ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9826 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

1 An advisory body membership should include invited individuals, agencies and organizations with expertise (alcohol & drug, early child development, data management, education, health, law enforcement, and mental health) and an interest in prevention and public health.

2 The advisory body should meet regularly (at least quarterly), as a whole body.
   a To accomplish different tasks, specialized sub-groups can be established and directed to meet (in-person or telephonically) at times other than meetings of the whole body.
   b The specialized working sub-groups can target:
      i Mission and overall policy,
      ii Goals and objectives, and
      iii Outcomes, including data surveillance, methodology, and analysis.

B The community should focus on development of prevention curriculum specifically aimed at young children. They should support ongoing teacher training, regular analysis of surveillance data and curriculum re-development based on data and the indicated need. It is suggested that:

1 To develop the curriculum, the community can request ongoing input from the advisory body, and if possible contract with a qualified contractor able to design instructional components for Head Start and school based delivery. The curriculum should:
   a Be based on an approach such as the Search Institute's developmental assets (external & internal) for preschoolers and elementary-age children. (Starting Out Right: Developmental Assets for Children, 1997, Search Institute, 700 S. Third Street, Suite 210, Minneapolis, MN 55415; (612) 376-8955.)
   b Be designed to reach children of multi-cultural backgrounds.
   c Be designed to convey multi-substance abuse and related health and safety messages.

2 A contracted vendor or other qualified person or organization should look to the development of instructional modules for instructing teaching personnel.

3 The community should develop a linkage between the curriculum, surveillance data, and treatment services.

C The community should support the development of training, which is designed to meet the needs of village/community-based providers (counselors and other health and safety providers). To do this:

1 An "adult learner" model for training development should be used to assist people who use English as a second language, and/or don't have a strong secondary or post-secondary education.
   a The training should include counselor skills in recognition, primary assessment and planning of services for children using inhalants.
   b The training should include:
      i Skill development for leading or establishing groups for high-risk children.
      ii Skill development for leading or establishing groups for children needing aftercare support.
   c The training should include counselor skills in recognition, primary assessment and planning of services for adults using inhalants.

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Keep in mind that inhalant abuse tends to only get worse, without steps taken to cope with the problem. We have seen adults who started sniffing gas on a regular basis as children, and have either mainly stayed with sniffing/huffing, or most likely developed a multiple substance abuse problem. A strong stand against inhalant usage by young people and the involvement by a village or community is probably the only way things can be improved.

Additional to a prevention and early intervention effort at the community, there is the need to look at the development and support for community based recovery and aftercare. In most instances, by the time we are seriously looking at prevention and early intervention, there will be a number of individuals needing treatment and support for long-term recovery.

Community Based Recovery & Aftercare: Provides the icing on the treatment and recovery cake. A community-based provider can also provide or assist with coordinating supportive community-based services. But in many instances this is a time when the inhalant abuser needs to begin using the information and tools provided in treatment, to **"self-manage"** their community re-entry and recovery (community-based recovery) with the support of their family and community.

There is the need for all of us to re-think aftercare and consider a rehabilitative approach, where we are helping the inhalant abuser to "self-manage" their lives and ultimately their addiction recovery. For far too long we have tried to make aftercare a formalized part of treatment services requiring a substance abuse services provider, and have met with limited success as a number of smaller communities in Alaska have no such person.

The recovering inhalant abuser should know and regularly experience that there is support available through their previous treatment provider and program. This can be provided by regular follow-up from the treatment program, which is focused on how they are doing. Follow-up can support recovery and may even be used to initiate relapse prevention. All of this (community-based support and follow-up by the previous treatment program) will promote individual investment and ownership by the inhalant abuser in their personal recovery.

Community-based recovery and aftercare should focus on assembling all of the pieces needed for a healthy and successful life. The majority of all of the work at this point will need to be done by the person working on his or her recovery. If a community-based provider is available, they can be very instrumental in helping with coordinating activities or services and providing personal support cou· seling. If a community-based provider is not available, then other possible sources for support should be explored. Possible options might be:

- A healthy adult family member,
- An elder in the community who is interested in the person, or
- Another interested community member such as a teacher, minister, public safety, etc.

There is a need for a realistic assessment and identification of available support to plan long-term recovery capacity within the community of residence. This assessment should be begun at the time when the inhalant abuse has fi. t been recognized in the community. Before they are ever referred to a treatment program, any an all support resources should have been identified and contacted so there will not be any surprises when they return home.

Though there may be community-based providers available, the goal is to ensure that each individual who returns from a treatment program outside of the community is prepared to have a significant role in managing their recovery.

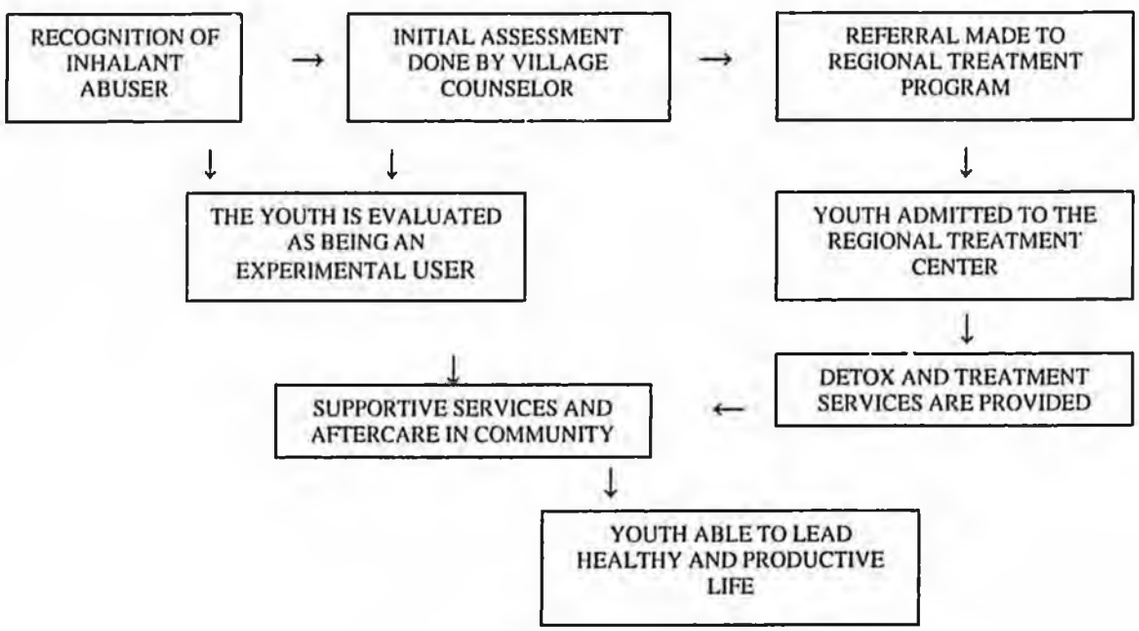
To reach the point of community-based recovery, there have been any number of services the inhalant abuser has participated in such as: intervention, pre-treatment, detoxification, residential and outpatient treatment. These services if having been reasonably successful will have helped the client develop a comprehensive aftercare plan which is based on the initial assessment of supportive resources available in their home community.

When a comprehensive aftercare plan has been developed, the returning recovering youthful inhalant abuser may be regularly involved in some and hopefully nearly all of the following:

- ◇ One or more community-based recovery support groups or some supportive and supervised group related activities such as a school based activity group or church youth group,
- ◇ Supportive services (individual and/or group counseling) for the youth and their family to deal with issues related to inhalants (substance abuse) and recovery,
- ◇ Family and community directed healthy activities,
- ◇ School (educational or vocational), subsistence activities, or paid work, and
- ◇ Healthy cultural and spiritual activities.

Attention should also be given to relapse prevention. This requires skills in recognition of problems before they get out of hand, as well as basic skills in intervention. It is important for the recovering youth as well as their family to have and practice these skills on a regular basis. The use of relapse prevention skills with a family will very likely enhance communication ability within the family, for the betterment of all.

The following is a graphic example of the entire process (through to aftercare & recovery):



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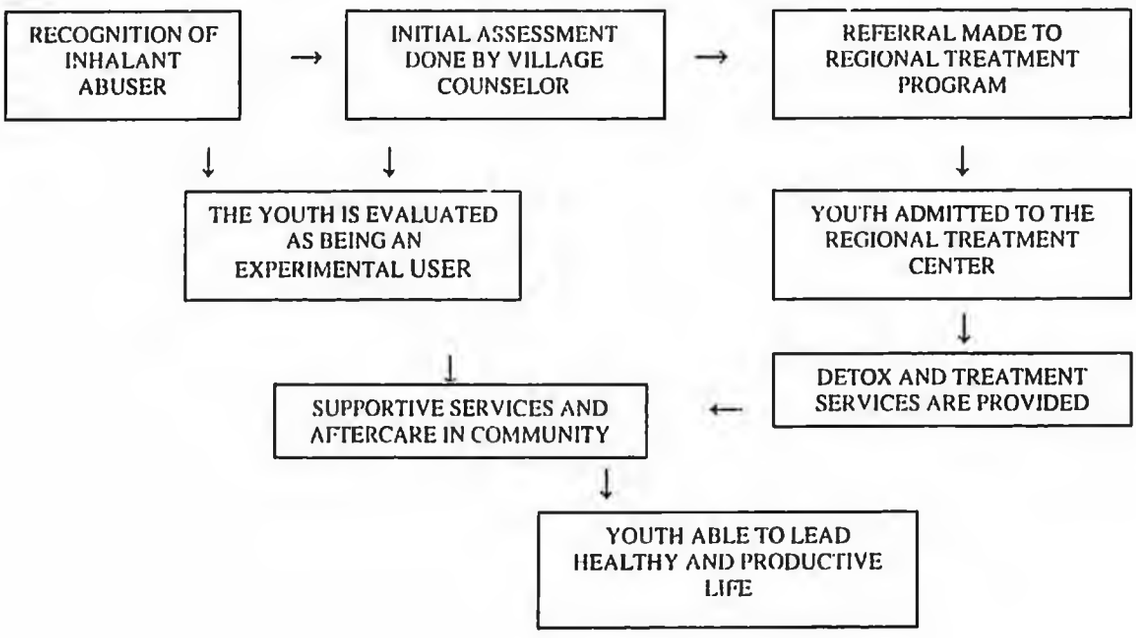

March 28, 2000

To All Those Who Care:

I am the sister of Teresa, who died of inhalant three years ago this month. I was living in Fairbanks during the time we lost my baby sister, but I was home on spring break. I remember that morning like it was yesterday. I always wanted to forget that time but I thank God he allowed me to remember. And now I know why, because we can help others with this same problem.
Back to that morning, I was woken up back at my sisters house at 6:00AM in the morning. They said my sister was in medical trouble. At first I just got angry because I was suppose to bring her to Fairbanks that morning and I thought why is she getting into mischief now. I got dressed and started down the lodge where she was. I thought all I had to do is go pick her up and let her sleep it off (I thought she was drunk). As I started down the road the health aides husband stopped me and said it was worse that I thought. After getting my older sister we went down to the lodge to find that they were doing CPR on her. I began calling her and telling her how much we love her and to hang on. I knelt down beside hear and talked to her. After what seemed like an eternity we got a call from to Doctor and was told it's been to long and to stop CPR. This was not what I wanted to hear, I started crying out lout saying no don't stop, but I knew in my heart that it was too late. I thought of my mom and dad in Fairbanks. Only my older sister and brother were in the village with our children from our family. It was North American weekend and everyone had taken off for the weekend. So the village was pretty empty. The hardest part was to gather our children and tell them that their 18 year old auntie had just past away. I couldn't even imagine the pain that our kids went through. And especially seeing our parents later on that day. I was hesitant about telling my young children how their aunt died, but I did because I wanted them to know how dangerous this chemical really is. The pain of loosing a loved one at such an early age is something that we all don't need to go through. I am only telling this story because I want someone out there to get something out of all this. Inhalants are nothing to mess with. I later went into counseling and prevention and learned what inhalants can do. I learned that it only takes one time, one puff and you can loose your life or do permanent damage to your mind and body. Inhalants could be very addicting, so beware if you know someone that is involved with inhalant the best thing you can do for them is to tell some one. I encourage you all to continue to spread the news about inhalants because we don't need to loose anymore people to this chemical, its very dangerous. This was not easy for me to go back and recall all that happened but I want people to know how bad, sad, dangerous, this drug is and we can prevent it all from happening. Keep up the good work and may God be with you all through this conference.

God Bless,
Dee-Dee

Poems reveal FAE child's

F.A.E.
by T.J.

I hate this place although I am glad to be Athabascan.

Sometimes I wish I could switch places with my 12 year old niece.

The people just don't know what it's like for an FAE child trying to get through life.

Trying so hard to catch up with everyone else but they just put you down.

I just want some real friends from down here.

I already have a best friend...but no-one can live with just one friend in the world.

I just needed to get that out. I need to live my life...I need to talk to my dad. MY BEST FRIEND.

Teresa came into this world with a birth defect that was 100% preventable. She was born with Fetal Alcohol Effect (FAE), a lesser form of Fetal Alcohol Syndrom (FAS), in which the physical features of the face and body are not malformed like an FAS child. If the mother doesn't drink during pregnancy, the child doesn't have the birth defect, it's as simple as that.

Teresa was given up for adoption when she was 4 months old. Her adoptive parents, Barbara and Andy Jimmie of Minto, were overjoyed and eager to receive the small baby girl. It wasn't until their baby was a toddler that they knew something was different about Teresa.

"When Teresa started moving around as a toddler was when her FAE became more noticeable," said Barbara. "She was always getting into things," she continued. "Most children when you say 'no' they move away, but not with Teresa." FAE and FAS children can be very hyperactive, going from one thing to the next. "About the only time she was still enough for me to snuggle her was when she was sleeping," said Barbara.

A Mother

A mother, so sweet, so kind, so sincere.

All she wants is a little respect and a lot of love, and when she gets lied to her by her own flesh and blood that she had to carry for 9 months,

Go through so much pain for and risk her life.

She feels deeply hurt, for all she taught you - good from evil - and of course - right from wrong, has all just went down the drain.

As you lay in your bed at night, probably not even considering all she has done for you.

She could be in her bed crying her precious heart out, praying to God, "Please don't let me lose my child" ever so silently and putting on a happy face the next day, just to make you feel good.

You don't know what a mother goes through for the most important thing in her life.....HER BABY.

The above was written at a time when Barbara had scolded Teresa for doing something wrong. The next morning Teresa gave her mother the poem.

"I thought I knew Teresa," said her dad, Andy, leafing through the journal which had belonged to his daughter. His face was one of thoughtfulness as his large hands gently turned the pages. "But after she died and I had read her poems - her diary - I realized that I didn't *really* know her."

Teresa died on March 20, 1997 from gas fumes which she inhaled. She was 18 years old.

"Andy and I were at a meeting in Fairbanks that day," said Barbara. "We were expecting her to join us. I had been looking at graduation dresses for her," continued Barbara. "I had planned on giving her the biggest graduation party there ever was. I was so proud of her."

The night Teresa died will always stick in Andy and Barbara's memory. "We were asleep when the doorbell rang: it was [the Rev.] Anna Frank. She told us that Teresa was in trouble and that the medics were doing CPR on her."

Teresa's body was found near the fire escape at the Minto Lodge. Although the medics tried to resucitate her, it was too late.

Teresa Jimmie, age 17, at a prom dance in 1996.
Photo: Laverne Alexander

insight into prejudice

"Me"

In the beginning it was as sweet as a kiss,
it made my insides feel all a bliss.

And now I'm confused and am crying for hope,
I'm about to give up I cannot cope.

When all of a sudden strength arises in my heart,
and this causes my spirit to throw a good dart
at the thing that was bothering me before,
and it brings me back to when HE was knocking at my heart's door.

And now I am hungry so I better feed,
open my bible and begin to read.

I want to be so serious again,
but the warmth of a smile
is always good to a needy friend
that is why I don't want this love to end.

I'm goin' to heaven as you can plainly see,
And I am gonna eternally
fellowship with the Christians, Jesus and me.

You can be there too if you ask him in,
and do a complete 360 from sin.
Just read God's word every day,
Oh yeah! and don't forget to pray.

"Teresa was a gifted singer, writer, and artist," said her mother Barbara, "but she was very restless."

Months before her death, in February of 1997, Teresa attended a Native Leadership Conference in Anchorage. It was at this event that Teresa went forward to receive prayers from a minister doing a church service there. The minister started walking toward her and then stopped. "He heard the voice of our Lord saying, 'she is already filled with the Holy Spirit, she only needs to let it go,'" said her mother, fingering a school photo of Teresa that she keeps in her purse.

"It was then that we noticed Teresa...she began to walk and touch other people near her, and it was like our Lord was telling her who to go to next. As soon as she touched these people, they would fall down under the power of the Holy Spirit," said Barbara recalling the evening.

Since Teresa's death several people (some strangers to the couple) have approached Barbara and Andy with Words of Knowledge that Teresa is in Heaven. This has comforted them a great deal.

"I grieve about how people treated her," said Barbara "She was good in many ways."

Since Teresa's death, her parents have felt a calling to have their daughter's poetry published. "I hope that this article, and Teresa's poems will help children realize how dangerous inhalents are and that they can kill you," said Barbara.

According to Jackie Sunnyboy of the Fairbanks Mental Health Clinic in Fairbanks, FAE children have a more difficult time psychologically coping with their birth defect than FAS children. She states, "With FAS, you can see it. With the Effected kids you can't see it, so in their schools and communities they become known as 'defiant.' They can talk the talk, but they can't walk the walk. They have no idea of cause and effect." They are also usually very naive and gullible and victimization continues throughout their lives.

"So many people view this as a hopeless, hopeless situation, and the reality is that with society acknowledging the importance of understanding this disability now, the doors are opening, especially in the State of Alaska. Early intervention and education is the key...and knowing that there is support available. It really does take a whole village to raise a child like this," Sunnyboy concluded.

Tears of Love
-by Teresa Ann Jimmie

When I am sad, You make me
laugh.
I Cry Tears of Love

When I feel alone, You're always
there with me.
I Cry Tears of Love

When I feel tempted You're
always there for help
I Cry Tears of Love

When I am enraged or angry You
held me in your arms.
I Cry Tears of Love

But now I am laughing
I once cried tears of love.

[Editor's Note: If you have a child with FAE/FAS or you think might be using drugs, please see page 7.]

ALCOHOL

By Theresa Jimmie

Why must people have so much pain inside pain and hurt and over half of it is from heart brokeness and the other broken up parts are from family members passing away and being lost in you're own heart in the darkness and depressness of drugs and alcohol and all this you have learned that alcohol is the number one blamed that most of our hearts are broken is ALCOHOL!

The High

By TJ

I walk the Streets as high as the Sky.
feeling like I can do anything.
believe anything believeing lies that my So called friends say.
Not knowing if they are telling the truth or not
I ~~walk~~ walk through this world That dosent exist to scocity. Seeing things that arent there, Saying things that aren't ~~there~~ true Hit after hit going higher and higher knowing I am gonna fall anytime but too high to care.
Walking through my life like I don't care when I do it's just the Highness stands in the way The high tells me "I can do anything if I put my mind to it" So I rry again and again not knowing that the high is eating away at my brain Stalling me from thinking right. Day after day telling myself "I am going to quit today" telling myself another lie. not wanting to live this Highness, doing and Saying things the High wants them to hear So I move on to a new high that is called "Alcohol" and pretty soon to drunk to even live the high and have this so called "fun" So as I am in "Ravens Way" getting cleaner and cleaner day by day and soon I am going to walk these streets clean and sober once again, TJ "95"

The things I could have done

by TJ

You love me, yet I decieve you
You would give me anything, yet I still disobey. Of all the things you've for me So far, I never even consider you.
I always fear of what's going to happen to me in the future, And you are the only one that can relieve me from all this pain. Yet I don't pay attention. You give me love I could never imagine, yet I still avoid it. Now I let the light shine in, I am warm all over, I return the love

YKHC STATEWIDE INHALANT TREATMENT CENTER

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P (907) 278-8029
E-Mail pe...@...

Code Information

UBC 1997
Building Type V-N (Non-Sprinklered)
Occupancy Types B, R1, A3, E2
Total SF = 11,925 SF

Occupancy Type	Actual Main Floor SF	Actual Mezzanine SF	Actual Total SF	Allowable SF	Setback On 4 Sides	Actual Allowable SF	Ratio Actual/Allowable
B	4,498 SF	1,400 SF	5,898 SF	8,000 SF	x 2	16,000 SF	.3686
R1	3,509 SF	0 SF	3,509 SF	6,000 SF	x 2	12,000 SF	.2924
A3	1,646 SF	0 SF	1,646 SF	6,000 SF	x 2	12,000 SF	.1372
E2	846 SF	0 SF	846 SF	9,100 SF	x 2	18,200 SF	.0465
							Total = .8447 < 1

Occupancy Separation Walls
R1 to A3 = 1 Hour
R1 to B = 1 Hour
E2 to B = 1 Hour
A3 to B = Non Rated

Index

YUKON-KUSKOKWIM HEALTH CORPORATION

Winchester Alaska, Inc.

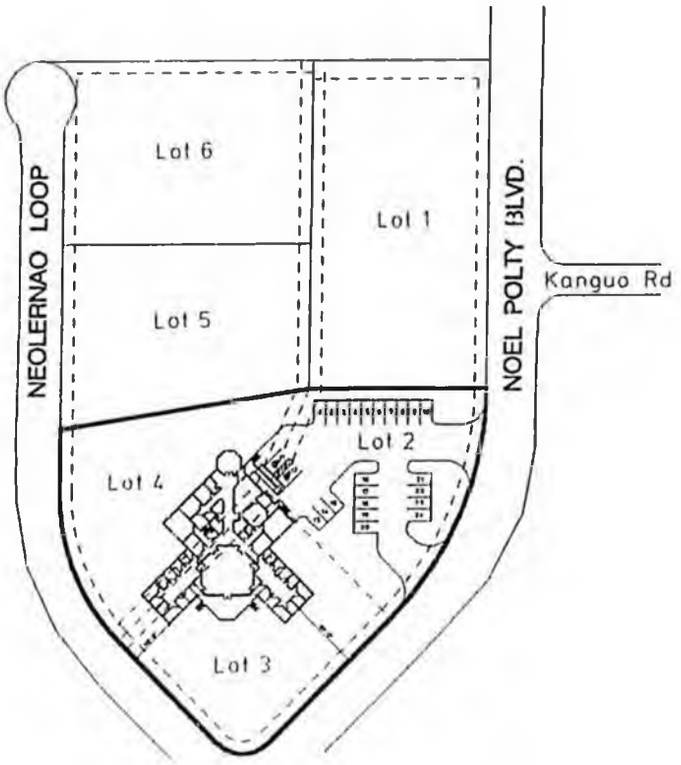
YKHC STATEWIDE INHALANT TREATMENT CENTER
YUKON-KUSKOKWIM HEALTH CORP
BETHEL, ALASKA

Revisions

Drawn | Date
Checked | Job No

Sheet Contents
Cover Sheet

Category: A
Sheet: 0



Site Plan (Option 1)

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INHALANT TREATMENT CENTER
YUKON-KUSKOKWIM HEALTH CORP
BETHEL, ALASKA

Revisions

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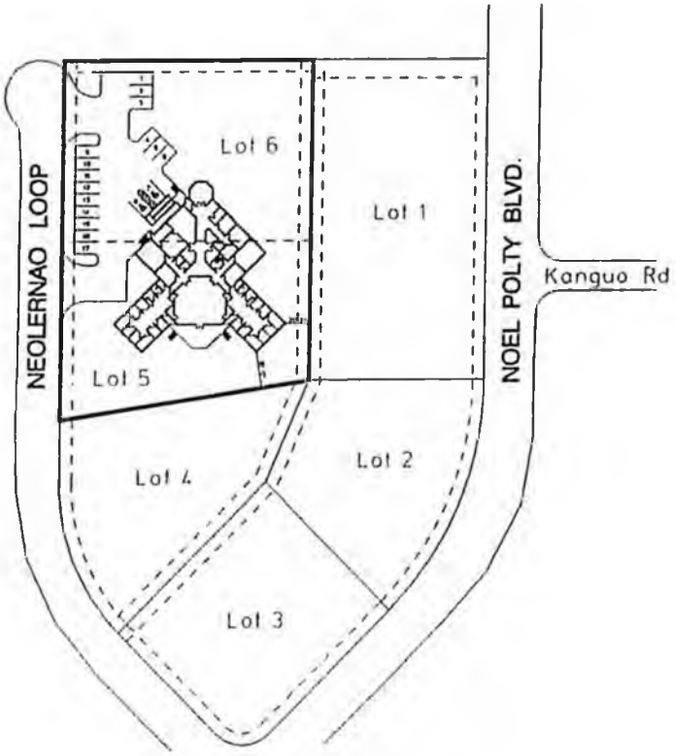
Job No

Sheet Contents
Site Plan

Category
A

Sheet
0.1



Site Plan (Option 2)

Scale: 1" = 50'

0 25 50 100

N

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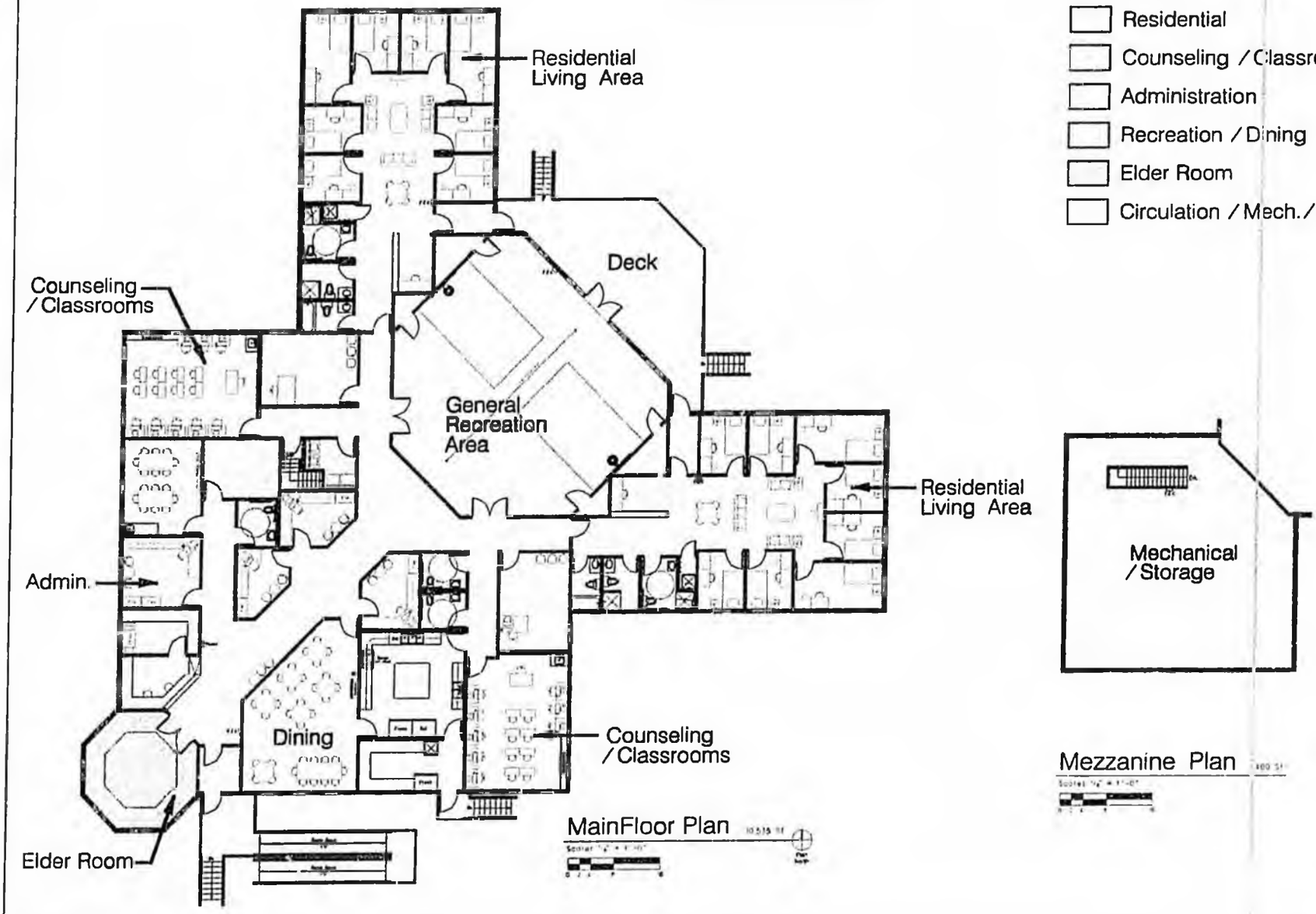
Revisions

Drawn
Checked
Date
Job No

Sheet Contents
Site Plan

Category
A

Sheet
0.2



Color Key

- Residential
- Counseling / Classrooms
- Administration
- Recreation / Dining
- Elder Room
- Circulation / Mech. / Stor.

Mezzanine Plan

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Winchester Alaska, Inc

YKHC STATEWIDE INHALANT TREATMENT CENTER

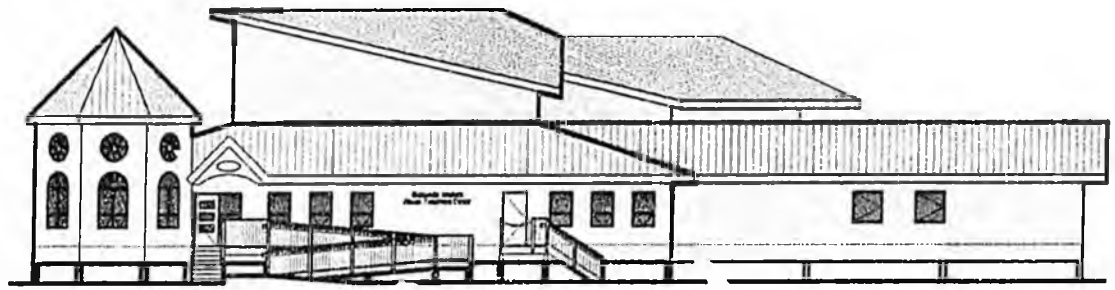
YUKON-KUSKOKWIM HEALTH CORP
BETHEL, ALASKA

Revisions

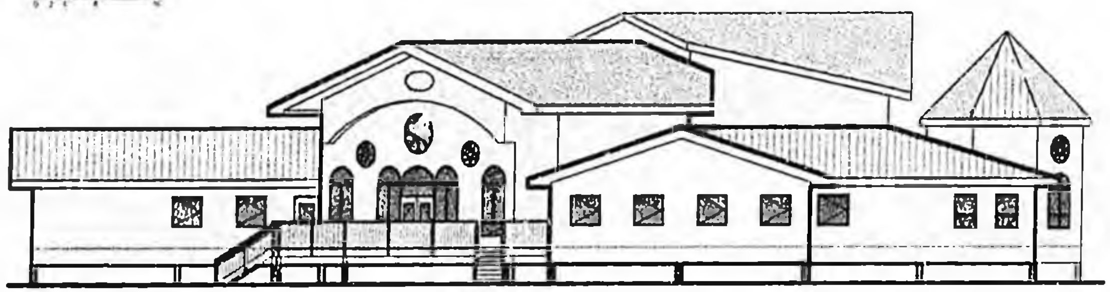
Drawn	Date
ST. Clements	5/25/2006
Checked	Job No.
S.L.W.	99081

Sheet Contents: Floor Plans

Category	Sheet
A	1.1



South Elevation



North Elevation

East Elevation

Conceptual Elevations

YUKON-KUSKOKWIM HEALTH CORPORATION

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BETHEL, ALASKA

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Drawn	Date
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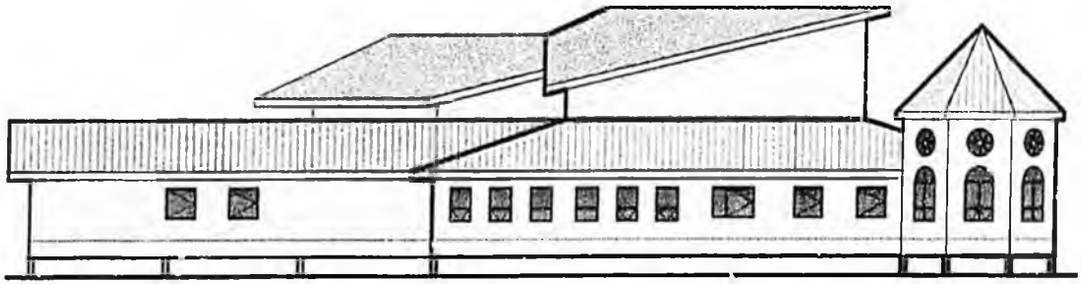
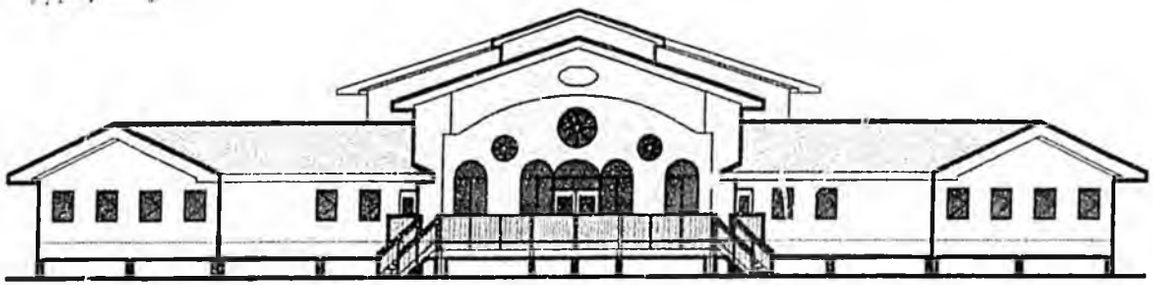
Sheet Contents: Elevations

Category: A

Sheet: 2.1



West Elevation



Northeast Elevation

Conceptual Elevations

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Category: A | Sheet: 2.2

(7)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 16, 2000 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 04/13/00

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 375

HOUSE BILL NO. 375 INHALANT ABUSE

"An Act relating to abuse of inhalants."

recommends it be replaced with the following committee substitute CSHB 375 (HES) [Y] the same title [ ] a new title

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

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[Y] fiscal note(s) DOC [ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____ [ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
	✓			
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	✓			
				✓
	✓			
				✓

CHAIR'S SIGNATURE _____ 4/13/00

HB

387

Representative Eric Croft

HB 387
The Alaska Religious Freedom Protection Act

Sponsor Statement

The Alaska Religious Freedom Protection Act (ARFPA) is a state response to United States Supreme Court decisions that have undermined the religious freedoms of Americans in recent years.

The United States and Alaska Constitutions contain nearly identical provisions stating that governments shall make no law "respecting an establishment of religion, or prohibiting the free exercise thereof." For most of the nation's history, the "free exercise" clause of the United States Constitution was interpreted to require that governments make reasonable exceptions to general laws if the implementation of those laws impinged on the religious practice of its citizens.

A good example is the case of Wisconsin v. Yoder, 406 U.S. 205 (1972). Members of the Old Order Amish religion allow their children to attend public school until the eighth grade to learn basic reading, writing, and math skills, but then the Amish religion requires the children begin preparation for adult baptism and life under the religious precepts of their faith. Pennsylvania allows Amish children of high school age to attend special vocational schools for three hours and then go home for religious and other instruction. Wisconsin, however, did not allow any exception to the compulsory school attendance law. Frieda Yoder, a 15-year old member of the Old Order Amish religion refused to attend public high school on religious grounds and her father, Jonas, was convicted of violating the law. The United States Supreme Court ruled that the compulsory attendance law violated the free exercise rights of the Yoder family. The Court ruled that the government may place a substantial burden on the free exercise of religion only if the government can show a compelling state interest and that the government's action is the least restrictive means of accomplishing that interest. This is known as the "compelling state interest" test for religious freedom. The Court noted that because the Amish children attended school until the 8th grade the burden on their education was relatively light and that the burden on the religion was proven to be substantial. The Yoder case and others stood for the proposition that a "regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." Yoder, 406 U.S. 221; see also Sherbert v. Verner, 374 U.S. 398 (1963).

The constitutional respect for freedom of religion embodied in the "compelling state interest" test was eliminated in 1990 by the United States Supreme Court in Smith v. Emp. Div., 494 U.S. 872 (1990). Justice Scalia, writing for a court divided 5-4, ruled that government no longer had to provide a religious exemption to general laws. "The Court today . . . interprets the [free exercise clause] to permit the government to prohibit, without justification, conduct mandated by an individual's religious beliefs, so long as that prohibition is generally applicable." Smith, 494 U.S. at 893 (Justice, O'Conner, dissenting).

The Smith decision met a storm of protest. In 1993, a broad bipartisan majority of both houses of Congress passed The Religious Freedom Restoration Act (federal RFRA) and the bill was signed into law by President Clinton. RFRA attempted to use congressional power to restore the "compelling state interest" test for religious freedom. In 1997, the United States Supreme Court ruled that the federal RFRA statute was an unconstitutional extension of federal power. City of Boerne v. Flores, 521 U.S. 507 (1997). The Flores decision effectively left any protection of religious freedom to the individual states. The Alaska Supreme Court has consistently interpreted the free exercise clause of the Alaska Constitution to require a compelling state interest analysis.
See Frank v. State, 604 P.2d 1068 (Alaska 1979) (allowing a religious exemption for the taking of a moose for an Athabaskan funeral potlatch). There is no present indication that the Alaska Supreme Court intends to follow the direction of the Smith decision in interpreting the Alaska Constitution. However, a change in the composition of the court or judicial philosophy could lead to this change in the future.

HB 387, the Alaska Religious Freedom Protection Act (ARFPA), will provide statutory protection for religious freedom in Alaska by enshrining the compelling state interest test for all state, municipal, and school district actions.

HB 387 is not intended to create an establishment of religion or allow a claim of religious freedom to authorize the infringement of the rights of others. It simply recognizes that Alaskans value their religious liberties and are willing to allow an exception from generally applicable laws for religious freedom unless the government shows a compelling state interest.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 387

Revision Date/Time (Note if correction) _____ Dept. Affected All
Title "An Act prohibiting governmental entities, BRU _____
including ..., from restricting a person's free exercise of religion." Component _____
Sponsor Representative Croft _____
Requester House Community and Regional Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*******	*******	*******	*******	*******	*******
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

HB 387 prohibits a school board or school district, a municipality, or a state agency from restricting a person's free exercise of religion unless the restriction is in the form of a rule of general applicability and does not intentionally discriminate against religion or among religions, and application of the restriction to the person is essential to further a compelling government interest and is the least restrictive means of furthering that compelling government interest. The bill further allows a person to bring a civil action against a school board or school district, a municipality, or a state agency for violating this section. The court may grant a declaratory judgment, an injunction, or damages.

Under existing law, individuals can and do sue the State of Alaska claiming their right to free exercise of religion has been infringed. However, they cannot seek damages from the state and

Prepared by: Joan M. Kasson Phone 465-5370
Division Attorney General's Office Date/Time 3/1/00, 3:13 PM
Approved by Commissioner Bruce M. Botelho, Attorney General Date 3/1/00
Agency Department of Law

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ANALYSIS CONTINUATION

have only limited ability to get damages from state officials under federal law. This bill would create a new civil action for damages.

Providing for an award of damages may encourage more litigation in this area. At a minimum, it will make suits more time consuming and complicated, as the damages will have to be evaluated. The more significant fiscal impact, however, would be the damages themselves, should a plaintiff prevail. What the actual amount might be, or which agencies might be sued, cannot be predicted.

NORTHWEST RELIGIOUS LIBERTY ASSOCIATION

NRLA

March 2, 2000

Alaska State Legislature
House Community and Regional Affairs Committee

Re: HB 387 - The Alaska Religious Freedom Protection Act

Honorable Chairman and Committee Members,

We strongly support House Bill 387 for several reasons. First, we are mindful of the fact that the Supreme Court's decision in *Sherbert v. Verner* (1963) specifically involved a Seventh-day Adventist church member who had been discriminated against at her place of employment on the basis of her firmly held beliefs. We take special interest in the fact that it was in this particular case that the high court ruled that the state's interest in denying unemployment benefits - merely because Mrs. Sherbert would not make herself available for work on Saturday (her Sabbath) as required by the state's unemployment compensation law - was insufficiently compelling to warrant an infringement upon this most fundamental right: the free exercise of religion.

★ LEGAL RATIONALE

Second, Representatives Croft, Dyson, Coghill and Halcro's efforts to restore the "compelling state interest" and "least restrictive means " tests as established in *Sherbert v. Vernor* (1963) and *Wisconsin v. Yoder* (1972), respectively, could not come at a better time. Such a provision will effectively restore an individual's right to free exercise of their religious convictions at the state level, and prevent the unnecessary discrimination that occurs on a daily basis in the public sector, particularly in the workplace. As Justice Sandra Day O'Connor stated in the Supreme Court's Decision in *Employment Division of Oregon v. Smith*, the court made a critical mistake when they failed to offer "convincing" evidence "to depart from the settled First Amendment jurisprudence." This fundamental departure allows states to 1) "make criminal an individual's religiously motivated conduct" in a way that burdens [an] individual's free exercise of religion"; 2) puts at a clear disadvantage minority religions and religious practices when leaving accommodation to the political process; and 3) enables government to ignore religious claims altogether, if it suits them, without offering any compelling justification to support their actions (494 U.S. 872 at 897, 902). However, as Justice O'Connor reiterated in *Smith*,

> The essence of a free exercise claim is relief from a burden imposed by government on religious practice or beliefs, whether the burden is imposed directly through laws that prohibit or compel specific religious practices, or indirectly through laws that, in effect, make abandonment of one's own religion or conformity to the religious beliefs of others the price of an equal place in the civil community (4[illegible] U.S. 872 at 897).

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★ **HISTORICAL RATIONAL**

Third, to place on the shoulders of government the burden to prove a compelling interest in order to protect the greater, or common good, is to place an individual's claim to religious freedom in its rightful place. America's founders, namely Thomas Jefferson and James Madison, believed that the free exercise of religion was the most "liberal" of all the rights Americans could claim, the one right that placed the greatest ust in the capacity of private choice, and the one least dependent on positive law. In other words, a right that was considered "unalienable." Again, as Justice O'Connor stated in *Smith*, "The First Amendment was enacted precisely to protect the rights of those whose religious practices are not shared by the majority" (493 U.S. 872 at 902). We believe that HB 387 will restore this historical intent at the state level.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Joseph L. Story

Joseph L. Story, Government Relations Representative
Northwest Religious Liberty Association

HOME SCHOOL LEGAL DEFENSE ASSOCIATION

Advocates for Family & Freedom

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BRADLEY P. JACOB, ESQ.
ATTORNEY (PA, MD, DC)

To: Members of the Alaska House Community and Regional Affairs Committee

From: Chris Klicka

Date: February 29, 2000

Re: House Bill 387, The Alaska Religious Freedom Protection Act

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By way of introduction, the Home School Legal Defense Association is a national organization which has as its primary purpose the protection of the right of parents to direct the education of their children. We presently have more than 66,000 member families in all 50 states and the District of Columbia, with many member families in Alaska. Because the vast majority of our members choose to home school out of religious convictions, the protection of religious freedom is essential to our cause.

The Alaska Legislature has a tremendous opportunity to restore the protection of religious freedom for all citizens in the state. The U.S. Supreme Court, in 1997, denigrated the right of the free exercise of religious beliefs to a second class right. The Alaska Legislature must ac now to protect religious liberty. Below are some commonly asked questions about state Religious Freedom Restoration Acts.

What will HB 387, the Alaska Religious Freedom Restoration Act, do?

The Alaska Religious Freedom Restoration Act (RFRA) reestablishes a test which courts must use to determine whether a person's religious belief should be accommodated when a government action or regulation restricts his or her religious practice. Known as the "compelling interest test," this test requires the government to prove with evidence that its regulation is (1) *essential* to achieve a compelling governmental interest and (2) the *least restrictive means* of achieving the government's compelling interest.

For example, in *People v. DeJonge*, a case argued by the Home School Legal Defense Association (HSLDA), a Michigan couple had the religious belief that they as the parents, although they were not certified teachers, should be teaching their children in their home rather than sending them to school. But the state law requiring all teachers to be certified did not permit

the couple to exercise this religious belief. Using the "compelling interest test," the court required the state to show that (1) teacher certification is *essential* to fulfill the state's compelling interest that children be educated and (2) that teacher certification was the *least restrictive means* to fulfill its interest. The state was able show without much difficulty that it had a compelling interest in seeing that its citizens were educated. But because this couple's children were scoring above the 90th percentile on standardized tests, the state could not prove teacher certification was *essential* for children to be educated and the least restrictive means to achieving that end. Thus, because the state could not satisfy the "compelling interest test," the parents were allowed to continue teaching their children according to their religious beliefs.

Why does Alaska need a RFRA?

Prior to 1990 the U.S. Supreme Court used the above test—the "compelling interest test"—when deciding religious claims. However, in a 1990 decision (*Employment Div. of Oregon v. Smith*) the Court tipped the scales of justice in favor of government regulation. The Court threw out the compelling interest test, which had shielded our religious freedom from onerous government regulation for more than 30 years.

The *Smith* decision reduced the standard of review in religious freedom cases to a "reasonableness standard." In other words, if a state regulation is "reasonable" (which they nearly always are), a religious objector loses. While all other fundamental rights (freedom of speech, press, assembly, etc.) remain protected by the stringent "compelling interest test," the Court singled out religious freedom, reducing its protection to the weak "reasonableness test."

In 1993, Congress attempted to remedy the *Smith* decision by enacting the federal Religious Freedom Restoration Act. This Act simply restored the "compelling interest test" in religious freedom cases. Four years later, the federal RFRA was struck down by the U.S. Supreme Court in the 1997 *City of Boerne* case.

As a practical matter, here are a few real-life examples of government restricting the free exercise of religion that have taken place under the "reasonableness test."

a) the long-standing practice of pastor-laity confidentiality has been repeatedly violated;

b) a Catholic hospital was denied accreditation for refusing to teach abortion techniques;

c) among other zoning ordinance conflicts, a church ministry to the homeless was shut down because it was located on the second floor of a building with no elevator;

d) a church was prohibited by a local city ordinance from feeding more than 50 people per day; and

e) Justice Fellowship reports that a Jewish minimum-security prisoner (CPA in jail for fraud, in 6th year of 8-year term) was denied the right to attend high holy day celebrations.

But Hasn't the U.S. Supreme Court already ruled the RFRA unconstitutional?

The 1993 federal RFRA attempted to use Congress' powers under Section 5 of the 14th Amendment to require both the federal and state governments to use the "compelling interest test" in religious freedom cases.

However, when the Supreme Court struck down the federal RFRA in 1997 (*City of Boerne v. Flores*), the problem wasn't with the "compelling interest test." The test had been used, as mentioned earlier, by the U.S. Supreme Court itself for more than 30 years. Rather, while the Supreme Court recognized the legitimacy of the "compelling interest test," it ruled that Congress could not *require* states to use this test in religious freedom cases.

A widely recognized principle of law is that states are free to protect an individual's right with a much higher standard than the U.S. Constitution itself affords. Under this principle and the *Boerne* decision, states are free to enact their own RFRAs, thereby choosing to apply the higher "compelling interest test" standard in their own religious freedom cases.

Should civil rights laws and ordinances be exempted from application of the Religious Freedom Restoration Act?

No. Religious freedom is one of many civil rights which all Americans should be allowed to enjoy. A civil rights exclusion in the RFRA simply makes religious freedom a "second-class" right, subordinate to all other civil rights. Instead, when a religious freedom right conflicts with another civil right, the two rights should be given the same level playing field by a balancing of interests using the compelling interest test.

In some situations, a civil rights law or ordinance should be upheld even when it conflicts with an individual's religious practice, while in other situations, the religious practice should be accommodated. Using the "compelling interest test" provided by HB 387, a court will be able to properly determine whether the government's interest in enforcing a particular civil rights law is compelling enough to override an individual's religious practice. If, however, civil rights laws are exempted from HB 387, religious freedom will *always* be curtailed when it conflicts with civil rights laws, even if the courts could have made a reasonable accommodation.

Will HB 387 create an increase in litigation?

No. This bill will simply restore the "compelling interest test," which the U.S. Supreme Court established almost 40 years ago as the standard of review for fundamental rights cases.

This "compelling interest test" worked well for over 30 years with no explosion of religious freedom cases. The consistent application of the "compelling interest test" in the courts "evened the playing field," giving people of sincere religious faith a fair chance against state regulations that violated their religious beliefs. Many times, both conservative and liberal religious and civil liberty organizations successfully used the "compelling interest test" to defend individuals' rights to freely exercise their religious beliefs.

As mentioned above, the federal RFRA, which restored the "compelling interest test" in religious freedom cases, was effective from its enactment in 1993 until the U.S. Supreme Court struck it

down in 1997. There is no record of an explosion in religious freedom litigation during this four-year period.

Furthermore, eight states have formally passed RFRAs to specifically restore the application of the "compelling interest test" in religious freedom cases (AL, IL, FL, TX, AZ, CT, RI, and SC). Seven more states, through state court precedents, have established a "compelling interest test" independent of the U.S. Supreme Court's damaging precedence in *Smith* and *Boerne*. (KS, MA, MN, VT, WA, WI, and MI.) None of these 15 states are experiencing an explosion in free exercise litigation.

Based on the lack of examples of excessive litigation during the almost 30 years of experience of using the "compelling interest test" for religious liberty (both before the *Smith* decision and during the federal RFRA years), we believe that restoring this test will generate very little, if any, new litigation. In fact, clarifying the standard for religious liberty under state law may prove to *reduce* the amount of litigation, because a clearly defined legal standard often leads parties to settle disputes before litigation ensues.

Will the passage of HB 387 result in a huge increase in litigation against local governments? Will this also increase the costs for the attorney general's office in defending state officials?

No. The same arguments above apply. The "compelling interest test" is not new. It has been in effect for most of the last 40 years. Local governments and state officials have not been inundated with religious freedom suits.

None of the eight states that have passed state RFRA have experienced any explosion of religious liberty cases, including Rhode Island where the law is seven years old. The "compelling interest test" is time-tested.

Furthermore, the "compelling interest test" is simply a "balancing test." It does not give religious claimants an automatic win. It only "evens the playing field" for the little guy.

Is it acceptable to exclude certain people, such as prisoners, from protection under HB 387?

No. As an inalienable right, religious liberty should not be denied to any class of persons. Home School Legal Defense Association urges states not to deny the protections of a state RFRA to anyone (including prison inmates). Religious liberty is diminished for all if it is denied to any. Once the government excludes one politically unpopular group, it is all too easy to exempt others. Of the states that have enacted RFRAs to date, none has found the need to exclude anyone.

But won't HB 387 create an explosion in frivolous cases filed by prisoners?

No. Studies show no sudden surge in religious freedom litigation filed by prisoners during the four years of the federal RFRA demonstrate there was no explosion of cases. Justice Fellowship compiled the following data (provided by the Statistical Division of Administrative Office of the U.S. Courts):

- Prisoner RFRA cases for the years 1995–1996 accounted for about one-tenth of one percent (0.01%) of cases in U.S. courts.

- The National Federal Court statistics show that in 1995, out of 43,158 total U.S. civil cases nationwide (1110 prisoner cases), only 50 of the cases invoking the federal RFRA were filed by prisoners.

- In 1996, out of 48,755 U.S. civil cases, only 51 RFRA cases were filed by prisoners.

A state-by-state breakdown of information was only available for the following three states:

- In New Mexico, out of 407 U.S. civil cases filed in 1995, 0 were filed by prisoners invoking the federal RFRA. In 1996, out of 492 U.S. civil cases filed, 0 were filed by prisoners invoking the federal RFRA.

- According to the Virginia Attorney General's office, out of 1,099 prisoner lawsuits filed against sheriff departments between 1993 and 1997 only 7 were "religious-styled" cases.

- In Florida, only 5 prisoner religious freedom cases invoked the federal RFRA during 1993–1997.

These statistics show that the federal RFRA caused no explosion of cases filed by prisoners—a group considered most likely to take advantage of such a law.

What is HB 387 based on?

The state RFRA model supported by HSLDA is based on other time-tested state Religious Freedom Restoration Acts. It is a combination of the Rhode Island RFRA (the oldest—passed in 1993) and the Illinois RFRA. The substantive provisions of the bill, its heart, are found in all RFRA states. (e.g. Texas, South Carolina, Arizona, Connecticut, Florida, and Alabama). Of course, the "compelling interest test" is patterned directly after the U.S. Supreme Court's description of the test found in dozens of cases over the last 40 years.

Why can't we simply let the Alaska Supreme Court reestablish the "compelling interest test"?

States which have neither an enacted RFRA nor their own body of case law applying the "compelling interest test" have simply followed whatever the current federal standard is. Courts in these states have always relied on the U.S. Supreme Court's religious freedom standard of review and its interpretation and application of the "compelling interest test." The states need to establish their own standard.

Since *Smith* and *Boerne* set the current federal precedent, this means trouble for Christians and other people of sincere religious faith.

Does HB 387 replace all existing remedies to protect religious freedom?

No. It only creates an additional "track" which a religious claimant can use to protect his free exercise of religion. State constitutional and federal constitutional remedies are still available.

Is there a problem with the lack of definition for "religious belief"? For example, what if a group got together (such as a satanic group) and said it was a "religious group" and wanted to meet in a high school gym, but did inappropriate things? Under this law, would the school have to let everyone (including this group) meet in the gym, or let no one do it? Would schools that allow Fellowship of Christian Athletes or Young Life to meet in the gym also be forced to let everyone else in (or no one)?

The first issue is the concern over the absence of a definition of religious belief.

There is a large body of case law relating to the definition of "religion." (For a good summary of the case law see Carl H. Esbeck, *A Restatement of the Supreme Court's Law of Religious Freedom: Coherence, Conflict, or Chaos?*, 70 Notre Dame L. Rev. 581, 609-612 (1995)). For example, in *U.S. v. Seeger*, 380 U.S. 163, 176 (1965), the U.S. Supreme Court defined religious belief as "sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by God."

The drafters of the 1993 federal RFRA considered defining "religion" but decided against it primarily because the U.S. Supreme Court had already done so. Since the U.S. Supreme Court has defined religious belief in dozens of cases with sufficient clarity, it is not necessary to define it in a state RFRA.

Secondly, a response to the school hypothetical:

The hypothetical Satanists who are denied access to a school could make claims under the Free Speech Clause, the Free Exercise Clause, and the Equal Access Act. Their case would likely be considered under the Equal Access Act and the First Amendment's Free Speech Clause –not free exercise law. Under the Equal Access Act (effective since 1984), if a school lets one noncurriculum group meet, it must let all noncurriculum groups meet. When Congress was considering the Equal Access Act, people were concerned that it would lead to an explosion of Satanists, Nazis, and hate groups wanting to meet and organize in schools; however, this "explosion" has not occurred.

Under the Free Speech Clause of the First Amendment, religious expression receives the same level of protection as nonreligious expression. See, e.g., *Kunz v. New York*, 340 U.S. 290 (1951) (meeting permit). Free speech rights are essentially a ceiling on free exercise rights. The standard of review for free speech cases is the "compelling interest test" giving individuals who exercise their right to free speech the highest level of protection. See *Heffron v. Int'l Society of Krishna Consciousness*, 452 U.S. 640, 652-53 (1981) (solicitation on state fair grounds).

Thus, once the school lets the Fellowship of Christian Athletes meet after hours, it must let in other groups. This is the case regardless of the standard of free exercise law. The school cannot discriminate among groups except to the extent it needs to regulate disruptive speech. See, e.g., *Tinker v. Des Moines*, 393 U.S. 503 (1969).

In state offices, if a person, because of a religious belief, wanted to have something distasteful on his desk, could his supervisor—under this law—ask for it to be removed?

It depends. If the item was on a teacher's desk, it could probably be removed under the Establishment Clause. If the item was on a desk not open for public view, it may be protected by the employee's free speech rights.

Free speech, the prohibition of establishment of religion, and Title VII considerations all would come into play here. However, like the school example, this scenario is likely going to be considered under the Free Speech Clause. Under U.S. Supreme Court precedent, when government regulates its employees' speech, a different test applies than when government regulates its citizens' speech. It's an easier test for the government to satisfy.

If the dispute over the object on the desk could not be resolved, the state RFRA could be invoked and the courts would have to balance the state's interest with the free exercise claim through application of the "compelling interest test."

CENTER FOR LAW AND RELIGIOUS FREEDOM

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TRANSMITTAL MEMORANDUM

DATE: February 29, 2000

TO: Representative John Harris

FAX: 907 465 3799

FROM: Betty L. Dunkum

RE: **Alaska Religious Freedom Protection Act**

Total Number of Pages (including this cover sheet): 8

COMMENTS:

Attached are some materials regarding the Alaska Religious Freedom Protection Act, HB 387, which is scheduled for a hearing before the Community and Regional Affairs Committee this Thursday, March 2, 2000. Please have someone insert copies of these materials in each committee member's packet. Please call me if you have any questions.

Sincerely yours,

Betty L. Dunkum

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Center for Law
and Religious Freedom

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Executive Assistant

MEMORANDUM

To: Members of the Alaska House Standing Committee on Community and Regional Affairs

From: Betty L. Dunkum, Esq.

Date: February 29, 2000

Re: **Religious Freedom Statute For Alaska**

For the reasons set out below, religious liberty in many states of the United States lacks adequate legal protection. As the first freedom guaranteed in the First Amendment to the U.S. Constitution, religious liberty should be fully enjoyed by Americans regardless of their state of residence. The Coalition For The Free Exercise Of Religion (presently consisting of over 70 religious faith groups and civil rights organizations) is seeking to enact federal legislation that would provide uniform legal protection in every state. However, because such a federal bill cannot cover as broad a spectrum of religious exercise as state law can, the Coalition is simultaneously assisting with legislation in states, such as Alaska, that appear committed to protecting all their residents and other persons that come within their jurisdiction.

1. Why Alaska Needs Its Own Religious Freedom Restoration Act

Prior to 1990, courts generally found an infringement of the First Amendment's clause protecting the free exercise of religion whenever a law or actions by a government official had the effect (intended or not) of substantially burdening a person's religious belief or practice. For example, pursuant to a state autopsy law, a state medical examiner could order the performance of an autopsy on a person who would have objected to the autopsy because of conflicting religious beliefs. Performance of the autopsy would substantially burden the religious freedom of the individual and his/her family. In another case, a city ordinance designating a church building as an historic landmark meant that the church could not alter its own property (*e.g.*, to expand the sanctuary or social hall or to establish a day-care ministry) without approval by the city landmark preservation board. This substantially burdened the church's collective religious freedom. Whenever courts found such a "free exercise" burden, they generally required that the government (the state medical examiner or the city, in these examples) give the religious person or body (here, the individual or the landmarked church) an exemption from the law.

The only exception to the general rule of free exercise was where the government could prove that denying religious accommodations was the least restrictive means of furthering a compelling government interest. In the historic preservation example above, the city would have

to prove that architectural preservation is a vitally important role for government and that there is no less onerous way to further this interest than to deny religious accommodations. Unlike landmark preservation cases, cities routinely met this "strict scrutiny" when churches sought exemption from fire and safety regulations applicable to their buildings.

But in 1990, the U.S. Supreme Court unexpectedly dropped the "compelling interest" test for most Free Exercise Clause claims. *Employment Division v. Smith*, 494 U.S. 872 (1990). The Court held that the test did not apply to cases where the burden on religion was the result of a law that was generally applicable to all persons and groups. So, using the autopsy example above, the individual's family could not invoke the First Amendment to prevent the autopsy.

This 1990 turnabout by the Court so threatened religious liberty for all faiths that a national coalition of over 65 religious denominations and civil rights groups was formed. They drafted and, in 1993, Congress passed (almost unanimously) the Religious Freedom Restoration Act, which restored the "compelling interest/least restrictive means" test. RFRA required a religious exemption from any government action that substantially burdened the complainant's religious exercise.

However, in 1997, the Supreme Court held that RFRA unconstitutionally exceeded Congress' authority under Section 5 of the Fourteenth Amendment. *City of Boerne v. Flores*, 521 U.S. 507 (1997).[1] Consequently, disparate impacts on religious liberty have no meaningful federal statutory protection against state or municipal law, policy, or practice. The First Amendment Free Exercise Clause is triggered only in the rare case where the state action intentionally discriminates against religious practice.

2. What Alaska Can Do To Restore Religious Liberty Protection

Friends of religious freedom should regularly check on the progress of our federal legislation and be ready to rally local support for a federal "RFRA II"--a bill that would uniformly (albeit less broadly) restore meaningful legal protection in every state.[2]

In addition, a state should enact its own RFRA, such as the Alaska Religious Freedom Protection Act, HB 387, because a state RFRA will affirm the state's commitment to protecting religious liberty. Indeed, eight states—Alabama, Arizona, Connecticut, Florida, Illinois, Rhode Island, South Carolina, and Texas—have already passed their own RFRAs, and a number of other states are in the same process.

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[1] While the high court has not addressed the issue, most scholars (and the Clinton Administration) agree that RFRA still applies against federal law or federal action. *See In re Young*, 141 F.3d 854 (8th Cir. 1998), *cert. denied*, 119 S.Ct. 43 (1998) (mem.).

[2] *See* Religious Liberty Protection Act, H.R. 1691, 106th Cong , 1st Sess. (1999) (utilizing federal Commerce Clause and spending power, rather than Section 5 of the Fourteenth Amendment).

The RFRA Coalition urges any state considering enactment of its own law to include the following essential elements.

a) **The Compelling Interest/Least Restrictive Means Test.** State RFRAs should apply this test to any government action that places a substantial burden on a person's religious exercise.

b) **Broad Definition For The "Exercise Of Religion".** The test should be triggered when government burdens an act, or a refusal to act, that is motivated by religious belief, whether or not the burdened religious exercise is compulsory or central to a larger system of religious belief. Reference to the First Amendment and/or the state constitution's religious liberty clauses should be avoided, so as not to imply that previous case law interpreting "the exercise of religion" under those provisions is being incorporated into the bill.

c) **Universal Protection.** As an inalienable right, religious liberty should not be denied to any class of persons. The Coalition urges states not to deny the protections of a state RFRA to anyone. Religious liberty is diminished for all if it is denied to any. And once a law omits one politically unpopular group it will be all too easy to exempt others. The Coalition opposes efforts to pass a state RFRA unless it is free of exemptions for prison inmates, land use claims, civil rights ordinances, etc. In some cases, suitable language can be framed on specific issues; please contact the Coalition if such language is required.

The Alaska Religious Freedom Protection Act, HB 387, presently includes all of the above elements. Please support this bill and oppose any amendments that would create "carveouts" for any group of people.

Please tell the Center for Law and Religious Freedom (703-642-1070, x3501) how we can assist you.

Examples Demonstrating Why Alaska Needs a Religious Freedom Restoration Act

In this document, several leading authorities on religious freedom in this country provide examples of why state RFRAs are needed.

MARK CHOPKO, General Counsel, U.S. Catholic Conference:

- During the years that the federal RFRA was still valid law, the Ninth Circuit found that RFRA had been violated when prison **personnel deliberately intercepted confessional communication.** *See Mockaitis v. Harcleroad,* 104 F.3d 1522 (9th Cir. 1997). Absent a religious freedom law, it is debatable that a prison regulation dictating that all conversations between prisoners and outsiders will be intercepted would have to excuse religious communications.

- The real power in RFRA "lay in its use in negotiation and persuasion in numerous local and administrative disputes . . . **The ability to have some legal basis on which religious persons and organizations could depend** as a starting point in negotiations was an enormous benefit[.]"

- Many dioceses report conflicts over the **loss of land by eminent domain for such things as creation of bicycle paths** or parking lots. In addition, St. Michael's Abbey in Orange County, California, sued the civil authorities to set aside a plan approving large-scale private development on land adjacent to the Abbey's land which had been, until recently, dedicated to private and quiet religious services.

- Officials in Arapahoe County, Colorado, have placed **numerical limits on the number of students that may be enrolled in religious schools**, and indeed, on the size of congregations of various churches as a way of limiting growth.

- In Douglas County, Colorado, administrative officials initially proposed **limiting the operational hours of a church** the same way they do any "commercial" facility. Limiting its operational hours means that a church could not lawfully engage in any act of service of devotion during those prohibited hours.

- In the Grand Teton area of Wyoming, local officials have proposed **limiting the number of persons who may seek spiritual consolation** and retreat at the Camp St. Malo owned by the Archdiocese of Denver. The camp was used by Pope John Paul II during his visit to the United States in 1993 for a day of quiet reflection.

MARC STERN, Senior Counsel, American Jewish Congress:

- A Muslim child won a judgment for injuries which left him physically and, to some degree, mentally handicapped. The child's lawyer sought to invest the judgment in an interest-bearing account as required by stated law, and as would appear, in the child's best interest. The parents objected that their religious beliefs forbid the taking of interest. **The judge ordered the parties to show cause why the lawyer should not be appointed guardian with the obligation, over the parents' objections, to invest the monies in an interest-bearing account.** While there are many financial arrangements that would provide the same "return" and would not violate Islamic law, the state law did not permit alternative investments of this sort.

- The director of an Immigration and Naturalization Service **detention facility refused to provide detainees--some of whom were seeking asylum for religious persecution—pork-free diets.** Because the President ordered federal officials to comply with the federal RFRA (part of which is no longer available) when threatened with a lawsuit, the manager agreed to provide a pork-free diet.

- A school district in **South Carolina banned the wearing of hats in school. The rule applied to a Jewish boy who wished to wear a yarmulke in school** as Orthodox Jewish practice requires. When threatened with a suit under the federal RFRA (an option now unavailable), the school board accommodated the student.

- A Jewish man was killed in an accident involving a commuter train. **The coroner insisted on an autopsy certifying the cause of death. The family of the deceased objected on religious grounds to the performance of an autopsy.** An MRI or CAT scan was offered in compromise. Once a lawsuit was threatened under the federal RFRA (an option now unavailable), the state attorney general advised the coroner to accommodate such a request.

- The **Illinois Athletic Association requires ball players to play bare-headed. This precluded any Orthodox Jewish boys that would wear yarmulkes.** The league defended its rule on grounds of safety. It argued that if players wore hats, the hats might fall of and other players trip over them. When an Orthodox school sought to play in the league and have its students wear yarmulkes, it was told no. The school offered to make the boys attach the yarmulkes to their hair with clips so that they would not fall off, and the Seventh Circuit held that the alternative had to be explored. Today, such a case would likely be dismissed at the initial motions stage, because it is a "facially neutral" law, and it is reasonable.

Alaska Civil Liberties Union
Statement on the Protection of Religious Liberty Before the House Committee on Health, Education & Social Services

Presented by Jennifer Rudinger, Executive Director
March 7, 2000

I. INTRODUCTION

Mr. Chairman and members of the Committee,

The Alaska Civil Liberties Union (AkCLU) greatly appreciates the opportunity to present this position paper on the importance of ensuring that any state legislation enhancing the protection of religious exercise will not cause any unintended harm to the enforcement of state and local civil rights laws. The American Civil Liberties Union (ACLU) historically supports legislation providing stronger protection of religious exercise--even against neutral, generally applicable governmental restrictions. But our concern is that some courts may turn a statutory shield for religious exercise into a sword against state and local civil rights laws.

Thus, the AkCLU regrets that we have no choice but to ask the Committee to refrain from passing House Bill 387 (Alaska Religious Freedom Protection Act, or "ARFPA") unless it will have no adverse consequences on the hard-won civil rights laws enacted and enforced by state and local governments. We offer several amendments, described below, to prevent any unintended adverse consequences. For the past decade, the ACLU has fought in Congress and the courts to preserve or restore the highest level of constitutional protection for claims of religious exercise. We have directly represented persons asserting burdens on their religious beliefs, filed *amicus* briefs with the Supreme Court, and were founding members of the coalition that supported the Religious Freedom Restoration Act in 1993, and the Religious Liberty Protection Act ("RLPA") during most of the last Congress.

However, we are no longer part of the coalition supporting the federal RLPA, as introduced in the House, because we could not ignore the potentially severe consequences that it may have on state and local civil rights laws. Although we believe that courts should find civil rights laws compelling and uniform enforcement of those civil rights laws the least restrictive means, we know that at least several courts have already rejected that position. We agree with Representative Croft that the result reached by the Alaska Supreme Court in *Swanner* is a good result. *Swanner, d/b/a Whitehall Properties v. Anchorage Equal Rights Commission,* 874 P.2d 274 (Alaska 1994). However, we all know that the principle of stare decisis is not absolute. Furthermore, it is not at all clear whether the same compelling interest the *Swanner* Court found in preventing housing discrimination on the basis of marital status would also be extended to preventing discrimination on the basis of other classifications, such as familial status, pregnancy status, disability, sexual orientation, or religion.

There is much disagreement in other jurisdictions about the issues raised in *Swanner.* We have found that landlords across the country have been using state religious liberty claims to

challenge the application of state and local civil rights laws protecting persons against marital status discrimination. None of the claims, including those in *Swanner*, involved owner-occupied housing; all of the landlords owned so many investment properties that they were outside the state laws' exemptions for small landlords. These landlords all sought to turn the shield of religious exercise protections into a sword against the civil rights of prospective tenants.

To confuse matters even more, the U.S. Court of Appeals for the Ninth Circuit (which governs Alaska) recently applied a strict scrutiny standard of review to a local civil rights law in deciding a claim by landlords that compliance with that law protecting unmarried couples from discrimination based on marital status burdened the landlords' religious beliefs. *Thomas v. Anchorage Equal Rights Commission*, 165 F.3d 692 (9th Cir. 1999). The court held that the governmental interest in preventing marital status discrimination was not compelling. As a result, the landlords did not have to comply with that civil rights law. The AkCLU has submitted an *amicus* brief in this case, arguing that the state does have a compelling interest in preventing discrimination on the basis of marital status in housing, a la *Swanner*, and the case is scheduled to be reheard by an en banc panel of the Ninth Circuit this month.

Besides the Ninth Circuit, the Massachusetts Supreme Court and a plurality of the Minnesota Supreme Court have also found that defendants in similar civil rights cases may have a religious liberty defense against state civil rights claims. The only two state court decisions that found in favor of the civil rights plaintiffs in similar cases are in California and Alaska--but both states are in the Ninth Circuit.

An improperly drafted statute could jeopardize more than marital status protection. The Ninth Circuit's analysis calls into question all state and local civil rights laws which are not motivated by a "firm national policy" in favor of eradicating specific forms of discrimination. Thus, persons protected because of characteristics such as marital status, familial status, pregnancy status, disability, and perhaps religion itself, could find their protections under state or local laws eroded by federal law. If legislation such as an unamended HB 387 becomes law, an applicant for a job or housing may have no state or local law protection against having to answer questions such as: Is that your spouse? Are those your children? Are you straight or gay? Are you pregnant? Are you HIV-positive? Mentally ill? Physically disabled? What is your religion?

Even where a "firm national policy" in eradicating certain types of discrimination could be shown, such as classifications based on race or sex, courts may conclude that such a compelling governmental interest could be achieved without prohibiting the discriminatory conduct of the particular defendant claiming a religious exemption to a civil rights law. I am attaching a paper submitted by the NAACP to Congress in opposition to the federal RLPA. The NAACP paper analyzes this danger in greater detail.

In the wake of recent court decisions around the country and in our very own Ninth Circuit, and in light of the lack of Alaskan precedent on so many of these issues, the Committee should not leave the problem of a state religious liberty statute's potential effect on state and local civil rights laws unresolved. The stakes are too high.

Instead, the AkCLU urges you to consider other alternatives for providing a shield for religious exercise without creating a sword against civil rights laws. As Texas State Representative Scott Hochberg's testimony to Congress (also attached with this paper) explains, Texas Governor George W. Bush signed into law--only last summer--a state RFRA that protects Texas' civil rights laws. In Congress, the ACLU and many other groups are supporting a civil rights amendment to RLPA offered by Congressman Nadler that will have a similar result.

The AkCLU very much appreciates your willingness to consider these concerns as you consider HB 387. We believe that members of the legislature who justifiably care deeply about protecting both religious exercise and state and local civil rights laws should not be forced to choose. It is a false choice because both goals can be made compatible. We hope to work with members of the Committee to resolve this problem. Thank you once again for this opportunity to present our concerns.

II. SCOPE OF THE POTENTIAL PROBLEM

This Committee is presently considering HB 387, the Alaska Religious Freedom Protection Act ("ARFPA"), which would provide extensive statutory protection for religious exercise to replace or enhance the constitutional protection previously afforded religious exercise prior to a 1990 Supreme Court decision that lowered the standard of review for religious exercise claims. HB 387 provides, in relevant part, that:

> A [government entity] may restrict a person's free exercise of religion only if (1.) the restriction is in the form of a rule of general applicability and does not intentionally discriminate against religion or among religions; and (2.) application of the restriction to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.
>
> ... This section may not be construed to create an establishment of religion or to authorize the infringement of a person's individual rights.

As introduced, HB 387 does not have any provision specifically addressing its potential effect on state and local civil rights laws.

The scope of the potential civil rights problem raised by religious freedom statutes is broad. The U.S. Court of Appeals for the Ninth Circuit and four state supreme courts have recently decided five cases with nearly identical fact patterns, namely, landlords claiming that their religious beliefs defeat housing discrimination claims brought by unmarried heterosexual persons based on marital status.[1] The decisions were split, with the Ninth Circuit and the Massachusetts and Minnesota courts holding that a religious liberty defense could defeat civil rights claims based on state or local laws. The courts could apply the reasoning in those decisions to civil rights claims made by members of other groups that also receive less protection from the courts and the federal government. Although the Alaska Supreme Court in *Swanner* upheld the anti-discrimination laws in the context of marital status, it is unclear whether the court's reasoning would extend to other types of civil rights claims.

The intent of at least some of the supporters of federal RLPA is clear. Several witnesses during hearings before the House and Senate Judiciary Committees specifically stated their belief that RLPA could and should be used as a defense to civil rights claims based on gender, religion, sexual orientation, and marital status.

In applying standards of review substantially similar to the ARFPA and RLPA religious exercise standard, numerous courts have recently decided cases in which defendants raised a religious liberty defense to civil rights claims based on state or local laws protecting against discrimination in housing based on marital status. *See Thomas v. Anchorage Equal Rights Commission*, 165 F.3d 692 (9th Cir. 1999) (governmental interest in preventing marital status discrimination was not compelling); *Smith v. Fair Employment & Housing Comm'n*, 913 P.2d 909 (Cal. 1996) [hereinafter *"Smith v. FEHC"*] (no substantial burden on religious exercise found); *Attorney General v. Desilets*, 636 N.E.2d 233 (Mass. 1994) (remanding for further

consideration of whether the governmental interest in eliminating discrimination based on marital status was compelling and whether uniform application of the state anti-discrimination law was the least restrictive means); *Swanner, d/b/a Whitehall Properties v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska), *cert. denied*, 115 S. Ct. 460 (1994) (the government's interest in providing equal access to housing was compelling and uniform application of the state anti-discrimination law was the least restrictive means); *Cooper v. French*, 460 N.W.2d 2 (Minn. 1990) ("marital status" did not include unmarried cohabiting couples; a plurality of the court also found no compelling governmental interest in preventing marital status discrimination). Thus, in the Ninth Circuit and Massachusetts and Minnesota, defendants may successfully use their religious beliefs to defeat at least certain civil rights claims based on state or local laws.

In those housing cases, the owner-occupied exceptions found in all state fair housing laws did not apply; the rental properties at issue were *not* owner-occupied, but instead were used solely for investment purposes. *See Thomas*, 165 F.3d 692 (statute provides exception for "space rented in the home of the landlord"); *Desilets*, 636 N.E.2d at 238 n.8 (law applicable only to "dwellings that are rented to three or more families living independently of each other"); *Swanner*, 874 P.2d at __ (statute provides exception for individual home "wherein the renter or lessee would share common living areas with the owner"); *French*, 460 N.W.2d 2 (owner did not live in subject property, a two-bedroom house); *Smith v. FEHC*, 913 P.2d at 912 (Smith "does not reside in any of the four units"). The landlords all claimed that their sincerely held religious beliefs about premarital sexual relations required them to deny housing to unmarried couples, despite state or local laws prohibiting discrimination on the basis of marital status in housing. Although the religious liberty defense was not always successful, the courts were split on whether the anti-discrimination laws impose a substantial burden on the exercise of the landlord's religion, and on whether the governmental interest in eradicating marital status discrimination in housing is compelling and pursued by the least restrictive means.

Defendants in civil rights cases have also raised religious liberty defenses in cases involving such characteristics as race or sexual orientation and in contexts ranging from educational institutions to employment. For example, defendants or courts unsuccessfully raised religious rationales for racially discriminatory practices. *E.g., Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) (religious university claimed that its religious beliefs about miscegenation – interracial marriage -- justified racial discrimination in admissions); *see also Loving v. Virginia*, 388 U.S. 1 (1967) (invalidating a Virginia antimiscegenation statute).[2]

Prior to the Supreme Court lowering the standard of review for religious liberty claims in *Employment Division of Oregon v. Smith*, 485 U.S. 660 (1988), the use of religious liberty defenses to civil rights claims was widespread. *See, e.g., Bob Jones Univ.*, 461 U.S. 574, 604; *EEOC v. Pacific Press Publishing Ass'n*, 676 F.2d 1272 (9th Cir. 1982) (religious publishing house claimed that dismissing employee in retaliation for bringing discrimination charges was based on religious doctrine forbidding members of the church from bringing lawsuits against the church); *Minnesota ex rel. McClure v. Sports & Health Club, Inc.*, 370 N.W.2d 844 (Minn. 1985) (health club's owners insisted on hiring only employees whose religious beliefs were consistent with the owners' religious beliefs despite state anti-discrimination law forbidding employment discrimination based on religion, sex, and marital status); *Gay Rights Coalition v. Georgetown Univ.*, 536 A.2d 1 (D.C. App. 1987) (religious university argued that its religious beliefs justified the denial of "university recognition" to gay student group, despite a District of Columbia civil rights law prohibiting discrimination on the basis of sexual orientation).

Currently, Alaska state and local laws also provide protection based on other characteristics that receive less than strict scrutiny, such as disability, sex, age, familial status, or pregnancy. Although the governmental interest in eradicating discrimination has been found compelling in the context of *Swanner*, providing a new defense in civil rights actions will—at a minimum--increase the cost of litigation for plaintiffs. However, the risk for persons claiming civil rights protection based on characteristics that receive lower levels of scrutiny is substantial. Because many of the groups claiming protection under state and local civil rights laws do not currently receive heightened scrutiny for their claims in court, and receive little or no explicit federal statutory protection from Congress, it is likely that at least some courts would find that the governmental interest in ending discrimination against these groups is not compelling. As noted above, courts around the country are divided on these questions, and these decisions have come from states that traditionally have been vigorous and strict in enforcing their civil rights laws.

III. APPLICATION OF THE FOUR-PART ARFPA TEST TO CIVIL RIGHTS CLAIMS

HB 387 provides, in relevant part, that:

> A [government entity] may restrict a person's free exercise of religion only if (1.) the restriction is in the form of a rule of general applicability and does not intentionally discriminate against religion or among religions; and (2.) application of the restriction to the person is essential to further a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

Thus, in deciding a challenge to a civil rights claim based on a state or local anti-discrimination law, a court must apply a four-part test: (i) is the defendant's discrimination "religious exercise"?; (ii) does the applicable state or local anti-discrimination law "restrict" the defendant's religious exercise?; (iii) is the government's interest in eradicating the discrimination "compelling"?; and (iv) are uniformly applied anti-discrimination laws the least restrictive means of furthering any compelling governmental interest?

A. Is Discrimination "Religious Exercise" Under ARFPA?

The first part of the ARFPA test is whether a refusal to comply with civil rights laws is religious exercise. Because ARFPA does not define what constitutes a religious exercise, any civil rights defendant who can show that his or her discriminatory actions were in any way "restricted" will be able to meet this prong of ARFPA. Under the pre-*Smith* Free Exercise Clause jurisprudence which ARFPA purports to restore, the "Supreme Court free exercise of religion cases have accepted, either implicitly or without searching inquiry, claimants' assertions regarding what they sincerely believe to be the exercise of their religion, even when the conduct in dispute is not commonly viewed as a religious ritual." *Desilets,* 636 N.E.2d at 237 (citing *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 137 (1987); *United States v. Lee*, 455 U.S. 252, 257 (1982); *Thomas v. Review Bd. of the Ind. Employment Sec. Div.*, 450 U.S. 707, 715 (1981)).

Courts have held that refusal to rent an apartment to an unmarried heterosexual couple based on the landlord's religious belief that promoting premarital sex is sinful is religious exercise. *See, e.g., Smith v. FEHC,* 913 P.2d at 923 ("While the renting of apartments may not constitute the exercise of religion, if Smith claims the laws regulating that activity indirectly

coerce her to violate her religious beliefs, we cannot avoid testing her claim under the analysis codified in RFRA."); *Desilets*, 636 N.E.2d at 237 ("Conduct motivated by sincerely held religious convictions will be recognized as the exercise of religion."). Similarly, in the employment context, courts have accepted the argument that hiring decisions are religious exercise, if the employer can demonstrate that the decision was based on religious belief or doctrine. *See, e.g., Pacific Press*, 676 F.2d at 1280 (retaliatory action taken by religious publisher against employee who instituted EEOC proceedings alleging sex discrimination was religious exercise because church doctrine prohibited lawsuits by members against the church).

B. Do State and Local Civil Rights Statutes "Restrict" Religious Exercise?

The purpose of the second part of the ARFPA test should be to avoid litigation over neutral laws that have only a minimal impact on religious exercise. However, "restrict" may be defined so broadly as to encompass *any* infringement on religious exercise, regardless of how slight the impact of that restriction may be. **The AkCLU suggests that the word "restrict" in HB 387 be replaced with the words "substantially burdens" a person's free exercise of religion.** Congress has not defined "substantial burden," and there is no generally applicable test to determine whether a substantial burden exists. *See Smith v. FEHC*, 913 P.2d at 924. However, several circuit courts have adopted a broad reading of "substantial burden," holding that

> a substantial burden on the free exercise of religion, within the meaning of the [RFRA], is one that forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs.

Mack v. O'Leary, 80 F.3d 1175, 1179 (7th Cir. 1996); *see also Werner v. McCotter*, 49 F.3d 1476, 1480 (10th Cir. 1995) ("To exceed the 'substantial burden' threshold, governmental regulation must significantly inhibit or constrain conduct or expression that manifests some central tenet of a [person's] individual beliefs."); *Brown-El v. Harris*, 26 F.3d 68, 70 (8th Cir. 1994) (substantial burden imposed when person is compelled, "by threat of sanctions, to refrain from religiously motivated conduct") (quotations omitted). *But cf. Goodall v. Stafford Cty. Sch. Bd.*, 60 F.3d 168, 171-72 (4th Cir. 1995) (substantial burden not imposed where plaintiffs "have neither been compelled to engage in conduct proscribed by their religious beliefs, nor have they been forced to abstain from any action which their religion mandates that they take"); *Cheffer v. Reno*, 55 F.3d 1517, 1522 (11th Cir. 1995) (same); *Bryant v. Gomez*, 46 F.3d 948 (9th Cir. 1995) (per curiam) (same).

Economic cost alone does not constitute a substantial burden. *See Braunfeld v. Brown*, 366 U.S. 599, 605 (1961); *Smith v. FEHC* at 926-27. However, even those courts that have adopted a narrow definition of substantial burden--where a substantial burden is imposed only where someone is compelled to engage in conduct forbidden by his or her religion, or forbidden to engage in conduct mandated by religious belief--have held that imposing liability on an employer for non-compliance with employment anti-discrimination laws constitutes a substantial burden when compliance would contradict religious belief or doctrine. *See, e.g., Pacific Press*, 676 F.2d at 1280 ("there is a substantial impact on the exercise of religious beliefs because EEOC's jurisdiction to prosecute . . . will impose liability on Press for disciplinary actions based on religious doctrine").

One court has held that compliance with state fair housing laws does not impose a substantial burden, in part because "one who earns a living through the return on capital invested

in rental properties can, if she does not wish to comply with an anti-discrimination law that conflicts with her religious beliefs, avoid the conflict, without threatening her livelihood, by selling her units and redeploying the capital in other investments." *Smith v. FEHC*, 913 P.2d at 925. The court also noted that "the landlord in this case does not claim that her religious beliefs require her to rent apartments; the religious injunction is simply that she not rent to unmarried couples. No religious exercise is burdened if she follows the alternative course of placing her capital in another investment." *Id.* at 926.

Because the court in *Smith v. FEHC* used an analysis for "substantial burden" that may be more stringent than the analysis required by ARFPA, Alaska courts are likely to view the "choice" of engaging in a different occupation or complying with the anti-discrimination law and violating one's religious beliefs as too harsh, and conclude that the burden is substantial. *See, e.g., Desilets*, 636 N.E.2d at 237-38 (substantial burden imposed because the civil rights law "affirmatively obliges the defendants to enter into a contract contrary to their religious beliefs and provides significant sanctions for its violation," and "both their nonconformity to the law and any related publicity may stigmatize the defendants in the eyes of many and thus burden the exercise of the defendants' religion"). Indeed, all courts, other than the court in *Smith v. FEHC*, that have considered the question in the housing context have found that the state or local anti-discrimination law substantially burdened the defendant's exercise of his or her religious beliefs.

C. Is the Governmental Interest in Eradicating Discrimination Compelling?

The third part of the ARFPA test provides that only a compelling governmental interest justifies imposing a restriction on the exercise of religion. The courts that recently decided civil rights cases in which a defendant raised a religious liberty defense have split most sharply on this part of the test.

The governmental interest in eradicating certain types of discrimination, particularly racial and sex-based discrimination, should meet the compelling interest standard. *See Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983) ("The governmental interest at stake here is compelling. . . . [T]he government has a fundamental, overriding interest in eradicating racial discrimination in education . . . . That governmental interest substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs."); *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984) (the state government's "compelling interest in eradicating discrimination against its female citizens justifies the impact . . . on the male members' associational freedoms"). Such plaintiffs, however, should anticipate incurring litigation costs as defendants raise the defense.

Because sexual orientation, marital status, disability, and other newly protected classes currently do not receive the same level of judicial scrutiny as race and sex, however, it may be more difficult to persuade all courts that the governmental interest in preventing discrimination on those grounds is compelling. For example, courts have reached divided results in determining whether preventing discrimination based on characteristics such as sexual orientation or marital status is compelling. *See, e.g., Gay Rights Coalition v. Georgetown Univ.*, 536 A.2d 1, 37 (D.C. App. 1987) (District of Columbia's interest in prohibiting educational institutions from denying equal access to tangible benefits on the basis of sexual orientation is compelling); *Swanner*, 874 P.2d at 282-83 (Anchorage's interest in prohibiting marital status discrimination in housing is compelling), *Desilets*, 636 N.E.2d 233 (remanding for further consideration of whether the government's interest in prohibiting marital status discrimination is compelling); *French*, 460 N.W.2d at 10-11 (plurality op.) (no compelling governmental interest in ending discrimination against unmarried couples).

Because ARFPA requires that the "application of the restriction to the person is essential to further a compelling governmental interest", courts could require the government to prove that there is a compelling interest in requiring the specific landlord or employer to comply with the civil rights law. *See, e.g., Desilets*, 636 N.E.2d at 238 (the issue is "whether the record establishes that the Commonwealth has or does not have an important governmental interest that is sufficiently compelling that the granting of an exemption to people in the position of the defendants would unduly hinder that goal"); *French*, 460 N.W.2d at 9 ("French must be granted an exemption . . . unless the state can demonstrate compelling and overriding state interest, not only in the state's general statutory purpose, but in refusing to grant an exemption to French."). However, the majority of courts have considered simply whether the government had a compelling interest in enforcing the law at issue.

When a state or municipality chooses to target and prohibit a specific form of discrimination, presumably it does so because it believes that there is a serious problem. *See EEOC v. Pacific Press Publishing Ass'n*, 676 F.2d 1272, 1280 (9th Cir. 1982) ("By enacting Title VII, Congress clearly targeted the elimination of all forms of discrimination as a 'highest priority.'"). Courts have sometimes found that legislative determination alone, however, is not always dispositive of whether the state's interest is compelling. *See Gay Rights Coalition*, 536 A.2d at 33 ("While not lightly to be disregarded, the Council's strong feelings do not resolve the issue whether its ban on sexual orientation discrimination represents a compelling governmental interest."); *Desilets*, 636 N.E.2d at 240 ("we are unwilling to conclude that simple enactment of the prohibition against discrimination based on marital status establishes that the state has" a compelling interest in ending marital status discrimination in housing).

To the extent that other state or municipal laws or policies discriminate against the class, courts are sometimes less likely to find that the governmental interest in ending discrimination against that class is compelling. Thus, in some states, anti-fornication or sodomy statutes have provided additional support for concluding that there is no compelling governmental interest in protecting against discrimination based on marital status or sexual orientation. *See, e.g., Thomas*, 165 F. 3d at 716-17 (citing state statutes providing less favorable benefits to unmarried couples than to married couples); *French*, 460 N.W.2d at 10 (plurality op.) ("How can there be a compelling state interest in promoting fornication when there is a state statute on the books prohibiting it?"); *Desilets*, 636 N.E.2d at 240 (the existence of a criminal statute against fornication "suggests some diminution" in the state's interest). On the other hand, the Alaska Supreme Court in *Swanner* noted that differential treatment of married and unmarried people in areas other than housing does not prove that the state views marital status discrimination in <u>housing</u> as insignificant.

Courts have taken different positions on defining the scope of the governmental interest at stake in prohibiting discrimination. Defining the governmental interest broadly, the *Swanner* court had no difficulty in concluding that the state's "interest in preventing discrimination based on irrelevant characteristics" is compelling. *Swanner*, 874 P.2d at 282-83. "The government views acts of discrimination as independent social evils even if the prospective tenants ultimately find housing. Allowing housing discrimination that degrade[s] individuals, affronts human dignity, and limits one's opportunities results in harming the government's transactional interest in preventing such discrimination." *Id.; accord Gay Rights Coalition*, 536 A.2d at 37 ("The compelling interests ... that any state has in eradicating discrimination against the homosexually or bisexually oriented include the fostering of individual dignity, the creation of a climate and environment in which each individual can utilize his or her potential to contribute to and benefit

from society, and equal protection of the life, liberty, and property that the Founding Fathers guaranteed to us all.").

In contrast, the Massachusetts Supreme Court in *Desilets* insisted on a much more narrow reading of the governmental interest, noting that "[t]he general objective of eliminating discrimination of all kinds. . . cannot alone provide a compelling State interest that justifies the . . . disregard of the defendants' right to free exercise of their religion. The analysis must be more focused." *Desilets*, 636 N.E.2d at 238. This narrow reading led the court to insist that Massachusetts "demonstrate that it has a compelling interest in the elimination of discrimination in housing against an unmarried man and an unmarried woman who have a sexual relationship and wish to rent accommodations to which [the civil rights statute] applies." *Id.*

D. Are Uniformly Applied Anti-Discrimination Laws the Least Restrictive Means Available?

The fourth part of the ARFPA test is whether the challenged state or local law uses the least restrictive means to achieve the government's compelling interest. Several courts have held that uniform application of anti-discrimination laws is the least restrictive means available. *See, e.g., Swanner*, 874 P.2d at 280, n.9 ("The most effective tool the state has for combating discrimination is to prohibit discrimination; these laws do exactly that. Consequently the means are narrowly tailored and there is no less restrictive alternative."); *Gay Rights Coalition*, 536 A.2d at 39 ("The District of Columbia's overriding interest in eradicating sexual orientation discrimination, if it is ever to be converted from aspiration to reality, requires that Georgetown equally distribute tangible benefits to the student groups."); *McClure*, 370 N.W.2d at 853 ("the state's overriding compelling interest of eradicating discrimination based upon sex, race, marital status, or religion could be substantially frustrated if employers, professing as deep and sincere religious beliefs as those held by appellants, could discriminate against the protected class"). However, the Massachusetts Supreme Court remanded that question when it held that the government may be required to prove that "uniformity of enforcement of the statute . . . [is] the least restrictive means for the practical and efficient operation of the anti-discrimination law." *Desilets*, 636 N.E.2d at 241.

Persons using a religious liberty defense to a civil rights claim have argued that uniform application of civil rights laws cannot be the least restrictive means if the civil rights statute in question contains exemptions for religious organizations and small landlords or employers. Those defendants have argued that a less restrictive means is available, namely, granting an exemption to persons who hold sincere religious beliefs. For example, one court found that "the compulsion of the state's interest appears somewhat weakened because the statute permits discrimination by a religious organization in certain respects . . . if to do so promotes the principles for which the organization was established." *Desilets*, 636 N.E.2d at 240. Similarly, the Ninth Circuit cited the state's "'underenforcement' of its purported interest in eradicating marital status discrimination," as expressed in statutory exemptions within the state fair housing law, as evidence that the state's interest was not compelling. *Thomas*, 165 F.3d at 717. However, another court recognized that while the government permits exemptions for "religious corporations when religious beliefs shall be a bona fide occupational qualification," "the state's overriding interest permits of no exemption to appellants in this case. . . . [W]hen appellants entered into the economic arena and began trafficking in the market place, they have subjected themselves to the standards the legislature has prescribed not only for the benefit of prospective and existing employees, but also for the benefit of citizens of the state as a whole in an effort to eliminate pernicious discrimination." *McClure*, 370 N.W.2d at 853; The split on how to apply

the least restrictive means part of the strict scrutiny test is particularly important when most state and local civil rights laws have numerous exemptions.

Finally, as we pointed out in our introduction to this position paper, we concur with the analysis by the NAACP. We share their concerns, and those of many other civil rights and religious groups, that even where a "firm national policy" in eradicating certain types of discrimination could be shown, such as classifications based on race or sex, courts may conclude that such a compelling governmental interest could be achieved without prohibiting the discriminatory conduct of the particular defendant claiming a religious exemption to a civil rights law.

IV. CONCLUSION AND SUGGESTED AMENDMENTS

The AkCLU urges the Committee, as it addresses the problem of increasing protection for religious exercise against neutral state and local laws, to avoid unintentional harm to the enforcement of state and local civil rights laws. Without careful drafting, a state religious liberty statute could provide a new federal defense against state and local civil rights claims made by persons who already receive the least protection from the courts and the federal government. This Committee should not pass any religious liberty legislation without ensuring that it will not deprive persons of their civil rights under state and local laws.

The AkCLU therefore proposes the following three amendments to clarify the intent of the bill and to protect religious freedom at the same time as it protects civil rights.

(1.) To clarify subsection (d) throughout HB 387, we suggest rephrasing (d) to read, "This section may not be construed to create an establishment of religion or to authorize the infringement of the rights of others by the person claiming a religious exemption to a facially neutral law of general applicability. This Act does not establish or eliminate a defense to a civil action or criminal prosecution under a federal, state, or local civil rights law."

The sponsor has stated that his intent in (d) is to prevent one person's free exercise of religion from infringing on the rights of another person. In other words, everyone has the right to practice his/her religion freely, exempt from laws that burden his/her religious exercise, as long as no one else is injured in the process. The AkCLU agrees with this assertion, and we feel that our amendment clarifies this balancing.

To cite for you a specific example where we <u>support</u> ARFPA, last year the AkCLU looked into a case in which a Muslim couple objected on religious grounds to the State of Alaska performing an autopsy on their deceased infant. Alaska law requires an autopsy to be performed in all SIDS (Sudden Infant Death Syndrome) cases, but the parents in this case sincerely believed, in accordance with their faith, that their baby would not go to Heaven if the baby's body was not presented whole unto God. (FYI, other faiths, such as Orthodox Judaism, also profess this religious tenet.) Since the cause of death can often be determined by "less restrictive" means that do not involve cutting into the corpse – i.e. magnetic resonance imaging, or MRI – HB 387 would protect the rights of relatives to be exempt from the state's generally applicable autopsy laws. Similarly, if the cause of death for suspected SIDS cases can be determined by means that do not infringe on religion, then the state should respect the religious practices of the parents of that infant.

Our suggested amendment fairly balances the religious freedom of the individual with the rights of the rest of society by preventing harm to any third parties from the exercise of an individual's religious rights.

(2.) As we have already pointed out, throughout HB 387, subsection (b) states that a government entity "may restrict a person's free exercise of religion only if...". (Emphasis added.) Our concern is that "restrict" may be read very broadly to include any level of restriction, no matter how minor its impact on the free exercise of religion. The federal RLPA uses a different standard. The federal RLPA provides in relevant part that "a [state or local] government shall not substantially burden a person's religious exercise..." (emphasis added). Courts have defined standards for substantial burdens, as discussed above. We propose that in (b) throughout the bill, the word "restrict" be replaced by "substantially burden".

(3.) Finally, we have some great qualms about the wording of Section (4) in the legislative findings. We think that the intent of (4) is to protect against discrimination, but by limiting the protection to the degree currently set forth in the Alaska Constitution, Section (4) leaves open a lot of gray area where courts have not yet granted compelling interest status to the state's interest in remedying certain types of discrimination. **We suggest the following wording for Section (4): "while it is improper for the legislature to tell the judiciary how to interpret the Constitution of the State of Alaska, it is proper for the legislature to codify protection for the free exercise of religion, so long as that legislative action does not authorize the infringement of the rights of others by the person claiming a religious exemption to a facially neutral law of general applicability."**

ENDNOTES

1In addition, the supreme courts of Michigan and Illinois recently vacated decisions that had held that their respective state fair housing laws protecting persons based on marital status served a compelling governmental interest and were narrowly tailored. *McCready v. Hoffius*, 1999 Mich. Lexis 694 (Mich. April 16, 1999), *vacating and remanding*, 586 N.W.2d 723 (Mich. 1998); *Jasniowskiv. Rushing*, 685 N.E.2d 622 (Ill. 1997), *vacating for lack of case or controversy*, 678 N.E.2d 743 (Ill. App. 1997). The Michigan Supreme Court reversed its own earlier decision after newly elected justices joined the court. The Illinois Supreme Court vacated an intermediate appellate decision for the procedural reason of a lack of a case or controversy.

2In *Loving*, the Supreme Court reversed a decision of the Virginia Supreme Court which had affirmed, in part, a Virginia state trial court decision that stated:

> Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with this arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.

Decision of Circuit Court for Caroline County (Jan. 6, 1959), (*quoted in Loving*, 388 U.S. at 3).

VON KEETCH, Church of Jesus Christ of Latter Day Saints:

- One city adopted an entirely new Comprehensive Plan covering development within its city. The Plan was based on the "overwhelmingly residential aspect of the City," and limited any new development within the city to single family unit dwellings. **The City's plan set up an "Educational and Religious Zone (ER) " for schools and churches that already existed within the city.** Although any entity could make a request for such a zone change, the zoning would be changed only if *the applicant* seeking the change *could prove* that (1) "the city made a mistake in zoning the property" in the first place; or (2) "a change in condition has occurred making the property more suitable for ER use than for residential use." *See Corporation of the Presiding Bishop v. Board of Comm'rs*, No. 95-1135 (Chancery Ct. Davidson County, Tenn., Jan. 27, 1998).

- **A religious mission for the homeless operated by the late Mother Teresa's order has been shut down because it was located on the second floor of a building without an elevator.**

- **Adult children with strong religious convictions about serving their feeble parents have been prevented form volunteering to care for their elderly parents** housed in government-regulated nursing homes. *See Greater New York Health Care Facilities v. Axelrod*, 770 F. Supp. 183 (S.D.N.Y. 1991).

- **One district court held that an unnecessary autopsy on a young Hmong man did not constitute a violation of the Free Exercise Clause,** despite the religiously-based belief of his family that the autopsy condemned the spirit of the deceased. The court had originally ruled in favor of the family, but after Smith, felt compelled to reverse its earlier ruling. The judge, when issuing its order against the family, remarked that "I have seldom, in twenty-four years on the bench, seen such a sincere instance of emotion displayed." *You Vang Yang v. Sturner*, 750 F. Supp. 558, 558 (D.R.I. 1990); *see also Montgomery v. County of Clinton*, 743 F. Supp. 1253 (W.D. Mich. 1990), *aff'd*, 940 F.2d 661 (6th Cir. 1991) (compelling autopsy despite contrary, deeply felt, conservative Jewish beliefs).

- **The strict confidentiality of communications between member and clergy has come under strong attack,** with litigants attempting to gain information or otherwise discover sacred confessional information for use in pursuance of their civil claims. *See, e.g., Hadnot v. Shaw*, 826 P.2d 978 (Okla. 1992); *Scott v. Hammock*, 870 P.2d 947 (Utah 1994).

- Local governments have attempted to impair or altogether eliminate proselytizing by Church missionaries by passing "generally applicable" laws that happen to place **severe restrictions on the times and places that missionaries may contact door-to-door.** Local officials have attempted to curtail church proselytizing in such cities as Mundelein, Illinois; Dover, New Jersey; Flemington, New Jersey; Chester, Connecticut; Valencia, California; Media, Pennsylvania; Downers Grove, Illinois; Marin County, California; and Seven Hills, Ohio.

STEVE McFARLAND, former director of the Center for Law and Religious Freedom at the Christian Legal Society:

- **An Orthodox Jewish rabbi was threatened with criminal prosecution for leading morning and evening prayers in a converted garage in one of Miami's single-family residential areas.** The U.S. Court of Appeals for the Eleventh Circuit held that the city's interest in an exception-free zoning plan outweighed the rabbi's interest, because the services "are not integral to [his] faith" and because the burden on the rabbi and his friends of having to relocate "plainly does not rise to the level of criminal liability, loss of livelihood, or denial of a basic income sustaining public welfare benefit [unemployment compensation]."

- **A federal judge in Philadelphia granted judgment for the city against a Seventh-Day Adventist church to which the city had issued a building permit and then revoked it *after construction had commenced*** when the city discovered it had erred in calculating the number of parking spaces its code would require.

- **Religious student groups or clubs are penalized if they require that their student leaders share a particular religious belief.** Many campuses deny official charter status to any group that discriminates in its leadership selection based on religion. This means that the chapter cannot meet on campus, use campus media to announce their activities, or distribute literature to their peers. Legal battles have taken place at: University of Arizona, University of Minnesota, University of Kansas, University of Toledo, Texas Institute of Technology, Johnson State University (VT), California State University - Monterey Bay, and Georgia Institute of Technology.

HB

392

Alaska State Legislature

Representative Jim Whitaker
House Special Committee on Oil and Gas, Chairman
House Resources Committee
House Health, Education, and Social Services Committee
House State Affairs Committee
House Special Committee on Fisheries

Session:
State Capitol, Room 13
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070

Interim:
119 N. Cushman St. Suite 213
Fairbanks, Alaska 99701
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House of Representatives
District 31

Sponsor Statement
HB 392
Continuances of CINA Hearings

HB392 acknowledges that, at the 48 hour hearing during which the court determines whether a child is a "Child In Need of Aid", the parent or guardian of that child may request a continuance of up to seven days, and instructs the court to advise the parent or guardian of that right at the time of the hearing.

When the State takes action to protect the safety of a child, it is an emotionally charged and very confusing situation for a parent. Often, at the time of the first hearing, which occurs within 48 hours of the time the child is taken into custody, parents have not had an opportunity to see the allegations made against them. This legislature recognizes that parents may need time to comprehend and respond to those allegations. For this reason, HB392 ensures that parents and guardians are informed of their right to request a continuance.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 392

Revision Date/Time (Note if correction): _____
Dept. Affected: Health and Social Services
Title: Relating to continuances in temporary placement hearings following emergency custody.
BRU: Family and Youth Services
Component: FYS Management
Sponsor: Rep. Whitaker
COMPONENT SERIAL NO. 2306
Requestor: House (HES)
See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
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						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: $0.0

POSITIONS:

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Department if enacted.

Prepared by: Theresa Tanory, Director
Phone: 465-3191
Division: Family and Youth Services
Date/Time: 2/23/00 3:06 PM

Approved by Commissioner: Karen Perdue, Commissioner
Date: 2/28/00
Agency: Department of Health & Social Services

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Also, on page 1 at lines 1 and 7, and on page 2 at line 3, the word "placement" should be replaced with the word "custody." This more accurately reflects that the precipitating issue in the hearing is that the child has been taken into emergency custody. Placement is addressed only after probable cause for emergency custody has been found, at the end of this section.

Also, to improve the internal consistency of this statute, the words "or supervision" should be added to section 1, on page 2, at the end of line 7. This reflects more accurately that after finding probable cause, the court may either temporarily place the child with the department or may return the child to the child's parent or guardian subject to departmental supervision, as provided in AS 47.10.142 (e).

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 392

Revision Date/Time (Note if correction) _____ Dept. Affected Law

Title "An Act relating to continuances for temporary placement hearings ... emergency custody of a minor ..." BRU Civil Division

Component Human Services

Sponsor Representative Whitaker

Requester House HESS Committee Component No. 2208

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

HB 392 allows the parent of guardian of a minor to request the continuance of the temporary placement hearing for up to seven days in order to prepare a response to the allegation that the child is a child in need of aid. The bill further amends Rule 10, Alaska Child in Need of Aid Rules to parallel the statutory change.

This bill will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Joan M Kasson Phone 465-5370

Division Attorney General's Office Date/Time 2/25/00, 4:49 PM

Approved by Commissioner Bruce M. Botelho, Attorney General Date 2/25/00

Agency Department of Law

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HB 396

STATE OF ALASKA

ALASKA COMMISSION ON POSTSECONDARY EDUCATION

TONY KNOWLES, GOVERNOR

3030 VINTAGE BLVD.
JUNEAU, ALASKA 99801-7109
VOICE (800) 441-2962
In Juneau 465-6740
TDD (907) 465-3143
FAX (907) 465-3293

February 25, 2000

VIA FACSIMILE TRANSMISSION

The Honorable Ethan Berkowitz
Alaska House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Re: HB 396, an Act transferring the assets, liabilities, and responsibilities...of the Alaska Student Loan Corporation to the Alaska Housing Finance Corporation...

Dear Representative Berkowitz:

I am writing in response to your February 18, 2000 request for information regarding the "value" of the Alaska Student Loan Corporation (ASLC or Corporation) and soliciting comment on House Bill 396.

Subsequent to receiving your request, ASLC Finance Officer Sheila King and I initiated a brief telephone call with your aide Patrick Flynn to gain a better understanding of the objectives of HB 396. In order to provide an appropriate valuation of the ASLC, we inquired about your intent to either continue or terminate operation of the programs currently funded by the ASLC. Patrick advised that while the bill as introduced may not yet accomplish this objective, your intent is for the Alaska Housing Finance Corporation (AHFC) to acquire the assets of the ASLC in return for a payment in some amount to the State. In other words, the State sells the ASLC to AHFC. The assets, liabilities, and responsibilities of the Corporation become those of AHFC. No changes to the operations of the Alaska Commission on Postsecondary Education or its programs are proposed.

As you may be aware, in recent years the Corporation has made dramatic strides in improving its financial stability and credit standing, and in lowering borrowing costs for our customers. In FY99, the Corporation has had net income at a recognizable level for the first time in its history, and loan rates for borrowers are at the lowest level in five years. As a result of all of these improvements, last year the Corporation's bonds received a full ratings upgrade to the double-A level.

While I understand that this bill is not intended to be hostile to the Corporation or its programs, I must advise you that HB 396 poses several negative impacts to the

Student Loan Program. We have consulted with the Corporation's financial advisor who indicates that the financial community will, in all likelihood, perceive the proposed transaction negatively in relation to the Corporation's bonds and future bonds required to fund the program. In the event that the Corporation's bond rating is adversely impacted,our borrowers will face increased interest costs, as the cost of bonding would be higher. In addition to raising costs paid by the students and their families who participate in our programs, these higher costs could inhibit future bonding for the program due to bond covenants to which the Corporation's assets are subject, relative to all outstanding bonds.

Additionally, I am convinced that the changes mandated by the bill to eliminate the Corporation board, giving control over funding decisions, strategies, and program development to the AHFC, would put at risk the public policy objectives of our programs. While as two state enterprise organizations there are some similarities in the missions of AHFC and ASLC, there are also substantive differences. The ASLC is focused on remaining a solvent, financially healthy organization able to provide as low a cost of educational financing for Alaskans as is feasible. The AHFC, on the other hand, has evolved into a revenue producing enterprise of the State. If the Student Loan Program were to be run as a subsidiary enterprise, expected to contribute in any substantial way to an AHFC income stream, it would require program managers to deviate from the priorities currently set by the Corporation Board and the Commission. These priorities currently include continued reduction in lending rates, developing financial incentives for good repayment behavior, and expanding services to include participation as a Federal Family Education Loan Program (FFELP) lender. ASLC's participation in FFELP would provide significant benefits to the State and Alaska students.

In providing an estimated value of the Corporation, the intent of the bill was considered. With the understanding that no changes in the operation of the program are anticipated and given that the assets of each entity are assets of the State, the appropriate valuation method recommended by our financial advisors is the present value of the expected future stream of estimated payments that would be received by AHFC. These payments are described in Governor Knowles' proposed return of contributed capital legislation (HB 373/SB 270). This value, through 2015, is $14,232,300.

Thank you again for this opportunity to provide comment. Any questions regarding this matter can be addressed to either myself or to Ms. King. Our numbers are 465-6740 and 465-6757, respectively.

Sincerely,

Diane Barrans
Executive Director

cc: Members, Alaska Student Loan Corporation
Members, Alaska Commission on Postsecondary Education

ALASKA MUNICIPAL BOND BANK AUTHORITY

333 Willoughby Avenue, 11th floor
P.O. Box 110405
Juneau, Alaska 99811-0405

Tel (907) 465-2388
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E-mail: ambba@revenue.state.ak.us

FEB 2 8 2000

February 25, 2000

The Honorable Ethan Berkowitz
State of Alaska House of Representatives Minority Leader
Alaska State Capital
Juneau, AK 99801-1182

Dear Representative Berkowitz:

Thank you for the opportunity to discuss House Bill 396 last week. The discussion was productive and underscored our common goal of ensuring that cost savings and value the Alaska Municipal Bond Bank Authority brings to the State of Alaska and all the municipalities of the State continue.

You have requested an estimate of the value of the Alaska Municipal Bond Bank Authority. As of June 30, 1999 the "net worth" of the Authority is approximately $34.8 million, of which approximately $19 million could be extracted if the program were eliminated, with the remaining $15.8 million trickling in over the next 20 years as outstanding obligations matured and reserves were released. This net worth is net of the $914,756 that the Alaska Municipal Bond Bank Authority will remit to the State of Alaska General Fund from its fiscal year 1999 operations.

We discussed, but I would like to re-emphasize, that this one-time injection of capital could cost the Alaska and it's municipalities close to $500,000 per year if capital costs rise by a slight three-tenths of one percent (Many communities would experience much greater increases in the cost of capital).

During FY 1999 the Bond Bank issued general obligation and revenue bonds amounting to $32.8 million. The Bond Bank currently has $161.3 million in total bonds outstanding for projects in 23 Alaskan communities, ranging from the Municipality of Anchorage to the City of Unalaska and the Fairbanks North Star Borough to the City of Wrangell. In FY 2000 we anticipate the Alaska Municipal Bond Bank Authority will issue approximately $28 million for nine underlying borrowers, three of which have never issued bonds.

Sincerely,

Deven Mitchell
Executive Director

Cc: Senator Al Adams

1-LS1394\H
Cook
2/24/00

CS FOR HOUSE BILL NO. 396( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BERKOWITZ

A BILL

FOR AN ACT ENTITLED

"An Act transferring the assets, liabilities, and responsibilities of the Alaska Municipal Bond Bank Authority and of the Alaska Student Loan Corporation to the Alaska Housing Finance Corporation; and relating to the Alaska Housing Finance Corporation."

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

* **Section 1.** AS 09.38.015(c) is amended to read:

(c) Property of the state, a municipality, <u>or a</u> [AND OF THE ALASKA MUNICIPAL BOND BANK AUTHORITY OR ANOTHER] state public corporation is exempt.

* **Sec. 2.** AS 14.40.956 is amended to read:

Sec. 14.40.956. Cooperation with other authorities. In issuing a bond, the corporation may request the assistance of and work with the Alaska Industrial Development and Export Authority and the Alaska <u>Housing Finance Corporation</u> [MUNICIPAL BOND BANK AUTHORITY]. The Alaska Industrial Development and

Export Authority may invest in and issue bonds for space-related projects of the Alaska Aerospace Development Corporation. The Alaska Industrial Development and Export Authority and the Alaska **Housing Finance Corporation** [MUNICIPAL BOND BANK AUTHORITY] may purchase and market bonds of the Alaska Aerospace Development Corporation.

* **Sec. 3.** AS 14.42.130(b) is amended to read:

(b) Public notice of a meeting of the board at which the issuance of corporation bonds **under AS 14.42.220** is authorized shall be provided at least 24 hours before the meeting.

* **Sec. 4.** AS 14.42.140 is amended to read:

Sec. 14.42.140. Minutes of meetings. The board shall keep minutes of each meeting **held to carry out its responsibilities under AS 14.42.130 - 14.42.390** and send a certified copy to the governor and to the Legislative Budget and Audit Committee.

* **Sec. 5.** AS 14.42.150 is amended to read:

Sec. 14.42.150. Administration of affairs. The board shall manage the assets and business of the corporation and may adopt bylaws and regulations, in accordance with AS 44.62 (Administrative Procedure Act), governing the manner in which the business of the corporation **under AS 14.42.130 - 14.42.390** is conducted and the manner in which its powers **under AS 14.42.130 - 14.42.390** are exercised. The board shall delegate supervision of the administration of the corporation to the executive **director** [OFFICER] of the corporation.

* **Sec. 6.** AS 14.42.170 is amended to read:

Sec. 14.42.170. Staff. The employees of the Alaska Commission on Postsecondary Education shall serve as staff for the corporation **in connection with the exercise of its responsibilities under AS 14.42.130 - 14.42.390**.

* **Sec. 7.** AS 14.42.190 is amended to read:

Sec. 14.42.190. Budget. The **portion of the** operating budget of the corporation **used in connection with the exercise of its responsibilities under AS 14.42.130 - 14.42.390** is subject to AS 37.07 (Executive Budget Act).

* **Sec. 8.** AS 14.42.200 is amended to read:

Sec. 14.42.200. General powers. In addition to other powers granted **under AS 14.42.130 - 14.42.390** [IN THIS CHAPTER], the corporation**, in the exercise of its power and functions under AS 14.42.130 - 14.42.390,** may

(1) sue and be sued in its own name;

(2) adopt an official seal;

(3) adopt regulations under AS 44.62 (Administrative Procedure Act) to carry out the purposes of this chapter;

(4) make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of the powers and functions of the corporation **under AS 14.42.130 - 14.42.390**, including contracts with a person or governmental entity;

(5) receive, administer, and comply with the conditions and requirements respecting any appropriation, gift, grant, or donation of property or money;

(6) borrow money as provided in **AS 14.42.220** [THIS CHAPTER] to carry out its corporate purposes **under AS 14.42.130 - 14.42.390** and issue its obligations as evidence of the borrowing;

(7) include in a borrowing **under AS 14.42.220** the amounts to pay financing charges, interest on the obligations for a period not exceeding one year after the date on which the corporation estimates funds will otherwise be available to pay the interest, consultant, advisory, and legal fees, and other expenses necessary or incident to the borrowing;

(8) invest or reinvest, subject to its contracts with noteholders and bondholders, money held **under AS 14.42.130 - 14.42.390** by the corporation as set out in AS 37.10.071;

(9) collect from a borrower amounts owed with respect to a student loan the corporation has purchased;

(10) gather information on student loans available to residents of Alaska and disseminate the information to reasonably assure that qualified residents are aware of financial resources available to those attending or desiring to attend institutions for which loans may be made under AS 14.43.090 - 14.43.325, 14.43.600 -

14.43.700, or 14.43.710 - 14.43.750;

(11) service student loans held by the corporation;

(12) purchase or participate in the purchase of student loans;

(13) contract in advance for the purchase or sale of student loans;

(14) sell or participate in the sale, either public or private and on terms authorized by the board, of student loans to the Student Loan Marketing Association or to other purchasers;

(15) collect and pay reasonable fees and charges in connection with the purchase, sale, and servicing of student loans;

(16) enter into agreements with the federal government, including guaranty agreements and supplemental guaranty agreements as described in the United States Higher Education Act of 1965, as necessary to provide for the receipt by the corporation of administrative allowances and other benefits available under the United States Higher Education Act of 1965;

(17) administer federal money allotted to the state involving insured student loans and related administrative costs and other matters;

(18) enter into agreements with the Alaska Commission on Postsecondary Education relating to student loans [, THE ADMINISTRATION OF THE STUDENT LOAN FUND CREATED UNDER AS 14.42.210,] and the payment of and security for bonds of the corporation **issued under AS 14.42.220**;

(19) to the extent permitted under contracts with bond holders, consent to the modification of the rate of interest, time of payment of an installment of principal or interest, or other terms of a student loan purchased by the corporation;

(20) procure insurance against any loss in connection with the operation of its programs **under AS 14.42.130 - 14.42.390**;

(21) provide advisory services to borrowers and other participants in the corporation's programs **under AS 14.42.130 - 14.42.390**;

(22) enter into credit facility agreements **to carry out the purposes of AS 14.42.130 - 14.42.390** and make pledges, covenants, and agreements with respect to the repayment of borrowings under the credit facility agreements;

(23) do all acts necessary, convenient, or desirable to carry out the

powers expressly granted or necessarily implied in **AS 14.42.130 - 14.42.390** [AS 14.42.100 - 14.42.390].

* **Sec. 9.** AS 14.42.210(a) is amended to read:

(a) The student loan fund is established in the corporation. The [STUDENT LOAN] fund is a trust fund to be used to carry out the purposes of **AS 14.42.130 - 14.42.390** [AS 14.42.100 - 14.42.390], AS 14.43.090 - 14.43.325, 14.43.600 - 14.43.700, 14.43.710 - 14.43.750, and AS 14.44.025. The fund consists of money or assets appropriated or transferred to the corporation for the fund and money or assets deposited in it by the corporation. The corporation may establish separate accounts in the fund.

* **Sec. 10.** AS 14.42.210(b) is amended to read:

(b) Money and other assets of the student loan fund may be used to secure bonds of the corporation **issued under AS 14.42.220**, invested in student loans and investments under AS 37.10.071, and used to purchase loans approved under AS 14.43.090 - 14.43.325, 14.43.600 - 14.43.700, or 14.43.710 - 14.43.750.

* **Sec. 11.** AS 14.42.210 is amended by adding a new subsection to read:

(d) At the end of each fiscal year, the corporation shall determine whether assets of the student loan fund exceed the amount necessary to carry out the purposes of the fund under (a) and (b) of this section. If the corporation determines that there are excess assets in the student loan fund, it shall notify the legislature of the amount of the excess, and the legislature may appropriate that amount to the power cost equalization and rural electric capitalization fund (AS 42.45.100).

* **Sec. 12.** AS 14.42.220(f) is amended to read:

(f) The corporation may not issue bonds **under this section**, other than refunding bonds, during any two consecutive fiscal years in an aggregate amount greater than $125,000,000 unless the legislature, by law, approves issuance of a greater amount.

* **Sec. 13.** AS 14.42.270 is amended to read:

Sec. 14.42.270. Pledge and agreement of state. The state pledges to and agrees with holders of bonds issued by the **former Alaska Student Loan Corporation or by the Alaska Housing Finance Corporation under AS 14.42.220**

[CORPORATION] that the state will not limit or alter the rights and powers vested in the corporation under **AS 14.42.130 - 14.42.390** [AS 14.42.100 - 14.42.390] to fulfill the terms of a contract made by the **former Alaska Student Loan Corporation or by the Alaska Housing Finance Corporation under AS 14.42.220** [CORPORATION] with the bondholders or in any way impair the rights and remedies of the bondholders until the bonds, together with the interest on them with interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the bondholders, are fully met and discharged. The corporation may include this pledge and agreement of the state in a contract with bondholders.

* **Sec. 14.** AS 14.42.280 is amended to read:

Sec. 14.42.280. Exemption from taxation. The real and personal property of the corporation and its assets, income, and receipts are declared to be the property of a political subdivision of the state and devoted to an essential public and governmental function and purpose, and the property, assets, income, receipts, and other interests of the corporation are exempt from all taxes and special assessments of the state or a political subdivision of the state, including municipalities, school districts, public utility districts, and other governmental units. Bonds of the corporation **issued under AS 14.42.220** are declared to be issued by a political subdivision of the state and for an essential public and governmental purpose, and the bonds, interest on them, income from them, and transfer of them, and all assets, income, and receipts pledged to pay or secure the payment of the bonds, or interest on them, are exempt from taxation by or under the authority of the state, except for inheritance and estate taxes and taxes on transfers by or in contemplation of death.

* **Sec. 15.** AS 14.42.290 is amended to read:

Sec. 14.42.290. Bonds legal investments for fiduciaries. The bonds of the corporation **issued under AS 14.42.220** are securities in which public officers and bodies of the state, municipalities, insurance companies, insurance associations, other persons carrying on an insurance business, banks, bankers, trust companies, savings banks, savings associations, building and loan associations, investment companies, other persons carrying on a banking business, administrators, guardians, executors,

trustees, other fiduciaries, and other persons who are authorized to invest in bonds or other obligations of the state [,] may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the corporation **issued under AS 14.42.220** are also securities that may be deposited with and may be received by public officers and bodies of the state and municipalities for any purpose for which the deposit of bonds or other obligations of the state is not or may be authorized.

* **Sec. 16.** AS 14.42.300 is amended to read:

Sec. 14.42.300. Operation of certain statutes excepted. (a) **In the exercise of its powers and functions under AS 14.42.130 - 14.42.390, the** [THE] corporation

(1) is not a municipality as the term is defined in AS 01.10.060**;**

(2) except [. EXCEPT] as provided in AS 14.42.190, [THE CORPORATION] is not subject to AS 37**; and**

(3) for [. FOR] all other purposes**,** [THE CORPORATION] is a political subdivision and an instrumentality of the state.

(b) The funds, income, and receipts of the corporation **that are obtained by it in the exercise of its powers and functions under AS 14.42.130 - 14.42.390** are not money of the state, nor may real property in which the corporation has an interest be considered land owned in fee by the state or to which the state may become entitled or in any way land belonging to the state, or state land referred to in art. VIII of the Alaska Constitution.

* **Sec. 17.** AS 14.42.310 is amended to read:

Sec. 14.42.310. Annual audit. The financial records of the corporation **that relate to its exercise of its powers and functions under AS 14.42.130 - 14.42.390** shall be audited annually by the legislative auditor or by a certified public accountant approved by the legislative auditor. The legislative auditor may prescribe the form and content of **these** [THE] financial records of the corporation and shall have access to these records at any time.

* **Sec. 18.** AS 14.42.390 is amended to read:

Sec. 14.42.390. Definitions. In **AS 14.42.130 - 14.42.390** [AS 14.42.100 - 14.42.390],

(1) "board" means the board of directors of the corporation;

(2) "corporation" means the Alaska **Housing Finance** [STUDENT LOAN] Corporation **(AS 18.56.020)**.

*** Sec. 19.** AS 14.43.090(a) is amended to read:

(a) There is created a scholarship revolving loan fund. The fund shall be used to make scholarship loans to students selected under AS 14.43.090 - 14.43.160, to pay the costs of collecting scholarship loans that are in default if those costs are not recovered from the student, and to pay the costs of administering the fund. Unless the instrument evidencing the scholarship loan has been sold or assigned to the **former** Alaska Student Loan Corporation **or to the Alaska Housing Finance Corporation**, repayments of principal and interest on a scholarship loan shall be paid into the scholarship revolving loan fund. If money estimated to be available is inadequate to fully fund estimated scholarship loans for any fiscal year, additional funding from the general fund may be requested and appropriated for that year.

*** Sec. 20.** AS 14.43.090(d) is amended to read:

(d) The commission may sell or assign notes and other instruments evidencing scholarship loans to the Alaska **Housing Finance** [STUDENT LOAN] Corporation and enter into agreements with the corporation relating to loans [, THE ADMINISTRATION OF THE STUDENT LOAN FUND CREATED UNDER AS 14.42.210,] and the payment of and security for bonds of the corporation. Proceeds from the sale or assignment of notes and other instruments shall be deposited in the scholarship revolving loan fund.

*** Sec. 21.** AS 14.43.120(f) is amended to read:

(f) Interest on a loan made under AS 14.43.090 - 14.43.160 is equal to the interest rate

(1) paid in each year on bonds issued by the **former** Alaska Student Loan Corporation **or the Alaska Housing Finance Corporation** under AS 14.42.220; and

(2) necessary to pay the administrative cost of the student loan program that is represented by the loan.

*** Sec. 22.** AS 14.43.120(r) is amended to read:

(r) The rate of interest, time of payment of an installment of principal or interest, or other terms of a scholarship loan may be modified if required to establish or maintain tax-exempt status under 26 U.S.C. 103 (Internal Revenue Code of 1986), as amended, for the interest on bonds issued by the **former** Alaska Student Loan Corporation **or the Alaska Housing Finance Corporation**.

*** Sec. 23.** AS 14.43. 20(t) is amended to read:

(t) Payment of interest under (l) of this section and forgiveness under (s) of this section are subject to appropriation by the legislature. Money obtained from the sale of bonds by the **former Alaska** Student Loan Corporation **or the Alaska Housing Finance Corporation** under AS 14.42.220 may not be appropriated for the payment of interest or the forgiveness of loans.

*** Sec. 24.** AS 14.43.120(u) is amended to read:

(u) The commission by regulation shall set a loan origination fee, not to exceed five percent of the total scholarship loan amount, to be assessed upon a scholarship loan that is funded from the student loan fund of the Alaska **Housing Finance** [STUDENT LOAN] Corporation. The loan origination fee shall be deducted at the time the loan is disbursed. Subject to appropriation, the loan origination fees shall be deposited into an origination fee account within the student loan fund of the Alaska **Housing Finance** [STUDENT LOAN] Corporation, and subsequently used by the corporation to offset losses incurred as a result of death, disability, default, or bankruptcy of the borrower.

*** Sec. 25.** AS 14.43.255(a) is amended to read:

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

*** Sec. 26.** AS 14.43.255(c) is amended to read:

(c) The commission may sell or assign notes and other instruments evidencing memorial scholarship loans to the Alaska **Housing Finance** [STUDENT LOAN]

Corporation and enter into agreements with the corporation relating to loans [, THE ADMINISTRATION OF THE STUDENT LOAN FUND CREATED UNDER AS 14.42.210,] and the payment of and security for bonds of the corporation. Proceeds from the sale or assignment of a note or other instrument shall be deposited in the appropriate memorial scholarship loan fund account.

* **Sec. 27.** AS 14.43.620 is amended to read:

Sec. 14.43.620. Teacher scholarship revolving loan fund. (a) There is created a teacher scholarship revolving loan fund. The fund shall be used to make scholarship loans to students selected under AS 14.43.600 - 14.43.700. Unless the instrument evidencing the teacher scholarship loan has been sold or assigned to the **former** Alaska Student Loan Corporation **or the Alaska Housing Finance Corporation**, repayments of principal and interest on a teacher scholarship loan shall be paid into the teacher scholarship revolving loan fund and shall be used to make new teacher scholarship loans. If estimated funds available are inadequate to fully fund estimated teacher scholarship loans for any fiscal year, additional funding from the general fund may be requested and appropriated for that year.

(b) The commission may sell or assign notes and other instruments evidencing teacher scholarship loans to the Alaska **Housing Finance** [STUDENT LOAN] Corporation and enter into agreements with the corporation relating to loans [, THE ADMINISTRATION OF THE STUDENT LOAN FUND CREATED UNDER AS 14.42.210] and the payment of and security for bonds of the corporation. Proceeds from the sale or assignment of the notes or other instruments shall be deposited in the teacher scholarship revolving loan fund.

* **Sec. 28.** AS 14.43.720 is amended to read:

Sec. 14.43.720. Family education loan account. (a) The family education loan account is created within the scholarship revolving loan fund (AS 14.43.090). The account shall be used to make family education loans to families selected under AS 14.43.710 - 14.43.750, to pay the costs of collecting family education loans that are in default if those costs are not recovered from the family, and to pay the costs of administering the account. Unless the instrument evidencing the family education loan has been sold or assigned to the **former** Alaska Student Loan Corporation **or the**

Alaska Housing Finance Corporation, repayments of principal and interest on family education loans shall be paid into the family education loan account. If estimated funds available from family education loan repayments are inadequate to fully fund estimated family education loans in a fiscal year, additional funding from the general fund may be requested and appropriated for that year.

(b) The commission may sell or assign notes and other instruments evidencing family education loans to the Alaska Housing Finance [STUDENT LOAN] Corporation and enter into agreements with the corporation relating to loans [, THE ADMINISTRATION OF THE STUDENT LOAN FUND CREATED UNDER AS 14.42.210,] and the payment of and security for bonds of the corporation. Proceeds from the sale or assignment of notes and other instruments shall be deposited in the family education loan account.

* **Sec. 29.** AS 21.76.080(b) is amended to read:

(b) An expenditure may be made from a joint insurance fund only to

(1) pay claims, losses, or benefits, including interest on them, and the administrative and adjustment expenses incurred in connection with them, involving the types of protection for which the fund provides coverage as specified in the joint insurance agreement;

(2) pay contractual obligations of a joint insurance fund established by a municipal joint insurance arrangement to the Alaska Housing Finance Corporation [MUNICIPAL BOND BANK AUTHORITY] or other lender; and

(3) purchase insurance coverage for members of a municipal joint insurance arrangement on a group basis.

* **Sec. 30.** AS 44.85.010 is amended to read:

Sec. 44.85.010. Legislative policy. (a) It is the policy of the state

(1) to foster and promote by all reasonable means the provision of adequate capital markets and facilities for borrowing money by municipalities in the state to finance capital improvements or for other authorized purposes, to assist these municipalities in fulfilling their capital needs and requirements by use of borrowed money within statutory interest rate or cost of borrowing limitations, to the greatest extent possible to reduce costs of borrowed money to taxpayers and residents of the

state, and equally to encourage continued investor interest in the purchase of bonds or notes of municipalities as sound and preferred securities for investment;

(2) to encourage municipalities to continue their independent undertakings and financing of capital improvements and other authorized purposes and to assist them by making capital funds available at reduced interest costs for orderly financing of capital improvements and other purposes especially during periods of restricted credit or money supply, particularly for those municipalities not otherwise able to borrow for capital needs;

(3) to assist municipalities to provide for adequate insurance coverage by authorizing the Alaska **Housing Finance Corporation** [MUNICIPAL BOND BANK AUTHORITY] to issue negotiable or nonnegotiable revenue bonds, notes, or certificates of participation either directly or through an entity it may create for the purpose of providing a self-insurance program for municipalities or municipal joint insurance arrangements organized under AS 21.76.

(b) The legislature further declares that

(1) the exercise of the powers of the state in the interest of its municipalities is required to further and implement the policies declared in (a) of this section by authorizing the **Alaska Housing Finance Corporation to exercise** [CREATION OF A STATE BOND BANK AUTHORITY AS A BODY CORPORATE AND POLITIC THAT WILL HAVE] full powers to borrow money and to issue its bonds and notes to make capital funds available for borrowing by municipalities and by granting broad powers to the **corporation to function as a** bond bank authority to carry out the declared policies, which are in the public interest of the state and its taxpayers and residents;

(2) state funds should be applied or authorized to be paid to a state **corporation in its capacity as a** bond bank authority only to provide adequate assurance and security to the holders of the bonds or notes of the bond bank authority;

(3) the **Alaska Housing Finance Corporation** [BOND BANK AUTHORITY] should conduct its operations to provide the lowest rates in terms of borrowing to municipalities as is consistent with a self-supporting operation with no expectation of subsidization with state funds; the legislature does not intend that the

bond bank authority be utilized as a means to finance municipalities beyond their capability to meet repayment schedules and debt service requirements of bonds or notes.

* **Sec. 31.** AS 44.85.070 is amended to read:

Sec. 44.85.070. Staff. [THE BOND BANK AUTHORITY SHALL EMPLOY AN EXECUTIVE SECRETARY WHO MAY WITH THE APPROVAL OF THE BOND BANK AUTHORITY SELECT AND EMPLOY ADDITIONAL STAFF AS NECESSARY. EMPLOYEES AND AGENTS OF THE BOND BANK AUTHORITY OTHER THAN LEGAL COUNSEL AND THE EXECUTIVE SECRETARY ARE IN THE CLASSIFIED SERVICE UNDER AS 39.25.] In addition to its staff of regular employees, the bond bank authority may contract for and engage the services of the bond counsel, consultants, experts, and financial advisors the bond bank authority considers necessary for the purpose of developing information, or conducting studies, investigations, hearings, or other proceedings.

* **Sec. 32.** AS 44.85.080 is amended to read:

Sec. 44.85.080. Powers of bond bank authority. The bond bank authority may

(1) sue and be sued;

(2) adopt and alter an official seal;

(3) make and enforce bylaws and regulations for the conduct of its business and for the use of its services and facilities;

(4) maintain an office at any place in the state;

(5) acquire, hold, use, and dispose of its income, revenues, funds, and money **to carry out the purposes of this chapter**;

(6) acquire, rent, lease, hold, use, and dispose of other personal property for its purposes **under this chapter**;

(7) subject to AS 44.85.100(b), borrow money and issue its negotiable bonds or notes **under this chapter** and provide for and secure their payment, provide for the rights of their holders and purchase, hold and dispose of any [OF ITS] bonds or notes **issued under this chapter**;

(8) fix and revise from time to time and charge and collect fees and

charges for the use of its services or facilities;

(9) **to carry out the purposes of this chapter,** accept gifts or grants from the United States, or from any governmental unit or person, firm, or corporation, carry out the terms or provisions or make agreements with respect to the gifts or grants, and do all things necessary, useful, desirable, or convenient in connection with procuring, accepting, or disposing of the gifts or grants;

(10) do anything authorized by this chapter, through its officers, agents, or employees or by contracts with a person;

(11) make, enter into, and enforce all contracts necessary, convenient, or desirable for the purposes of the bond bank authority or pertaining to a loan to a political subdivision, a purchase or sale of municipal bonds or other investments, or the performance of its duties and execution of any of its powers under this chapter;

(12) purchase or hold municipal bonds at prices and in a manner the bond bank authority considers advisable, and sell municipal bonds acquired or held by it at prices without relation to cost and in a manner the bond bank authority considers advisable;

(13) invest funds or money of the bond bank authority not required at the time of investment for loan to political subdivisions for the purchase of municipal bonds, in the same manner as permitted for investment of funds belonging to the state, except as otherwise provided in this chapter;

(14) prescribe the form of application or procedure required of a political subdivision for a loan or purchase of its municipal bonds, fix the terms and conditions of the loan or purchase, and enter into agreements with political subdivisions with respect to loans or purchases;

(15) render services to a political subdivision in connection with a public or private sale of its municipal bonds, including advisory and other services, and charge for services rendered;

(16) charge for its costs and services in review or consideration of a proposed loan to a political subdivision or purchase by the bond bank authority of municipal bonds of the political subdivision, whether or not the loan is made or the municipal bonds purchased;

(17) fix and establish terms and provisions with respect to a purchase of municipal bonds by the bond bank authority, including date and maturities of the bonds, provisions as to redemption or payment before maturity, and any other matters which in connection with the purchase are necessary, desirable, or advisable in the judgment of the bond bank authority;

(18) procure insurance against any losses in connection with its property, operations, or assets in amounts and from insurers as it considers desirable;

(19) to the extent permitted under [ITS] contracts with the holders of bonds or notes **issued under this chapter** [OF THE BOND BANK AUTHORITY], consent to modification of the rate of interest, time and payment of installment of principal or interest, security or any other term of a bond or note, contract or agreement of any kind to which the bond bank authority is a party;

(20) by regulation, create a new entity for the purpose of issuing negotiable or nonnegotiable revenue bonds, notes, or certificates of participation to finance a self-insurance program for municipalities or municipal joint insurance arrangements organized under AS 21.76; the powers, duties, and membership of the new entity shall be limited to the powers, duties, and membership of the authority and stated in the regulation; the new entity shall be a public corporation and an instrumentality of the state with the same legal existence and continuing succession as the bond bank authority; and

(21) do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter.

* **Sec. 33.** AS 44.85.100 is amended to read:

Sec. 44.85.100. Annual report and audit. (a) Before October 1 of each year the bond bank authority shall make a report of its activities **under this chapter** for the preceding fiscal year to the governor and notify the legislature that the report is available. The report **must** [SHALL] set out a complete operating and financial statement covering its operations **under this chapter** during the year. The bond bank authority must have an audit of its books and accounts **kept under this chapter** made at least once in each year by certified public accountants**. The** [AND THE] cost of the audit shall be considered an expense of the bond bank authority**,** and a copy of the

audit shall be filed with the commissioner of revenue and the legislature.

(b) The bond bank authority shall include in the report required by (a) of this section an estimate of the amount of revenue bonds of the bond bank authority to be issued **under this chapter** during the fiscal year following the fiscal year in which the report is submitted. **Under this chapter, the** [THE] bond bank authority may not issue revenue bonds, other than refunding bonds, in excess of $50,000,000 during any fiscal year beginning after June 30, 1981, unless the legislature, by law, approves the estimate required by this subsection for that fiscal year.

* **Sec. 34.** AS 44.85.110 is amended to read:

Sec. 44.85.110. Annual budget. The bond bank authority shall prepare and submit [AN ANNUAL BUDGET] under AS 37.07 (Executive Budget Act) **the portion of the Alaska Housing Finance Corporation budget used in connection with the exercise of its responsibilities under this chapter**.

* **Sec. 35.** AS 44.85.120 is amended to read:

Sec. 44.85.120. Care and custody of bonds. The bond bank authority, in accordance with AS 36.30 (State Procurement Code), may enter into agreements or contracts with a bank, trust company, banking or financial institution inside or outside the state as may be necessary, desirable, or convenient, in the opinion of the bond bank authority, for rendering services in connection with the care, custody, or safekeeping of municipal bonds or other investments held or owned by the bond bank authority **under this chapter**, for rendering services in connection with the payment or collection of amounts payable as to principal or interest, and for rendering services in connection with the delivery to the bond bank authority of municipal bonds or other investments purchased by it or sold by it **under this chapter**, and to pay the cost of those services. The bond bank authority may also, in connection with any of the services to be rendered by a bank, trust company, or banking or financial institution as to the custody and safekeeping of its municipal bonds or investments **under this chapter**, require security in the form of collateral bonds, surety agreements, or security agreements in such form and amount as, in the opinion of the bond bank authority, is necessary or desirable.

* **Sec. 36.** AS 44.85.180(a) is amended to read:

(a) Subject to AS 44.85.100(b), the bond bank authority may issue its bonds or notes in principal amounts that it considers necessary to provide funds for any purposes under this chapter, including

(1) the purchase of municipal bonds;

(2) the making of loans through the purchase of municipal bonds, notes, or certificates of participation secured by an agreement between the bond bank authority and a municipality or a municipal joint insurance arrangement organized under AS 21.76;

(3) the payment, funding, or refunding of the principal of, or interest or redemption premiums on, bonds or notes issued **under this chapter** [BY IT] whether the bonds or notes or interest to be funded or refunded have or have not become due;

(4) the establishment or increase of reserves to secure or to pay bonds or notes or interest on bonds or notes and all other costs or expenses of the bond bank authority incident to and necessary or convenient to carry out its corporate purposes and powers **under this chapter**.

* **Sec. 37.** AS 44.85.180(b) is amended to read:

(b) Except as otherwise provided in this chapter or by the bond bank authority, every issue of bonds or notes **under this chapter** shall be general obligations payable out of the revenues or funds of the bond bank authority, subject only to agreements with the holders of particular bonds or notes pledging a particular revenue or fund. Bonds or notes may be additionally secured by a pledge of a grant or contributions from the United States or the state or a political subdivision or a person, firm, or corporation, or a pledge of income or revenues, funds or money of the bond bank authority from any source whatsoever.

* **Sec. 38.** AS 44.85.180(c) is amended to read:

(c) Notwithstanding the provisions of (a) and (b) of this section, the total amount of [BOND BANK AUTHORITY] bonds and notes **issued under this chapter** outstanding at any one time, except bonds or notes issued to fund or refund bonds or notes, may not exceed $300,000,000.

* **Sec. 39.** AS 44.85.230 is amended to read: