture Titled Land

Dear Representatives of the 20th Legislature:

We are writing to petition the legislature to reconsider the passage of Senate Bill #109 sponsored by Lyda Green and House Bill #184 sponsored by Jeannette James.

We as farmers, land owners as well as business owners own fee simple property as well as a parcel of "Ag Rights" land.

We feel that when an individual placed a bid on any of the agricultural tracks they were fully aware and advised of any covenants and restrictions placed on "Ag" parcels being put up for State auction. Bidders placed respective bids reflecting the limited value placed on buying only the "Agriculture Rights" to State land. Land was purchased at low rates from \$50 -75 per acre versus similar "Fee Simple" farm ground with prices near \$400 per acre.

As you all are aware of, many of the original agriculture tracks that were sold by the State have undergone drastic restructuring from the original terms set forth at the time of purchase. Many farmers have benefited from the reduced interest rates as a result of this restructuring.

Furthermore, the State originally paid to have those farms cleared. Then the Federal Government sets up the 10 year CRP program which recently has been renewed, so many have turned "Ag Land" over to reap profits from this program. Now, we have our legislature going further to roll over all of that land to limited but yet "Fee Simple Title", without having to pay a Red Cent for the difference in land value. This bill is totally unfair to all other land owners in the State of Alaska.

Should this bill pass, what will be the repercussions on those of us who purchased "Ag Land" from an original owner, who can now come back and say the land he sold was undervalued, it is now legally worth more.

CORRECTION

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



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

Pinkelman & McCollum
P.O. Box 336
Delta Jct., Alaska 99737

April 3, 1997

To: Senate & House Representatives

Re: Agriculture Titled Land

Dear Representatives of the 20th Legislature:

We are writing to petition the legislature to reconsider the passage of Senate Bill #109 sponsored by Lyda Green and House Bill #184 sponsored by Jeannette James.

We as farmers, land owners as well as business owners own fee simple property as well as a parcel of "Ag Rights" land.

We feel that when an individual placed a bid on any of the agricultural tracks they were fully aware and advised of any covenants and restrictions placed on "Ag" parcels being put up for State auction. Bidders placed respective bids reflecting the limited value placed on buying only the "Agriculture Rights" to State land. Land was purchased at low rates from \$50 -75 per acre versus similar "Fee Simple" farm ground with prices near \$400 per acre.

As you all are aware of, many of the original agriculture tracks that were sold by the State have undergone drastic restructuring from the original terms set forth at the time of purchase. Many farmers have benefited from the reduced interest rates as a result of this restructuring.

Furthermore, the State originally paid to have those farms cleared. Then the Federal Government sets up the 10 year CRP program which recently has been renewed, so many have turned "Ag Land" over to reap profits from this program. Now, we have our legislature going further to roll over all of that land to limited but yet "Fee Simple Title", without having to pay a Red Cent for the difference in land value. This bill is totally unfair to all other land owners in the State of Alaska.

Should this bill pass, what will be the repercussions on those of us who purchased "Ag Land" from an original owner, who can now come back and say the land he sold was undervalued, it is now legally worth more.

If any legislation should be made regarding agriculture lands, lets go from this day forward, not retroactive from August 15, 1976.

And furthermore, farmers may be limited with their borrowing abilities on this land, but it is our understanding, there are lending institutions who will lend up to \$50.00 per acre on "Ag Titled" land. And for greater autonomy let them be weaned from the government, and play by the rules of the ball game. They will still be able to make business decisions responsive to the economic factors of the marketplace without having to be freely given title to this land. Let's be fair to all.

Sincerely,

Russell A. Pinkelman

Jeannie Pinkelman

Cathie McCollum

Doug McCollum

Russ & Jeannie Pinkelman

Doug & Cathie McCollum

Fax: Adams, Donley, Duncan, Ellis, Green, Halford, Hoffman, Kelly, Leman, Lincoln, Mackie, Miller, Parnell, Pearce, Phillips, Sharp, Taylor, Torgerson, Ward, Wilken, Jay Kerttula.

Gov Jerry Kuntze

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Verson: SB 109
(S) Publish Date: 4-2-97

Revision Date: _____ Dept. Affected: Department of Law
Title: "An Act relating to land used for agricultural
purposes . . . annulling certain program regulations . . . BRU: Civil Division
Sponsor: Senator Green Component: General Legal Services
Requester: Senate Finance COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | 107.5 | 107.5 | 107.5 | 107.5 | 107.5 | 107.5 |
| TRAVEL | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 |
| CONTRACTUAL | 19.5 | 19.5 | 19.5 | 19.5 | 19.5 | 19.5 |
| SUPPLIES | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| EQUIPMENT | 6.5 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
| CHANGE IN REVENUES () | | | | | | |

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |

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

POSITIONS

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

SB 109 requires the Department of Natural Resources to make conveyances of land used for agricultural purposes.

The bill would increase the burden on the state to enforce covenants requiring that grantees under SB 109 use conveyed parcels only for agricultural purposes. Under existing law, the state conveys only agricultural rights in land, while retaining the underlying fee title, subject to a reversionary interest triggered if the grantee uses the land for non-agricultural purposes. The state can enforce its rights through an administrative proceeding to terminate the grantee's rights, with the grantee having the right to judicial review.

SB 109 would require the state bring a civil action in state court to enforce the agriculture-only covenants. Under the bill, the state would no longer retain a reversionary interest in the land, and its remedies would be restricted to damages or injunctive relief for specific performance. Because the state would have significantly less leverage in terms of its remedies, the potential for litigation would increase. In addition, because the courts

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
Division: Administrative Services Division Date: 3/19/97
Approved by Commissioner: Bruce M. Botelho *Bruce M. Botelho* Date: 3/19/97
Agency: Department of Law

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

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill No. 2
Version: SB 109
(S) Publish Date: 4-2-97

Revision Date: _____ Dept Affected: Natural Resources
 Title: "An Act relating to Land Used for Agricultural BRU: Management and Administration
 Purposes and to State Land Classified for Agricultural Purposes....." Component: Information Resource Management
 Sponsor: Green, Pearce
 Requestor: (S)FIN Component Serial No. 427

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY98 | FY99 | FY00 | FY01 | FY02 | FY03 |
|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| PERSONAL SERVICES | 25.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 25.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |

| | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|----------------------|-----|-----|-----|-----|-----|-----|

| | | | | | | |
|------------------------|-----|-----|-----|-----|-----|-----|
| 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 | 25.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 25.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |

Estimate of any current year (FY97) cost: \$ None

POSITIONS

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| PART-TIME | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| TEMPORARY | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

ANALYSIS: (Attach a separate page if necessary)

SB 109 proposes to convey fee title to state land classified as agricultural land, subject to a covenant limiting the use to agricultural purposes. Former disposals of agricultural land are to be converted to fee title with the restrictive covenant. The current owners of agricultural rights only land may apply for fee title if they convey their interest in the land back to the state. These conveyances will require new transactions in the Land Administration System, and notation of the deeds back to the state and the new fee title patents to the Land Status GIS system (status plat).

Prepared by: Carol Carroll, Director *Carol Carroll* Phone: 465-4730
 Division: Support Services Date: 20-Mar-97
 Approved by Commissioner: *Carol Carroll* Date: 3/21/97
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Verson: SB 109
 (S) Publish Date: 4-2-97

Revision Date: _____ Dept Affected: Natural Resources
 Title: An Act relating to land used for agricultural BRU: Agricultural Development
purposes and to state land classified for agricultural... Component: Agricultural Development
 Sponsor: Green, Pearce
 Requestor: (S)FIN Component Serial No. 455

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY98 | FY99 | FY00 | FY01 | FY02 | FY03 |
|-------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| PERSONAL SERVICES | 28.5 | 11.4 | 11.4 | 11.4 | 11.4 | 11.4 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 28.5 | 11.4 | 11.4 | 11.4 | 11.4 | 11.4 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 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 | 28.5 | 11.4 | 11.4 | 11.4 | 11.4 | 11.4 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 28.5 | 11.4 | 11.4 | 11.4 | 11.4 | 11.4 |

Estimate of any current year (FY97) cost: \$ _____ none

POSITIONS

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 1 | 1 | 1 | 1 | 1 | 1 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

Section 4 of the bill allows for appeals based on economics. It is estimated that approximately 25% of 400 plus land sales would be appealed on economics the first year, at 10% in future years, at a cost of approximately \$240/appeal.

Prepared by: Jay Kerttula, Director *Jay Kerttula* Phone: 745-7200
 Division: Agriculture Date: 20-Mar-97
 Approved by Commissioner: *Paul Canale* Date: 3/21/97
 Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Verson: SB 109
 (S) Publish Date: 4-2-97

Revision Date: _____ Dept Affected: Natural Resources
 Title: An Act relating to land used for agricultural purposes BRU: Resource Development
and to state land classified for agricultural purposes.... Component: Land Development
 Sponsor: GREEN
 Requestor: (S)FIN Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY'98 | FY99 | FY00 | FY01 | FY02 | FY03 |
|----------------------------------|------------------|--------------|-------------|-------------|--------------|--------------|
| PERSONAL SERVICES | 110.4 | 187.7 | 63.4 | 69.7 | 79.2 | 84.5 |
| TRAVEL | 1.9 | 2.1 | 2.3 | 2.5 | 2.8 | 3.1 |
| CONTRACTUAL | 19.0 | 16.3 | 18.0 | 19.6 | 21.9 | 23.9 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 131.3 | 206.1 | 83.7 | 91.8 | 103.9 | 111.5 |
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CHANGE IN REVENUES (1005) | (3,200.0) | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|--------------|--------------|-------------|-------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 131.3 | 206.1 | 83.7 | 91.8 | 103.9 | 111.5 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | 131.3 | 206.1 | 83.7 | 91.8 | 103.9 | 111.5 |

Estimate of any current year (FY97) cost: \$ None

POSITIONS

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 2.3 | 4.1 | 1.2 | 1.3 | 1.5 | 1.6 |
| PART-TIME | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TEMPORARY | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

ANALYSIS: (Attach a separate page if necessary)

Conversion of existing patents: Assumes 230 existing ag patents are eligible and that conversion can be completed in first two years. Process begins by setting up data base, then giving public notice of conversion opportunity by mailout to last known address and by ads in five Alaska newspapers. This first-year phase would require 4 person-months' work by an NRO II and an Admin Clerk II, total \$14.4, plus contractual costs of \$4.1 for certified mail and publication twice in five newspapers. Next phase is accepting deeds from patentees and adjudicating title conflicts: 12 person-months in the first year (6 mos. each for NRO II and Admin Clerk II), \$43.2, plus 24 person-months in the second year (12 mos. each for NRO II and Admin Clerk II), \$86.4. Final phase, in second year, is issuing patent if title conflicts resolved: 12 person-months (6 each of NRO II and Admin Clerk II), \$43.2. Cost would be lower if Secs. 12-13 are amended as recommended in DNR's letter to Sen. Green dated March 19, 1997. **Total for conversion: \$61.7 FY98, \$129.6 FY99, grand total \$191.3.**

Prepared by: Jane Angvik *[Signature]* Phone: 269-8503
 Division: Land Date: 20-Mar-97
 Approved by Commissioner: *[Signature]* Date: 3/21/97
 Agency: Natural Resources

ANALYSIS (cont.)

Monitoring/enforcement of agricultural covenant: Analysis assumes that only the state can enforce the covenant and that annual monitoring of each parcel is needed so that the courts do not deem the covenant "waived or abandoned." (These figures would be lower if DNR's recommendations to the sponsor in its letter dated March 19, 1997 are accepted.) Monitoring would be done mostly by surface transportation, with 10% by air charter for landowners who are uncooperative and whose improvements cannot be seen by road, at average of one per day (including time needed for follow-up on apparent violations: document on film, research current owner at Recorder's Office, correspond with landowner, refer unresolved violations to Dept. of Law for prosecution, and provide litigation support). Enforcement officer would be an NRO II. 230 farms would be monitored first year, with numbers increasing by 10% every year as new patents are issued (183 parcels are currently under contract) and as patentees subdivide their parcels. 1.0 full-time equivalent first year @ \$52.8; then 1.1 (\$58.1), 1.2 (\$63.4), 1.3 (\$69.7), 1.5 (\$79.2), 1.6 (\$84.5). Travel costs assume 20 days' per diem payments averaging \$75/day for multi-day inspection trips, plus 20 days' meal allowance at \$21/day for day trips exceeding 10 hours, for first-year costs of \$1.9, increasing annually. Each air charter is estimated at 2 hrs. @ \$225/hr.; 23 in first year for a total of \$10.4, increasing to \$11.4; \$12.6; \$13.8, \$15.2, \$16.7 by last year. 207 inspections by road require two 4WD cars, five months each in first year, at \$447.00 rental per vehicle-month or \$4.5; then \$4.9; \$5.4; \$5.8; \$6.7; \$7.2. Total for monitoring: \$69.6 first year, increasing annually.

Change in revenues as a result of conversion: The sales price of parcels that have already been patented or are currently under contract was based on the original rights conveyed. Their fair market value rises if additional rights are conveyed, particularly the right to subdivide into four residence sites instead of one. 358 parcels were originally or are presently being conveyed on a one-homesite-per-parcel basis (agricultural homesteads are not included in these totals, as they have always allowed subdivision into four residence sites if the original parcel was a full 160 acres). Change in value would vary by region because of differing real estate values. The figures include "raw" value only, not the "retail" cost, because the latter includes the subdivider's costs of additional survey, platting, amenities such as roads, and marketing. For Delta parcels, the raw value of each additional residence site is zero to \$4,000 (local real estate values are depressed due to military base closure); Nenana-North Pole, \$1,000 to \$5,000; Matanuska Valley and Kenai Peninsula, \$2,000 to \$6,000. An unweighted average of \$3,000 is used for this estimate: 358 parcels times three extra residence sites per parcel times \$3,000 for a total of \$3.2 million. Revenue change is attributed to first year only, though it would actually be spread over a longer period as new patents are issued. Analysis assumes this value is lost to the state, thus a negative impact on revenues. If Secs. 11-12 are changed as recommended in DNR's letter to the sponsor dated March 19, 1997, revenue would instead be gained by the state. Total revenue change (-\$3,200.0) first year only.

ANALYSIS CONTINUATION:

have found restrictive covenants waived for non-enforcement, the state would be under pressure to strictly monitor parcels for compliance with the covenants and bring timely legal actions, rather than risk waiving our rights.

The Division of Agriculture estimates that there are currently 475 agricultural-use parcels, of which 250 are in the Kenai Peninsula and Mat-Su Boroughs, and in the Fairbanks area. The parcels average 215 acres in size. SB 109 permits subdividing the parcels into not more than four parcels of not less than 40 acres each. This could triple the number of parcels that should be monitored for covenant violations. In addition, the legislation proposes to make the terms for acquiring a parcel more attractive than current law. This could also have the effect of increasing the number of agricultural-use parcels.

The department anticipates needing one full-time equivalent attorney position to handle the increased workload that would result for SB 109. The full-time equivalent cost estimate is based on the department's standard attorney cost schedule (\$127,000) and includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Case specific costs and one-time equipment purchases are not included in the rate, and so are added separately (direct case costs, \$5,000; one-time equipment purchases, \$6,500).

FISCAL NOTE

No. 6
 Bill Version: CSSB 109 (FIN)
 (S) Publish Date: 4-4-97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to land used for agricultural
purposes . . . annulling certain program regulations . . .
 BRU: Civil Division
 Sponsor: Senator Green Component: General Legal Services
 Requester: Senate Finance Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | 107.5 | 107.5 | 107.5 | 107.5 | 107.5 | 107.5 |
| TRAVEL | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 |
| CONTRACTUAL | 19.5 | 19.5 | 19.5 | 19.5 | 19.5 | 19.5 |
| SUPPLIES | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| EQUIPMENT | 6.5 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

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

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 | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |

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

POSITIONS

| POSITIONS | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|-----------|-------|-------|-------|-------|-------|-------|
| FULL-TIME | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

CSSB 109 (FIN) requires the Department of Natural Resources to make conveyances of land used for agricultural purposes.

The bill would increase the burden on the state to enforce covenants requiring that grantees under CSSB 109 (FIN) use conveyed parcels only for agricultural purposes. Under existing law, the state conveys only agricultural rights in land, while retaining the underlying fee title, subject to a reversionary interest triggered if the grantee uses the land for non-agricultural purposes. The state can enforce its rights through an administrative proceeding to terminate the grantee's rights, with the grantee having the right to judicial review.

CSSB 109 (FIN) would require the state bring a civil action in state court to enforce the agriculture-only covenants. Under the bill, the state would no longer retain a reversionary interest in the land, and its remedies would be restricted to damages or injunctive relief for specific performance. Because the state would have significantly less leverage in terms of its remedies, the potential for litigation would increase. In addition,

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 4/3/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/3/97
 Agency: Department of Law

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

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

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CSSB 109 (FIN)

| | |
|--|--|
| Revision Date: | Dept. Affected: <u>Department of Law</u> |
| Title: <u>"An Act relating to land used for agricultural purposes . . . annulling certain program regulations . . ."</u> | BRU: <u>Civil Division</u> |
| Sponsor: <u>Senator Green</u> | Component: <u>General Legal Services</u> |
| Requester: <u>Senate Finance Committee</u> | COMPONENT SERIAL NO. <u>2087</u> |

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | 107.5 | 107.5 | 107.5 | 107.5 | 107.5 | 107.5 |
| TRAVEL | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 |
| CONTRACTUAL | 19.5 | 19.5 | 19.5 | 19.5 | 19.5 | 19.5 |
| SUPPLIES | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| EQUIPMENT | 6.5 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

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

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |

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

POSITIONS

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

CSSB 109 (FIN) requires the Department of Natural Resources to make conveyances of land used for agricultural purposes.

The bill would increase the burden on the state to enforce covenants requiring that grantees under CSSB 109 (FIN) use conveyed parcels only for agricultural purposes. Under existing law, the state conveys only agricultural rights in land, while retaining the underlying fee title, subject to a reversionary interest triggered if the grantee uses the land for non-agricultural purposes. The state can enforce its rights through an administrative proceeding to terminate the grantee's rights, with the grantee having the right to judicial review.

CSSB 109 (FIN) would require the state bring a civil action in state court to enforce the agriculture-only covenants. Under the bill, the state would no longer retain a reversionary interest in the land, and its remedies would be restricted to damages or injunctive relief for specific performance. Because the state would have significantly less leverage in terms of its remedies, the potential for litigation would increase. In addition,

| | |
|---|------------------------|
| Prepared by: <u>Joan M. Kasson</u> | Phone: <u>465-5370</u> |
| Division: <u>Administrative Services Division</u> | Date: <u>4/3/97</u> |
| Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u> | Date: <u>4/3/97</u> |
| Agency: <u>Department of Law</u> | |

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

CORRECTION

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



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

FISCAL NOTE

No. 6
 Bill Version: CSSB 109 (FIN)
 (S) Publish Date: 4-4-97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to land used for agricultural
 purposes . . . annulling certain program regulations . . . BRU: Civil Division
 Sponsor: Senator Green Component: General Legal Services
 Requester: Senate Finance Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | 107.5 | 107.5 | 107.5 | 107.5 | 107.5 | 107.5 |
| TRAVEL | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 | 2.9 |
| CONTRACTUAL | 19.5 | 19.5 | 19.5 | 19.5 | 19.5 | 19.5 |
| SUPPLIES | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 | 2.1 |
| EQUIPMENT | 6.5 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

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

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 138.5 | 132.0 | 132.0 | 132.0 | 132.0 | 132.0 |

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

POSITIONS

| | | | | | | |
|-----------|-----|-----|-----|-----|-----|-----|
| FULL-TIME | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

CSSB 109 (FIN) requires the Department of Natural Resources to make conveyances of land used for agricultural purposes.

The bill would increase the burden on the state to enforce covenants requiring that grantees under CSSB 109 (FIN) use conveyed parcels only for agricultural purposes. Under existing law, the state conveys only agricultural rights in land, while retaining the underlying fee title, subject to a reversionary interest triggered if the grantee uses the land for non-agricultural purposes. The state can enforce its rights through an administrative proceeding to terminate the grantee's rights, with the grantee having the right to judicial review.

CSSB 109 (FIN) would require the state bring a civil action in state court to enforce the agriculture-only covenants. Under the bill, the state would no longer retain a reversionary interest in the land, and its remedies would be restricted to damages or injunctive relief for specific performance. Because the state would have significantly less leverage in terms of its remedies, the potential for litigation would increase. In addition,

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370
 Division: Administrative Services Division Date: 4/3/97
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 4/3/97
 Agency: Department of Law

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