

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9873 HOUSE JUDICIARY

1 (e) Except as provided in (g) of this section, the remedies provided under this
2 section are in addition to any other remedies provided by law.

3 (f) This section does not apply to an act for which a person is civilly liable
4 under (a) of this section if the act involves an amount or value of less than \$500.

5 (g) This section does not apply to claims, records, or statements made to
6 present or support a claim under

7 (1) AS 23.20 (Alaska Employment Security Act);

8 (2) AS 23.30 (Alaska Workers' Compensation Act);

9 (3) AS 43 (Revenue and Taxation);

10 (4) AS 47.25 (Public Assistance); or

11 (5) AS 47.27 (Alaska Temporary Assistance Program).

12 * **Sec. 3.** AS 37.10 is amended by adding new sections to read:

13 **Sec. 37.10.092. Limitation of actions; standard of proof.** (a) A civil action
14 under AS 37.10.090 may not be filed more than six years after the date of discovery
15 by the official of the state or municipality charged with responsibility to act in the
16 circumstances of the basis for the action or, in any event, no more than 10 years after
17 the date on which the act for which the civil action is filed was committed.

18 (b) In an action brought under AS 37.10.090, the state or a municipality is
19 required to prove all essential elements of the cause of action, including damages, by
20 a preponderance of the evidence.

21 (c) A guilty verdict rendered in a criminal proceeding charging false statements
22 or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere,
23 estops the defendant from denying the essential elements of the offense in a civil
24 action brought under AS 37.10.090 that involves the same activity as in the criminal
25 proceeding. This subsection does not apply to a guilty verdict upon a plea of nolo
26 contendere made before July 1, 2000.

27 **Sec. 37.10.094. Action by attorney general or municipal attorney.** (a) The
28 attorney general shall investigate acts for which a person may be civilly liable under
29 AS 37.10.090 involving state money or property. If the attorney general finds that a
30 person has committed or is committing an act for which civil liability is imposed under
31 AS 37.10.090, the attorney general may bring a civil action under AS 37.10.090

1 against that person. If the attorney general brings a civil action on a claim involving
2 municipal money or property as well as state money or property, the attorney general
3 shall, on the same date that the complaint is filed in this action, provide a copy of the
4 complaint to the appropriate prosecuting authority of the municipality.

5 (b) The prosecuting authority of a municipality shall investigate acts for which
6 a person may be civilly liable under AS 37.10.090 involving municipal money or
7 property. If the prosecuting authority of the municipality finds that a person has
8 committed or is committing an act for which the person is civilly liable under
9 AS 37.10.090, the prosecuting authority may bring a civil action against that person.
10 The prosecuting authority of a municipality may bring a civil action on behalf of the
11 state on a claim involving state money or property and municipal money or property,
12 and shall, on the date that the complaint is filed in the action, provide a copy of the
13 complaint to the attorney general. Within 60 days after receiving the complaint, the
14 attorney general shall do one of the following:

15 (1) notify the court that the attorney general intends to prosecute the
16 action on behalf of the state and municipality, in which case the attorney general shall
17 assume primary responsibility for prosecuting the action; or

18 (2) notify the court that the attorney general declines to prosecute the
19 action, in which case the prosecuting authority of the municipality may continue to
20 prosecute the action; notwithstanding AS 37.10.090, if the attorney general declines
21 to prosecute the action, the attorney general may authorize the prosecuting authority
22 of the municipality to assume lead responsibility for prosecuting the action for any
23 state money or property remaining in the action.

24 * Sec. 4. AS 36.30.687(c) and AS 37.10.100 are repealed.

25 * Sec. 5. This Act takes effect July 1, 2000.

AMENDMENT

Page 1, lines 1 and 2: delete all material (the title) and insert the following new material to read:

"An act creating a right for the state or a municipality to recover civil damages against a person who makes a false administrative claim for payment or approval from a state or municipal officer for payment of money or property or who knowingly receives the benefit of a false administrative claim presented to a state or municipal officer; and providing for an effective date."

Page 4, line 25: delete "serve" insert "provide" in its place
line 26: delete "on" and insert "to" in its place

Page 5, line 2: delete "serve" insert "provide" in its place
line 3: delete "on" and insert "to" in its place

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 8, 2000

SUBJECT: CSHB 425(CRA) on misrepresentations and false claims to the state
(Work Order No. 21-GH2029\D)

TO: Representative John Harris, Co-Chair
House Community and Regional Affairs Committee
Attn: John Manly

FROM: 
Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above. Since this bill did not originate in this office, the bill was generally reviewed while making the changes requested by the committee. The following comments are brought to your attention.

1. Title. The title appears to need some revision to satisfy the constitutional expression requirement. Currently it does not appear to cover the acts described under proposed AS 37.10.090(a)(6). It also does not appear to cover fully the former version of AS 37.10.090 that is being repealed and reenacted or AS 37.10.100, which is being repealed (and which was related to the former version of AS 37.10.090).

2. Court rule changes. The bill may be interpreted to make court rule changes that need to be disclosed in the title and in the text of the bill itself. Proposed AS 37.10.094(a) requires the attorney general to serve a copy of the complaint on the municipality and does not indicate whether the municipality must be made a party to the action or is being given the copy for informational purposes only. If the municipality is not required to be a party, these provisions appear to change Rule 5(a) of the Alaska Rules of Civil Procedure, which only requires that service be made on the parties.

Proposed AS 37.10.094(b) requires that the municipality serve a copy of the complaint on the attorney general and requires the attorney general to notify the municipality in 60 days whether the attorney general will conduct the action. Once again, if the attorney general is not a party at the outset, there may be a court rule change here. On the other hand, if (b) is interpreted to make the attorney general a party by the act of service, then the 60-day requirement may be interpreted to change the civil rules that provide for an answer to the complaint and do not provide for this type of notification.

3. Use of "violation." The use of "violation" in proposed AS 37.10.090, 37.10.092, and 37.10.094 does not appear to be an appropriate reference word for the acts covered by

Representative John Harris
March 8, 2000
Page 2

AS 37.10.090(a) of that section. The acts are not described as "violations" in (a) and, in addition, "violation" can be a technical term for the least serious of criminal offenses. It would be a good idea to use another descriptive term or phrase.

4. Drafting style. In addition to the above, there are some drafting style changes that need to be made.

Since the bill has passed out of your committee, you may wish to pass this memo along to the next committee of referral so that it can consider these issues.

If I may be of further assistance, please advise.

TLB:glc
00-115.glc

Attachment

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 5, 2000

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 451-2811
FAX: (907) 451-2846

P.O. BOX 110300-DIMOND COURT HOUS
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

The Honorable Pete Kott Chair
House Judiciary Committee
State Capitol
Juneau, Alaska 99801

Re: HB 425 -- False Claims

Dear Representative Kott:

Thank you for scheduling a hearing for HB 425 "An Act relating to misrepresentation and false claims made against a state or a municipality."

The Department of Law requested the governor to introduce this bill to provide clear penalties and strong incentives to prosecute persons who would present false claims for money or property to the state or a municipality. Existing state law contains authority for the attorney general to file suit to collect money of the state or a municipality that is "illegally paid or . . . diverted for an illegal purpose, or paid to a person not authorized by law to receive them." AS 37.10.090. The foregoing statute predates statehood and is in need of updating so that state and municipalities are well equipped to prosecute persons who would obtain money or other public property through fraud or misrepresentation.

We became impressed with the need for the law changes offered in this bill during the course of our investigation of the potential claim against the Bank of America. Our attention was initially directed to the Bank of America by the City of San Francisco. The city, the State of California, and hundreds of other municipalities were engaged in litigation filed by the State of California under what is commonly called the "false claims statute." The bank was alleged to have failed to pay the California government entities substantial amounts of unclaimed debt service payments held in trust for bondholders. The case presented great difficulties of proof because the bond accounting systems of the bank are largely incapable of tracing the unclaimed money held in trust.

It is strongly believed by counsel to the City of San Francisco and the California Attorney General's office that the threat of treble damages under the false claims statute was the principal motivation for the bank's willingness to settle the case short of litigation.

We recommend that the public finance code would be improved by the addition of a statute similar to the California false claims statute (Cal. Government Code sec. 12652) which is the model we used in drafting this bill. Similar laws are on the books in many other states and the federal government.

A brief summary of the bill is set out below:

Section 1: This section provides that contract claims against the state will be covered by the false claims penalties in case of fraud or misrepresentation by the claimant.

Section 2: Creates civil liability for

- a. presentment of a false claim to a state or municipal officer;
- b. uses a false record or statement to obtain payment from the state or a municipality;
- c. conspires to defraud by getting a false claim allowed or paid;
- d. as a custodian of public money or property, delivers less of that money or property to the state or municipality than it is entitled by law;
- e. makes a false receipt for state or municipal property;
- f. knowingly buys or receives state or municipal property from someone who lawfully may not sell or pledge the property;
- g. makes a false record to conceal, avoid, or decrease an obligation to pay or transmit property to the state or a municipality;
- h. fails to disclose the existence of a false claim once the person knows it is false, if the person stands to benefit from the claim.

Establishes the following penalties:

- a. Treble damages,
- b. a civil penalty of up to \$10,000 for each fraudulent act; and
- c. Rule 82 attorney fees and costs.

Establishes the following incentives: damages can be reduced to double the loss incurred by the state, and civil penalties waived, if

- a. the person presenting the false claim reports that fact within 30 days after learning of the falsity of the claim;
- b. the person cooperates with investigation; and
- c. no civil or criminal proceedings had been started at the time that the person began cooperating with the investigation.

Certain claims are not covered. The false claims penalties do not apply to amounts less than \$500 or to certain claims presented under

- a. the unemployment insurance statutes
- b. Worker's compensation statutes
- c. state revenue and tax code , including permanent fund dividends;
- d. public assistance under AS 47.25
- e. Alaska Temporary Assistance Program

Section 3. Establishes a statute of limitations: six years from discovery, 10 years after commission of fraudulent act.

Establishes the following burden of proof: proof must be by a preponderance of the evidence (51%); proof of a criminal conviction for false statements or fraud stops the defendant from denying the elements of making a false claim in a civil action.

Establishes authority to prosecute: attorney general has power to investigate claims involving state property and the municipal attorney has the power to investigate claims involving municipal property. If the investigation involves a mixture of state and municipal property, notification must be made to the other government involved. Attorney general may proceed with the case or tender it to the municipality.

Section 4. Repeals: repeals the limitation period applicable to contract claims which would now be covered by the period specified in this bill; and

repeals a provision which specifies how the costs of actions to recover state or municipal property are handled.

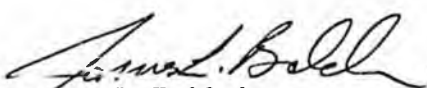
Hon. Pete Kott
Re: HB 425

April 5, 2000
Page 4

Again, thank you for hearing this bill. We will appear at the hearing and offer whatever assistance the committee considers appropriate.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
James L. Baldwin
Assistant Attorney General

JLB:jn

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

March 7, 2000

The Honorable Pete Kott, Chair
Judiciary Committee
Alaska House of Representatives
State Capitol, Room 118
Juneau, Alaska 99811

Dear Representative Kott:

House Bill 425 – “An Act relating to misrepresentation and false claims made against the state or a municipality” passed the Community and Regional Affairs Committee this morning and will soon be referred to your committee. I am writing today to ask that you schedule the bill for a hearing at the earliest possible opportunity.

House Bill 425 will give the public a way of ensuring that persons who seek to recover money or property from the state or a municipality are doing so in good faith. The most effective means of doing this is to provide for clear consequences for unlawful conduct. This bill would allow for such consequences and would also provide incentives to cooperate in the prosecution of a misrepresentation or false claim.

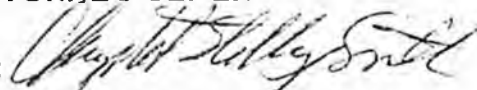
Nearly all states and the federal government have false claims statutes. This bill will give Alaska similar authority to protect the public treasury from wrongful claims. I hope your committee will consider HB 425 in the near future.

Thank you in advance for your assistance.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Chrystal Stillings Smith
Legislative Liaison

CSS:rew

cc: Pat Pourchot, Office of the Governor
Jim Baldwin, Department of Law
Deborah Behr, Department of Law

HB 425

TONY KNOWLES
GOVERNOR
governor@gov.state.ak.us

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

2/25/00

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

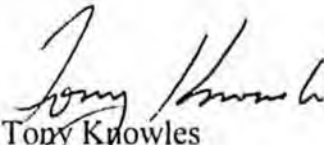
Dear Speaker Porter:

This bill I transmit today would fill a gap in our statutory law by providing general authority for the civil prosecution of a person who makes a false claim for, or a misrepresentation regarding, money or property against the state or a municipality. The public needs some way of ensuring that persons who seek to recover money or property from the state or a municipality are doing so in good faith. The most effective means of doing this is to provide for clear consequences for unlawful conduct. This bill would allow for a civil penalty of damages up to three times the amount suffered and court costs and attorneys fees from persons who make a misrepresentation or false claim against the state or a municipality.

The bill would provide incentives to cooperate in the prosecution of a misrepresentation or false claim. Also, the bill would apply only to matters involving at least \$500 and would not apply to unemployment, workers' compensation, state tax, public assistance, or temporary assistance claims. These programs have specific authority elsewhere in statute providing for the prosecution of false claims. The bill also provides procedures for circumstances in which both state and municipal money or property are involved and sets a limitation period of 10 years after which suits for misrepresentations and false claims are barred.

Nearly all states and the federal government have false claims statutes. It is time that Alaska had similar authority to protect the public treasury from wrongful claims.

Sincerely,


Tony Knowles
Governor

FISCAL NOTE

Bill Version: HB 425
 (H) Publish Date: 2/28/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "... relating to misrepresentation and false BRU Civil Division
claims made against the state or municipality; ..." Component Commercial
 Sponsor Rules Committee Governmental Affairs
 Requester Governor Component No. 2211, 2207

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 ()	*****	*****	*****	*****	*****	*****
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would provide general statutory authority for the civil prosecution of a person who makes a false claim for, or a misrepresentation regarding, money or property against the state or a municipality. It would allow for damages of up to three times the amount suffered, a civil penalty, and court costs and attorneys fees from persons who make a representation or false claim against the state or a municipality. The new law would not apply to any controversy that involves less than \$500 and would not apply to unemployment claims, workers' compensation claims, state tax claims, public assistance claims, or temporary assistance claims.

Any potential fiscal impact or revenues resulting from passage of this legislation will be dependent on the number and magnitude of new prosecutions undertaken by the state.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date/Time 1/24/00, 9:47 AM
 Approved by Commissioner *Hedberg* Bruce M. Botelho, Attorney General Date 1/24/00
 Agency Department of Law

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FISCAL NOTE

Bill Version: HB 425
 (H) Publish Date: 2/28/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

BILL

Revision Date/Time (Note if correction) _____ Dept. Affected All
 Title "An Act relating to misrepresentation and false claims made against the state or a municipality; and providing for an effective date." BRU Centralized Administrative Services
 Component Purchasing
 Sponsor Rules Committee
 Requester Governor Component No. 60

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

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	N/A					
Part-time	N/A					
Temporary	N/A					

ANALYSIS: (Attach a separate page if necessary)

This bill would amend AS 36.30.687(a) to make individuals liable to the state for false claims as provided by AS 37.10.090.

There is no fiscal impact.

Prepared by: Marsha Hubbard, Director Phone 465-5687
 Division General Services Date/Time _____
 Approved by Commissioner Robert Poe Jr. Date 1/25/00
 Agency Department of Administration

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HB

435

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 435

- 1 Page 4, line 3:
- 2 Delete "loan"
- 3 Insert "[LOAN]"

- 4 Page 4, line 4:
- 5 Delete "[LOAN]"
- 6 Insert "loan"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
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MEMORANDUM

March 21, 2000

SUBJECT: HB 435 (2000 Revisor's Bill)

TO: Representative Pete Kott, Chair
House Judiciary Committee

FROM: Pamela Finley
Revisor of Statutes

The following is a sectional analysis of HB 435, the 2000 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

...shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of...the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Sections 1- 3, 5, 6, 9, 11, 13, 16, 19, 23, 24, 26, 27 - 67, 70, 72, 73, 74, 79 - 82, 86, 88, 91, 94, 96, 97, 99, 102, and 105 delete, repeal, or update, provisions that have become obsolete either through other legislative action or the passage of time.

Sections that correct errors or oversights: Sections 4, 8, 10, 12, 14, 20 - 22, 71, 76, 78, 83, 84, 87, 92, 93, 98, 100, 101 and 103 correct errors or oversights.

Sections that improve the form or substance of the law: Sections 7, 15, 17, 18, 25, 68, 69, 75, 77, 85, 90, 95 and 104 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Sections 1 - 3 amend AS 02.15.040 and 02.15.170 and AS 02.20.040(b) by substituting "Federal Aviation Administration" for "Federal Aviation Agency". The name was changed in 1966.

Section 4 amends AS 02.35.120, which sets out penalties for violation of AS 02.35. Because AS 02.35.130 sets out a specific penalty for violations of AS 02.35.090 and 02.35.110, those

sections should be excepted from the more general provisions of AS 02.35.120. Section 4 accomplishes this by adding "other than AS 02.35.090 and 02.35.110" after "this chapter".

Sections 5 and 6 amend AS 03.20.020(a) and 03.20.050, relating to fairs, to change the references to "house election district" to "house district". When the constitutional amendments proposed by 1998 Legislative Resolve 74 were adopted by the voters in 1998, the term "house district" was substituted for "election district" in the constitution. These bill sections make conforming changes in statute.

Section 7 amends AS 06.05.230 to allow a bank to acquire, hold, or convey real or personal property in connection with a negatively amortizing loan described in AS 45.45.010(f). In ch. 51, SLA 1998, AS 45.45.010(f) was amended to allow banks and certain other institutions that make loans to accept a percentage of ownership or profits above the lending institution's interest rate in connection with negatively amortizing loans that meet certain requirements. However, AS 06.05.230 allows a bank to acquire, hold, or convey real or personal property only for certain purposes, and negatively amortizing loans are not among those purposes. Therefore, according to the Division of Banking, Securities, and Corporations, banks cannot participate in negatively amortizing loans despite the fact that in ch. 51, SLA 1998, the Legislature attempted to authorize them to do so. This bill section allows banks to acquire, hold, and convey property to the extent necessary in connection with negatively amortizing loans that are described in AS 45.45.010(f).

Section 8 amends AS 06.20.250(e) by substituting "first payment extensions" for "first payment loan extensions". The phrase "first payment loan extensions" makes no sense and it is clear that the subsection is referring to extensions for first payments, not extensions for loans.

Section 9 amends AS 08.06.030(a) to reflect changes in the name of the accrediting commission and the certifying organization for acupuncturists.

Section 10 amends AS 08.24.380 by adding a paragraph defining "commissioner" as the commissioner of community and economic development. Although the term "commissioner" is used in AS 08.24, under which the Department of Community and Economic Development is to regulate collection agencies, the term is not defined. This bill section rectifies that oversight.

Section 11 amends AS 08.32.187(a) by substituting "Department of Veterans Affairs" for "Veterans' Administration".

Section 12 amends AS 08.36.247(b) by deleting "dental examiners" before "board". AS 08.36.370 defines "board" to mean the "Board of Dental Examiners", so "dental examiners" is unnecessary and technically inaccurate.

Section 13 amends AS 08.36.350(a) by substituting "Department of Veterans Affairs" for "Veterans' Administration".

Section 14 amends AS 08.38.100 by adding a definition of "department". Chapter 67, SLA 1999 added AS 08.38, under which the Department of Community and Economic Development is to regulate the professions of dietitian and nutritionist. Through an oversight, a definition of "department" was omitted. This bill section corrects that omission.

Section 15 amends AS 08.42.070---the reciprocity provision for embalmers and funeral directors---by adding paragraphing in order to make it easier to read.

~~Section 16 amends AS 08.42.100 by removing a dated reference.~~

Section 17 deletes "referred to in this chapter as 'department'" from AS 08.52.010, and section 18 adds the definition of "department" as a new section AS 08.52.100. This conforms AS 08.52 (concerning explosives handlers) to the normal style of the Alaska Statutes.

Section 19 amends AS 09.25.121, concerning public records, by substituting "Department of Veterans Affairs" for "Veterans' Administration". The federal Veterans' Administration has been redesignated as the Department of Veterans Affairs.

Section 20 amends AS 10.06.480(a)(1) by substituting "AS 10.06.305 - 10.06.390" for "AS 10.06.405 - 10.06.438". This corrects an error in ch. 166, SLA 1988, which was derived from HB 246 and SB 199 of the 14th Legislature, SB 246 of the 13th Legislature, and SB 873 of the 12th Legislature, which is where the error arose. The original draft was taken from a model act, which had different section numbers. AS 10.06.358, 10.06.360, 10.06.363, and 10.06.365, referenced at the beginning of AS 10.06.480(a)(1), were all in article 5 of the model act. The editor correctly renumbered those sections, but where the model act referred to "article 5" at the end of AS 10.06.480(a)(1), the editor substituted "AS 10.06.405 - 10.06.438", which is article 5 under the current numbering, but not under the model act. The correct substitution for "article 5" of the model act is "AS 10.06.305 - 10.06.390", which was article 5 of the model act, although it is article 3 under current numbering. This error was brought to our attention by an attorney in private practice who noticed that the language did not make sense.

Section 21 amends AS 10.20.590 (relating to nonprofit corporations) by changing a reference to an "annual" report to a "biennial" report. AS 10.20.620 requires a biennial report, and AS 10.20.585(1) makes the failure to file the biennial report a basis for revoking the certificate of authority. This corrects an error in ch. 123, SLA 1980.

Section 22 amends AS 13.16.580 by substituting "AS 40.17" for "AS 34.15" and "filed under AS 45.09" for "AS 45.05" and by adding "or filing" after "recordation". The recording provisions of AS 34.15 were repealed in 1988 and replaced by AS 40.17. The reference to AS 45.05 became incorrect in 1980 when the Uniform Commercial Code provisions (which until that time were all in AS 45.05) were renumbered by the revisor as AS 45.01 - AS 45.09. The only provisions in AS 45.01 - AS 45.09 that provide for recordation (or more accurately,

Representative Pete Kott
March 21, 2000
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for filing) are those in AS 45.09 that authorize the filing of notices of security interests. Accordingly, "AS 45.09" is substituted for "AS 45.05".

Sections 23 and 24 amend AS 13.26.105(d) and 13.26.135(a), concerning guardianship, by substituting "Department of Veterans Affairs" for "Veterans' Administration" and "administrator of the federal Veterans' Administration". The federal Veterans' Administration has been redesignated as the Department of Veterans Affairs. Notice to the department, rather than the administrator, was specified because in a given situation it may be appropriate to notify a subordinate officer rather than the head of the department.

Section 25 amends AS 14.07.075 to change the name of the state Board of Education to the Board of Education and Early Development. Section 104 requires the revisor of statutes and the lieutenant governor generally to make the same change in the statutes and regulations. Last year, the name of the Department of Education was changed to the Department of Education and Early Development. The department and the Board have requested that the name of the Board (which is at the head of the department) also be changed.

Section 26 amends AS 14.40.325 by substituting "office of management and budget" for "division of budget review." There is no statutorily created division of budget review in the Office of the Governor, although in 1986, when AS 14.40.325 was enacted, there was an administratively created division of budget review within the office of management and budget.

Sections 27 - 29, 31 - 33, and 35 - 65 substitute "house district" for "election district" in various statutes in the Alaska Election Code. Sections 29, 30, 34 and 43 make technical changes due to the internal renumbering of paragraphs in AS 05.15.010 in section 27. Section 62 amends the definition of "senate district" for AS 15 to reflect the repeal of art. XIV of the state constitution. Section 63 adds a definition of "house district" because the 1998 amendments to the constitution substituted "house district" for "election district."

Sections 68 and 69 amend AS 16.05.340 to substitute a reference to residency under AS 16.05.415 for a reference to residency under AS 16.05.940. The change applies to members of the military service on active duty and their dependents. Chapter 38, SLA 1997 added a definition of residency for AS 16.05.330 - 16.05.430 (sport hunting and fishing licenses) and rewrote the general definition of residency in AS 16.05.940 (which applies to the rest of AS 16.05 - 16.40). Although in this particular case there is no substantive difference between the residency requirements of AS 16.05.415 and AS 16.05.940 for the military, the correct cross-reference is AS 16.05.415.

Section 70 amends AS 16.05.341, concerning hunting and sport fishing licenses for disabled veterans, by substituting "Department of Veterans Affairs" for "Veterans' Administration". The federal Veterans' Administration has been redesignated as the Department of Veterans Affairs.

Section 71 amends AS 16.05.925(a) to add certain sections as exceptions to the general catchall penalty provision for violations of the fish and game code and regulations. The added sections have their own penalties, as opposed to relying on the penalties designated for a class A misdemeanor. The added sections are AS 16.05.665 (falsifying an application), AS 16.05.783 (same day airborne hunting), and AS 16.05.905 (activities by aliens).

Section 72 amends AS 17.20.130 to substitute a reference to the current federal law regulating viruses, serum, and toxins for the reference to the 1902 law.

Section 73 amends AS 18.50.070 by substituting "house district" for "election district". See explanation for bill section 27.

Section 74 amends AS 18.56.098(i) to substitute a reference to current federal law for a reference to repealed federal law. The text of the two federal laws (defining "qualified veteran") is identical.

Section 75 amends AS 18.66.990(3)---the definition of "domestic violence"---by adding "an offense under" before "a law or ordinance of another jurisdiction". A crime is not a law, but instead a violation of a law or an offense under a law.

Section 76 amends AS 21.09.150(b)(5) by substituting a reference to AS 21.34 for a reference to AS 21.33. This corrects an error in ch. 117, SLA 1984, which repealed the surplus lines provisions in AS 21.33 and enacted surplus lines provisions in AS 21.34.

Section 77 amends AS 21.39.060 by breaking subsection (a) into subsections (a) and (b) and making conforming technical changes. The division is necessary because currently there are two provisions denominated (a)(1), (2), and (3).

Section 78 amends AS 22.05.010(d) by adding a reference to the superior court in the definition of "final decision". The subsection refers to final decisions of both the superior court and the court of appeals. This corrects an error in ch. 12, SLA 1980.

Section 79 amends AS 23.15.280, concerning vocational rehabilitation by substituting "Department of Veterans Affairs" for "Veterans' Administration". The federal Veterans' Administration has been redesignated as the Department of Veterans Affairs.

Section 80 amends AS 26.05.295, concerning educational assistance for enlisted personnel, by substituting "Department of Veterans Affairs" for "Veterans' Administration". The federal Veterans' Administration has been redesignated as the Department of Veterans Affairs.

Section 81 amends AS 29.45.030, concerning the definition of "disabled veteran" for municipal tax exemptions, by substituting "Department of Veterans Affairs" for "Veterans' Administration". The federal Veterans' Administration has been redesignated as the Department of Veterans Affairs.

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Section 82 amends AS 29.47.470 by substituting a current reference to federal law for an obsolete one. 49 U.S.C. App. 1513 was repealed in 1994. 49 U.S.C. 40116(e) is the successor of 49 U.S.C. App. 1513(b) and 49 U.S.C. 40117 covers the same material that 49 U.S.C. App. 1513(e) did.

Section 83 amends AS 32.05.435 to substitute "partnership" for "corporation." AS 32.05.435 applies to partnerships, not corporations.

Section 84 amends AS 37.06.010(c) by substituting "~~municipalities~~" for "municipality" in order to correct a grammatical error.

Section 85 amends AS 38.05.180(j)(6)(B) by substituting "Legislative Budget and Audit" for "LB&A" in order to conform the statute to the preferred style of the Alaska Statutes.

Section 86 amends AS 39.27.030 to give the term "election district" the same meaning it has in AS 39.27.020(b), i.e., those election districts established under the December 7, 1961 proclamation of reapportionment and redistricting. Although "house district" was substituted for "election district" in other statutes, that substitution did not seem appropriate in AS 29.60.160(a), 29.60.290(b), AS 39.27.020, 39.27.030, or AS 44.31.020. These five statutes all concern cost-of-living differentials based on "election districts." For your convenience, a copy of those statutes is attached. In AS 29.60.160 and 29.60.290 and AS 39.27.020, "election district" is defined as referring to election districts established under the December 7, 1961 proclamation of reapportionment and redistricting. Since the areas referred to actually were "election districts," it seems appropriate to leave the term "election district" in these three statutes. However, in AS 39.27.030 and AS 44.31.020, the term "election district" is not defined, even though AS 39.27.030 does refer to AS 39.27.020 and AS 44.31.020 refers to AS 39.27.030. Because AS 39.27.030 appears to be linked to AS 39.27.020 and because AS 44.31.020 is linked to AS 39.27.030, in both of these statutes "election district" is defined as an election district as defined under AS 39.27.020(b), i.e., one established under the 1961 proclamation.

Section 87 amends AS 39.25.125(b) by substituting "equal to what the official would have made" for "equal to what would have been made." This corrects an editorial error that was made in 1982 when the revisor substituted "equal to what would have made" for "equal to what he would have made" in accordance with instructions in sec. 4, ch. 58 SLA 1982 to remove references to "he" or "she" in the statutes. The 1982 substitution was not accurate because it assumes that only the official makes contributions to the retirement system, while in fact both the official and the employer make contributions. Although this change probably could have been corrected editorially (since it was an editorial error in the first place), the error occurred so long ago that it would be better to make the correction in the revisor's bill.

Section 88 amends AS 41.10.100(b)(6) by substituting "state" for "Alaska District". Under former AS 41.10.020, the Soil Conservation District of Alaska was established and consisted of the entire state. AS 41.10.020 was repealed in 1983, but the reference in AS 41.10.100(b)(6) was overlooked.

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Section 89 amends AS 42.05.381(e) by removing an obsolete requirement at the end of the subsection. The regulations concerning adjustment of rates were enacted and can currently be found at 3 AAC 53.010 et seq.

Section 90 amends AS 42.05.531 by substituting "a public utility" for "public utilities" to conform to the rest of the sentence.

Section 91 amends AS 42.40.430 by deleting a reference to a federal statute that was repealed in 1994. There is no clear equivalent in existing federal law, but none is needed because AS 42.40.430 refers to "other law" in general.

Section 92 amends AS 43.23.065(b)(3) by substituting "education loans" for "scholarship loans" to correct an error of omission in ch. 54, SLA 1997. AS 43.23.067 used to apply to scholarship loans, but ch. 54, SLA 1997 amended it to apply to all loans covered by AS 14.43.145, so that "education loans" is a more accurate term.

Section 93 amends AS 44.28.020(c) to substitute "established" for "if such a system is established". The bill that became chapter 73, SLA 1997 originally provided for an optional automated victim notification system. In committee, the bill was changed to make the notification system mandatory, but a conforming change in AS 44.28.020(c), also enacted in ch. 73, SLA 1997, was not made.

Section 94 amends AS 44.31.020 by supplying a definition for "election district." See the discussion for bill section 86.

Section 95 amends AS 44.33.020(21) to add "or community development" in the list of programs that the Department of Community and Economic Development is to administer and for which it is to adopt regulations. In ch. 58, SLA 1999, AS 44.47.980 (which provided general authority for the Department of Community and Regional Affairs to adopt regulations) was repealed to effect the merging of the Department of Community and Regional Affairs and the Department of Commerce and Economic Development. However, there was no statute that gave the Department of Commerce and Economic Development or the Department of Community and Economic Development general regulation-making authority. This bill section gives the new department the same general authority to adopt regulations that the former Department of Community and Regional Affairs had.

Section 96 amends AS 44.62.430(b) and section 97 amends AS 46.03.313(d) by substituting "house district" for "election district". See discussion for bill section 27.

Section 98 amends AS 46.08.040(a)(2)(E) by substituting "AS 26.23.073(g)" for "AS 46.13.080". AS 46.08.040(a)(2)(E), with its reference to AS 46.13.080, was added by ch. 128, SLA 1994. However, ch. 32, SLA 1994 repealed AS 46.13.080 and reenacted its provisions, with some slight changes, as AS 26.23.073(g).

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Section 99 amends AS 46.08.150 by removing a reference to the Hazardous Substance Spill Technology Review Council, which expired June 30, 1995. See also discussion of the repealers in sec. 102.

Section 100 amends AS 47.12.400(a) by deleting the third occurrence of "that" in order to make the sentence grammatically correct. This corrects an error in ch. 59, SLA 1996.

Section 101 amends sec. 54(b), ch. 132, SLA 1998 so that AS 25.24.210(f)---which was added by sec. 16, ch. 132, SLA 1998---would be repealed (on July 1, 2001 under current law) along with many other provisions requiring social security numbers. The explanation for this involves both ch. 87, SLA 1997 and ch. 132, SLA 1998. Section 45, ch. 87, SLA 1997 added AS 25.24.210(e)(12), which required that a petition for dissolution of marriage contain the social security numbers of the spouses and children affected by the decree. Under sec. 148(c), ch. 87, SLA 1997, as amended by sec. 53, ch. 132, SLA 1998, this amendment would be repealed as of July 1, 2001. However, because dissolution petitions are public records and the legislature wanted to allow people to keep the social security numbers as private as possible, sec. 15, ch. 132, SLA 1998 deleted AS 25.24.210(e)(12), and sec 16, ch. 132, SLA 1998 added AS 25.24.210(f), which requires the social security numbers to be on the petition or on a document accompanying the petition. However, sec. 16 was not added to the 2001 repeal that covers sections addressing social security numbers. This bill section corrects that error.

Section 102 repeals AS 14.03.290(5). This paragraph defines "parent advisory group," but the term is not used in the relevant statutes.

Section 102 repeals AS 14.43.120(p). This subsection defines residency for the purposes of AS 14.43.120. However, residency is no longer relevant to AS 14.43.120 because subsection (j)---which set out loan forgiveness based on residency---was repealed in ch. 92, SLA 1987.

Section 102 repeals the definition of "house district" in AS 15.60.010(5). See discussion for bill section 27. Note that the definition of "election district" being repealed in sec. 102 referred to districts established by art. XIV, sec. 3---which established the original districts used to elect members to the state House of Representatives---as modified under Article VI (reapportionment).

Section 102 repeals AS 39.50.200(b)(51), 44.66.010(a)(19), and AS 46.13.100 - 46.13.900. These provisions all relate to the Hazardous Substance Spill Technology Review Council, which expired June 30, 1995.

The text of each of the provisions repealed by sec. 102 is attached.

Section 103 prevents the amendment made by sec. 28, ch. 132, SLA 1998 to AS 25.27.165(b)---which changed the deadline for a putative father to provide financial information from 20 days to 30 days---from being repealed. Section 148(c), ch. 87, SLA 1997, as amended by sec. 53, ch. 132, SLA 1998, requires sections amended by ch. 87, SLA

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1997 to be returned to the language that existed before the ch. 87, SLA 1997 amendments. In addition, sec. 54, ch. 132, SLA 1998 indicates that intervening amendments are not be preserved. However, the same 30 day deadline that appears in AS 25.27.165(b) also appears in AS 25.27.165(c), as amended by sec. 29, ch. 132, SLA 1998, and this amendment is not to be undone in the future. See sec. 54(b), ch. 132, SLA 1998, which provides for a repeal of certain sections of ch. 132, SLA 1998, but does not include either sec. 28 or sec. 29 of ch. 132, SLA 1998. Therefore, this bill section is added to keep AS 25.27.165 internally consistent, and follow the policy choice of retaining the sec. 28 and 29, ch. 132, SLA 1998 amendments. (The problem which this bill section seeks to correct is a good example of why we prefer to treat delayed amendments section by section, instead of by the "global" approach used in sec. 148(c), ch. 87, SLA 1997.)

Section 104. See explanation for bill section 25.

Section 105 requires the revisor of statutes to substitute "2__" for "19__" or "1____" wherever they appear in forms in statute, in order to conform the statutes to the date change that occurred this year. For instance "July 19__" would become "July 2____".

Section 106 gives the bill an immediate effective date.

TEXT OF REPEALED PROVISIONS

AS 14.03.290(5):

(5) "parent advisory group" means a group that is recognized by the school as representative of those parents having children attending that school, that has regular meetings, and in which membership is open to all parents within that school's attendance area;

AS 14.43.120(p):

(p) For purposes of this section, a person qualifies as a resident if the person is physically present in the state with the intent to remain permanently in the state or, if not physically present in the state, the person intends to return to the state and is absent due to military service.

AS 15.60.010(5):

(5) "election district" means one of the districts described in art. XIV, sec. 3, of the state constitution, as may be modified under art. VI of the state constitution;

AS 39.50.200(b)(51):

(51) Hazardous Substance Spill Technology Review Council (AS 46.13.110);

AS 44.66.010(a)(19):

(19) Hazardous Substance Spill Technology Review Council (AS 46.13.110) - June 30, 1995.

AS 46.13.100:

Sec. 46.13.100. Findings and purpose. The legislature

(1) finds and declares that there exists a lack of scientific knowledge concerning the availability, properties, and effectiveness of various hazardous substance containment and cleanup technologies; and

(2) concludes that it is in the best interest of the state and its citizens to establish a Hazardous Substance Spill Technology Review Council to assist in the identification of containment and cleanup products and procedures for arctic and sub-arctic hazardous substance releases and make recommendations to the departments and agencies of the state regarding their use and deployment.

AS 46.13.110

Sec. 46.13.110. Hazardous substance spill technology review council.

(a) There is established in the Department of Environmental Conservation the Hazardous Substance Spill Technology Review Council.

(b) The council consists of the commissioner of environmental conservation, the adjutant general of the Department of Military and Veterans' Affairs, a representative of the

University of Alaska appointed by the governor, the governor's senior science advisor, a representative of the Prince William Sound Science Center in Cordova appointed by the governor, and four other members, one from each judicial district of the state, appointed by the governor, with broad experience or expertise in one or more of the following areas: physical or biological science; oil technology, transportation, or management; fisheries; economics; environmental engineering; or law. The U.S. Coast Guard and the Environmental Protection Agency may each appoint a federal employee to the council to represent their agencies as nonvoting members. Appointed state members of the council serve overlapping three-year terms.

(c) The council members shall elect from among themselves a chair and vice-chair.

(d) The oil and hazardous substance response office established under AS 46.08.100 shall serve as staff for the council.

(e) State and federal members of the council serve without compensation, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

(f) The council shall meet regularly at the call of the commission or the chair of the council.

(g) State members of the council are subject to AS 39.50.

AS 46.13.120

Sec. 46.13.120. Duties of the council. The council shall

(1) review and recommend to the Department of Environmental Conservation research topics for it to pursue;

(2) establish testing protocols to be used by the Department of Environmental Conservation to evaluate the effectiveness of hazardous substance spill technologies for use in the state;

(3) identify sources of money that may be available for discharge-related research;

(4) make proposals to the governor, commission, and other entities to encourage and fund prevention, response, cleanup, and mitigation of future discharges of hazardous substances;

(5) compile and maintain information relating to

(A) containment and cleanup technology that is available in the event of a hazardous substance discharge, the extent to which current containment and cleanup technology is available and may be applied in the state, and ways to improve hazardous substance spill response technology and procedures;

(B) steps that should be taken by government and industry to ensure proper management, handling, and transportation of hazardous substances and to improve the statewide ability of industry and governmental agencies to respond to discharges of hazardous substances;

(C) the extent to which industry practices and governmental practices or laws should be changed to reduce or minimize the potential for hazardous substance discharges;

(D) hazardous substances spill technology research conducted by the Department of Environmental Conservation.

(6) {{}Repealed Sec. 28 ch 32 SLA 1994{}}.

AS 46.13.130:

Sec. 46.13.130. Investigations; hearings.

(a) The council may issue subpoenas, administer oaths, and conduct investigations related to its duties.

(b) The council may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the duties assigned to the council.

(c) On a majority vote of the council, subpoenas and subpoenas duces tecum may be issued and served in the manner prescribed by AS 44.62.430(b) and (c) and court rule. The failure, refusal, or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the council's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

(d) State agencies shall, to the extent permitted by law, cooperate with the council and provide it with information it requests for carrying out its duties.

AS 46.13.900:

Sec. 46.13.900. Definitions. In this chapter,

(1) {{}Repealed Sec. 28 ch 32 SLA 1994{}}.

(2) "council" means the Hazardous Substance Spill Technology Review

Council;

(3) "hazardous substance" has the meaning given in AS 46.03.826.

STATUTES THAT REFER TO "ELECTION DISTRICTS" AND
CONCERN COLAS

AS 29.60.160:

Sec. 29.60.160. Area cost-of-living differential.

(a) Payments to a municipality or other eligible recipient under AS 29.60.110 - 29.60.130 shall reflect area cost-of-living differentials. Payments shall be based on the sum of per capita, per mile, and per bed or facility grants due each municipality or other recipient multiplied by the appropriate area cost-of-living differential. The area cost-of-living differential for each recipient shall be determined annually by election district under the provisions of AS 39.27.030. Application of the area cost-of-living differential may not result in distribution of an amount less than the amount of the payment determined without reference to application of this section.

(b) The election districts used to establish area cost-of-living differentials under (a) of this section are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965.

AS 29.60.290:

Sec. 29.60.290. Qualification for minimum payment.

(a) A municipality qualifying for an entitlement under AS 29.60.010 - 29.60.080 or 29.60.100 - 29.60.180 shall receive a minimum payment plus an area cost-of-living differential for each fiscal year if

(1) the municipality has conducted a regular election during the state fiscal year preceding the year in which the department's determination of the municipality's millage rate equivalent is made under AS 29.60.030 and has reported the results of the election to the commissioner;

(2) regular meetings of the governing body are held in the municipality during the state fiscal year preceding the year in which the department's determination of the municipality's millage rate equivalent is made under AS 29.60.030 and a record of the proceedings is maintained;

(3) a municipal budget has been adopted for the fiscal year during which payment of an entitlement is authorized by AS 29.60.010 - 29.60.080 or 29.60.100 - 29.60.180 and an audit or financial statement for the fiscal year preceding the year in which the department's determination of the municipality's millage rate equivalent is made under AS 29.60.030 has been prepared and furnished to the department in accordance with AS 29.20.640(a); and

(4) local ordinances adopted by the municipality have been codified in accordance with AS 29.25.050.

(b) The area cost-of-living differential payable to each municipality under this section shall be determined annually by election district under the provisions of AS 39.27.030. Except as provided in AS 29.60.300, application of the area cost-of-living differential may

not result in a payment that is less than the minimum payment determined under (a) of this section. For purposes of this subsection, the election districts used are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965.

(c) The department shall pay to each municipality eligible to receive a minimum payment under this section an amount equal to the difference between the minimum payment determined under (a) and (b) of this section and the sum of the amounts payable for the same fiscal year under AS 29.60.010 - 29.60.080 and 29.60.100 - 29.60.180.

(d) If at least \$41,472,000 is appropriated for all entitlements under AS 29.60.010 - 29.60.310 for a fiscal year, the minimum payment for a municipality under this section for that year equals \$40,000. Otherwise, the minimum payment equals \$25,000. A payment under this section may be prorated and reduced under AS 29.60.300.

(e) Payments under this section shall be made from the money allocated to the tax equalization account established in AS 29.60.060.

AS 39.27.020:

Sec. 39.27.020. Pay step differentials by election district and in other states.

(a) The following pay step differentials are approved as an amendment to the basic salary schedules provided in AS 39.27.011:

Election District	Pay Steps Above Basic Salary Schedule
1	0
2	1
3	1
4	0
5	2
6a (excluding Valdez Duty Station)	4
6b (Valdez Duty Station)	5
7	1
8	0
9	2
10	2
11	2
12	7
13	7
14	8
15a (excluding Nenana Duty Station)	9
15b (Nenana Duty Station)	8
16a (south of Arctic Circle)	4
16b (north of Arctic Circle)	9
17	9
18	9
19	8
In other states	minus 6

(b) For purposes of (a) of this section, "election district" means an election district designated in the governor's proclamation of reapportionment and redistricting of December 7, 1961.

(c) The director of the division of personnel shall establish salary differentials for positions in foreign countries. The differentials shall be adjusted annually, effective July 1, to maintain equitable relationships between salaries for positions in foreign countries and salaries for positions in Alaska.

AS 39.27.030:

Sec. 39.27.030. Cost-of-living survey. Subject to an appropriation for this purpose, the director shall conduct a survey, at least every five years, to review the pay differentials established in AS 39.27.020. The survey may address factors, as determined by the director, that are also relevant in review of state salary schedules, entitlement for beneficiaries of state programs, and payments for state service providers. The survey must reflect the costs of living in various election districts of the state, and Seattle, Washington, by using the cost of living in Anchorage as a base.

AS 44.31.020:

Sec. 44.31.020. Duties of department. The Department of Labor and Workforce Development shall

- (1) enforce the laws, and adopt regulations under them concerning employer-employee relationships, including the safety, hours of work, wages, and conditions of workers, including children;
- (2) accumulate, analyze, and report labor statistics;
- (3) operate systems of workers' compensation and unemployment insurance;
- (4) gather data reflecting the cost of living in the various election districts of the state upon request of the director of personnel under AS 39.27.030;
- (5) operate the federally funded employment and training programs under 29 U.S.C. 1501 - 1792b (Job Training Partnership Act); and
- (6) administer the state's program of adult basic education.

HCR

10

4/28/99




REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

MEMORANDUM

DATE: April 22, 1999

TO: Representative Bill Hudson, Chair
House Special Committee on Utility Restructuring

FROM: Representative Alan Austerman 

SUBJ: Request for Scheduling - House Concurrent Resolution 10

I respectfully request the House Special Committee on Utility Restructuring schedule a hearing for HCR 10 at your earliest convenience.

The adoption of this resolution requests the Alaska Energy Authority to divest itself of its interest in the Four Dam Pool power projects.

The referral packet is attached for your information.

Please contact Cliff Stone of my staff at 6588 as needed.

Thank you for your consideration.



REPRESENTATIVE ALAN AUSTERMAN Alaska State Legislature

P.O. Box 2368, Kodiak, Alaska 99615 (907) 486-5930 • Session: State Capitol, Juneau, Alaska 99801 465-2487

HOUSE CONCURRENT RESOLUTION NO. 10
SPONSOR STATEMENT

The State of Alaska acquired land and constructed four hydroelectric facilities in the mid 1980's. These projects are commonly referred to as the Four Dam Pool. The Alaska Energy Authority (AEA) owns these projects and is a party to a 40-year power sales agreement with local utilities serving the communities of Copper Center, Glennallen, Ketchikan, Kodiak, Petersburg, Port Lions, Valdez, and Wrangell.

Through AEA, the State of Alaska retains significant liabilities relating to these power projects because of the power sales agreement. These liabilities include responsibility for uninsured facility failure, substandard performance, deficiencies in the reserve and replacement fund and loss of power sales.

The adoption of House Concurrent Resolution 10 will request the AEA to divest itself of its interest in the Four Dam Pool.

This will be accomplished by preparing a request for proposals (RFP's) as soon as practicable for the sale of the power projects, open to the electric utilities in the communities served by the Four Dam Pool or to a consortium of electric utilities in those communities.

The terms of the RFP's will assure that the state receives a fair market value for the power projects and that the power projects will continue to provide adequate power to the respective communities.

RISK ASSESSMENT OF THE FOUR DAM POOL HYDROELECTRIC PROJECTS

SUMMARY

Harza Engineering Company has carried out an assessment of the possible costs associated with the continued operation of the hydroelectric projects comprising the "Four Dam Pool." The projects are:

- Swan Lake Project;
- Solomon Gulch Project;
- Terror Lake Project; and
- Tyee Lake Project.

The following were carried out for each project:

1. A condition assessment was performed to identify the needs for project improvements and associated costs.
2. A schedule for replacements due to normal wear and tear was identified, along with associated costs.
3. An assessment of the energy generation potential was made.
4. An analysis of the risks was carried out, probable repair costs and outage duration were identified; the likely range was identified.
5. Operation and maintenance costs were examined.

The costs were summarized to arrive at a composite annual cost in five-year increments over a 35-year future planning horizon (1996 to 2030).

Condition Assessment

As a result of the Condition Assessment, a number of items were identified at each project that merit attention in the future. In accordance with the Scope of Work, these items are classified as follows:

- **Deficient Design** - defined as a condition that does not meet the minimum generally accepted standards for safety and reliability. Only one item, the Tyee Lake Project transmission line, was determined to be deficient in design.
- **Deferred Maintenance** - defined as a condition where either regularly scheduled maintenance or maintenance to repair a damaged structure or malfunctioning component was not carried out in a timely manner. Only a few items of deferred maintenance were found.
- **Other Project Improvements** - project structures or equipment planned for replacement for reasons including obsolescence, unavailability of spare parts, premature failure, or changing operating conditions, equipment and structural repairs or modifications that have not been deferred, but are now required to correct a malfunction, or to improve functionality or safety. Other project improvements may also involve studies to address operational or design issues. In some cases, the implementation of these items is discretionary in nature.

summary of the condition of each plant is presented below.

Swan Lake

The Swan Lake Project is considered to be in excellent condition, with only one item of referred maintenance and several needed replacements and project improvement items. A major deferred maintenance item involves the need to paint the transformers at the Bailey substation and replace corroded cooling radiators. The major items of replacement involve the generator excitation system and replacement of the battery system. Present plans and budgets include the replacement of the draft tube bulkhead gates with stainless steel replacements and installation of a new intake gate feeder power supply cable is planned.

A continuing maintenance item is the collection and clearing of trash and debris that accumulates in front of the power intake. The possibility of improving the trash boom and

acquiring a tugboat and log skidder for handling trash and logs should be considered.

A portion of the transmission line is exposed to landslide risk, and is a major potential source of plant outage. A landslide stabilization study should be carried out to identify corrective measures, or alternatively, one to two miles of transmission line could be considered for relocation to eliminate this hazard.

Solomon Gulch

The Solomon Gulch Project is considered to be in good condition. The only major area of concern is corrosion of the penstocks. The rate of corrosion is being monitored. Painting the exterior of the penstocks would be prudent to improve resistance to corrosion and extend the useful life. In general, the penstock is expected to perform satisfactorily for the next 36 years, but there may be a need for repair in local areas where corrosion is advancing at a higher rate.

The penstock valves are reportedly capable of closure against full turbine discharge, but cannot close against the flow that would result in the event of a penstock rupture. In view of the long portion of exposed penstock, and the corrosion problem that is being monitored, it would be prudent to replace the penstock valves to provide protection in the event of penstock rupture. Any deficiencies in the penstock intake bulkheads would need to be corrected to carry out this work.

The major source of plant outage is the 112 mile transmission line. The section between the Meals and P11 substations is particularly susceptible to avalanche outage. Consideration should be given to installation of buried cable in areas susceptible to avalanche outage.

Another source of concern is the settlement of the P11 substation building. Corrective measures should be implemented to prevent interruption of service if the settlement continues.

Terror Lake

The Terror Lake Project is considered to be in generally good condition. However, there are some structural aspects that require maintenance and remedial repair measures. The major aspects that require attention involve the repairing excessive leakage at the intake gate,

performing tunnel repairs, and reinforcing the side channel spillway at the main dam.

The Rolling Rock diversion is believed to be a source of sediment that causes excessive turbine wear. The construction of a sand sluicing system was started, but was not finished because of problems with the contractor. More detailed study should be carried out to determine the most efficient way to resolve the sediment problem. Possible solutions could involve completion of the installation of the sediment discharge system or abandoning Rolling Rock as a diversion, while allowing it to remain in place to function as a surge facility.

The Terror Lake facility was recently affected by a large flood. Some of the project buildings at the powerhouse site are at-risk due to flooding from the Kizhuyak River. Permanent dikes and river training facilities should be designed and constructed.

Tyee Lake

Except for the transmission line, the Tyee Lake Project is considered to be generally in good condition. Some structural maintenance that is required involves shoring up housing and storage buildings at the site, and reinforcing the exposed rock face that forms the back wall of the powerhouse. An inspection of the unlined power tunnel by use of a remotely operated vehicle to evaluate its condition would be prudent.

The transmission line is the source of many outages. The transmission line is considered to be deficient in design since ground clearance criteria is not met under loading conditions that could have been reasonably foreseen at the time of design. Studies are underway (by others) to address corrective measures.

Electrical controls to the gate house for remote operation would improve operation and safety in the event of an emergency situation. Dredging of the harbor will improve access.

Energy Generation Potential

Analysis of the energy generation potential results in the following estimates of average annual generation potential:

Swan Lake Project -	70.1 GWh per year
Solomon Gulch Project -	52.9 GWh per year
Terror Lake Project -	117.0 GWh per year
Tyee Lake Project -	109.0 GWh per year
Four Dam Pool Total -	349.1 GWh per year

The output of Tyee Lake is limited by the electrical demand in the areas served by the project. The proposed intertie with the Swan Lake Project would help better utilize the generation potential of the Tyee Project.

The Terror Lake powerhouse was designed to accommodate the addition of a third unit. A preliminary cost analysis indicates that the addition of a third 12.5-MVA generating unit at Terror Lake warrants additional feasibility level investigation. The third unit will not provide additional energy, but will provide additional peaking capacity that is needed in the system.

Additional expansion options at Tyee and Swan Lake projects do not appear warranted at this time. At Tyee, the operating capabilities are not fully utilized because of limited electrical demand. At Swan, increasing the storage or generation capacity appears to be expensive in comparison with other possible generation options that may be available, if the need does indeed exist.

The output of Solomon Gulch is limited by the electrical demand in the areas served by the project. An expansion of the storage capacity is not warranted or economically justified based on a detailed study performed in 1992.

Risk Related Costs

The analysis described in the accompanying report included an analysis of cost to repair structures and components that might be damaged due to natural events, accidents and internal failures (an unknown failure due to design, construction or material deficiency). The

associated outage duration was also investigated. The expected annual risk related cost, and an estimate of the outage that might be associated with the risk-related events, was estimated. The expected annual cost and outage duration is tabulated below:

	Expected Risk-Related Repair Cost (1995 US\$ per year)	Expected Risk-Related Outage Duration (days per year)
Swan Lake Project	159,529	13.4
Solomon Gulch Project	291,464	22.8
Terror Lake Project	349,308	18.9
Tyce Lake Project	312,387	23.5

Figure 1 presents the cumulative distribution curves that result from the analysis, indicating the range of possible costs and outage duration for each project.

Although the graphs in Figure 1 illustrate the range and expected probabilities associated with the anticipated risk related cost and outage duration, there is a possibility of catastrophic events that will result in very large damage cost and a long outage duration. Financial planning for covering uncertain events must consider this possibility.

Operation and Maintenance Costs

For this study, operation and maintenance costs are based on an analysis of historical costs, brought to a common 1995 price level, and averaged. Joint costs are allocated to projects by prorating on the basis of at-site costs in proportion to the at-site costs of all four projects. The estimated average annual operation and maintenance cost for all four projects, excluding fixed charges for debt service and equipment replacement fund contributions, is \$6.8 million at the 1995 price level.

Summary of Expected Costs

Table 1 presents a summary of the expected annual costs, in five year increments, for the 35-year planning horizon considered in this study. All costs are presented in 1995 dollars.

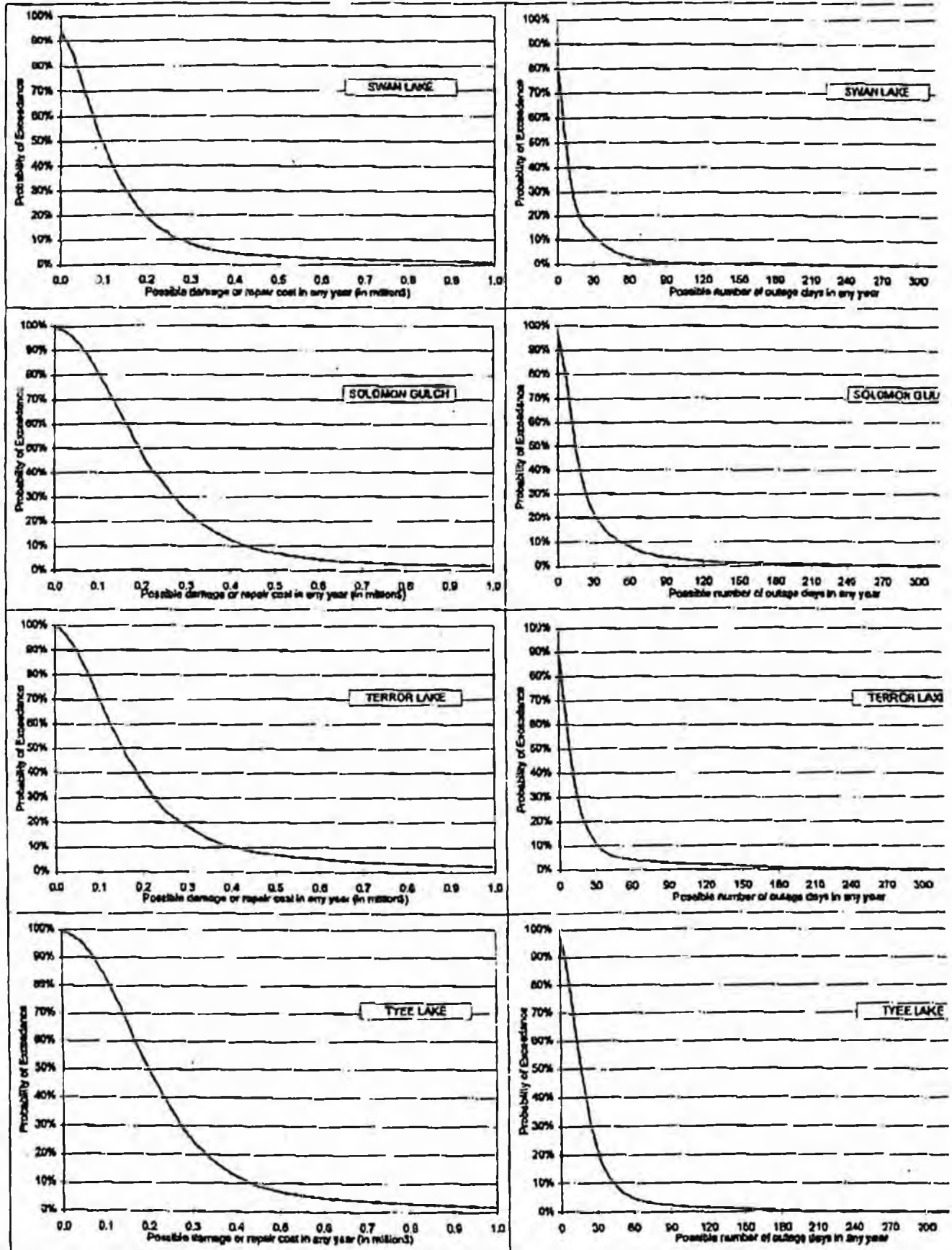
Table 2 presents a summary of the expected costs for various items. Certain items included in Table 2 are based on expenditures to take place in the period 1996 to 2000, and are at 1995 price levels. In addition, Table 2 presents the annual costs on a levelized basis for two separate replacement funds, and the annual risk costs at 1995 price levels.

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Figure 1 - Range of Expected Annual Costs and Outage Days

Range of Expected Annual Costs

Range of Expected Number of Outage Day



MEMORANDUM

**State of Alaska
Department of Law**

TO: D. Randy Simmons
Executive Director
Alaska Industrial Development
and Export Authority

FROM: Keith A. Laufer *KL*
Assistant Attorney General
Governmental Affairs Section, Anchorage

DATE: January 27, 1997

FILE NO:

TEL. NO: 269-5135

SUBJECT: Four Dam Pool

I. INTRODUCTION

Recently there have been developments with respect to the Four Dam Pool projects owned by the Alaska Energy Authority ("AEA"). This memorandum will provide a background with respect to the projects and the existing power sales agreement between the State and the purchasing utilities. In addition, this memorandum will discuss the proposal received from former United States Senator Mike Gravel on behalf of a group of investors, the Energy Group, to purchase the projects.

II. BACKGROUND

A. The Projects and the Power Sales Agreement

The State constructed and acquired the projects constituting the Four Dam Pool in the mid 1980's. The cost of the projects to the State was approximately \$483 million. The Four Dam Pool is owned by AEA and consists of four hydroelectric projects serving five communities. Power from the Tyee Lake project is sold through Thomas Bay Electric Association to the communities of Wrangell and Petersburg. Power from the Swan Lake project is sold to Ketchikan Public Utilities. Power from the Solomon Gulch project is sold to the Copper Valley Electric Association serving the Glennallen and Valdez areas. Finally, power from the Terror Lake project is sold to Kodiak Electric Association. The power from all the projects is sold under the terms of a Long Term Power Sales Agreement (the "PSA") between the purchasing utilities and the AEA. The projects are operated by the individual utilities pursuant to operating agreements between the utilities and AEA.

The PSA was executed in October, 1985 and has an initial term of 45 years; terminating October, 2030. Under the PSA, to the extent the purchasing utilities require power, they are required to first purchase the power produced from the Four Dam Pool. The price of the power is established by a formula in the PSA. Under the formula, the power rate has two components. The first component covers the operating cost of the four projects. For this purpose, operation costs of the four projects are pooled to determine one operating cost component for the entire

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Four Dam Pool

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Four Dam Pool. The second component of the rate is the "debt service component." The debt service component is somewhat a misnomer as no debt was issued by the State to finance the projects (although funds were loaned from the Department of Commerce and Economic Development to AEA to partially finance the projects). The debt service component is the payment to the State in partial repayment of the State's investment in the projects. The debt service component is determined by reference to a debt service schedule contained in the agreement. The debt service component provides for rate "re-openers" in certain events based on the cost of power in the railbelt. In AEA's view, the likelihood of the next rate re-opener significantly altering the current rate is unlikely.

In fiscal year 1996, the power rate for energy produced by the Four Dam Pool was 6.4 cents per kWh. This rate consists of an operating cost component of 2.4 cents and a debt service component of 4.0 cents. For fiscal year 1996, the debt service component produced a debt service payment of about \$11 million dollars. AEA has estimated that the present value of the debt service payments to the State over the remaining term of the PSA is approximately \$165 million dollars. This amount assumes a discount rate of 7%.

Under the PSA, AEA retains significant liabilities related to the projects. In particular, AEA is responsible for uninsured facility failures, substandard performance, and deficiencies in the reserve and replacement fund. Moreover, the utilities obligation to purchase power is not a "take or pay" obligation. Rather, the utilities only pay for power actually purchased from the projects. While the utilities are required to purchase power first from the Four Dam Pool projects to the extent they require power, if the projects are not producing power for some reason, there is no obligation for the utilities to continue to pay.

The PSA also creates a "self-help right" on the part of the utilities. Under that provision of the PSA, if AEA does not fulfill its obligations regarding repairs to the projects, the utilities may withhold their debt service payment to the State and utilize the funds withheld to perform the necessary repairs.

As part of the 1993 legislation that re-organized AEA, the legislature has pre-allocated the debt service payments that are received from the Four Dam Pool to specific funds. Pursuant to AS 42.45.050, debt service payments made by the Four Dam Pool utilities are to be appropriated by the legislature as follows: 40% to Power Cost Equalization and Rural Electric Capitalization Fund; 40% to the Southeast Energy Fund; and 20% to the Power Project Fund to be used for Statewide energy projects. None of the Four Dam Pool debt service payment has been allocated to AEA to fulfill any of its repair obligations under the PSA, nor has AEA been appropriated any other funds to perform such obligations.

B. Funding of Required Repairs

In March, 1994, it became apparent that significant repairs were required to be made to the Tyece Transmission Line which is a part of the project. In addition, required repairs were identified for

the Terror Lake and Swan Lake projects and for spill prevention controls at the projects. Under the PSA, these repairs were the obligation of the State. Because AEA had no funds with which to make the repairs, the purchasing utilities filed suit against AEA in an effort to invoke their self-help rights under the PSA to withhold their debt service payments and utilize those funds to conduct the required repairs. In settlement of that lawsuit, the State agreed with the utilities that limited self-help would be invoked for fiscal year 1996. Funds withheld by the utilities were used for engineering studies to determine the proper scope of the repairs which were required to the projects. As part of the settlement AEA agreed to enter into discussions with the purchasing utilities regarding the possible transfer of ownership of the projects to the utilities.

In fiscal year 1996, the Administration proposed legislation that would have altered the allocation of revenues from the Four Dam Pool. Under the Administration's proposal, debt service payments would have first been allocated to AEA to pay debt service on debt that would have been issued by AEA to fund the required repairs. The legislature, however, failed to pass the proposed legislation and, as was expected, the utilities elected to utilize their self-help rights to withhold the entire debt service payments for fiscal year 1997 and 1998 in order to fund the necessary repairs. Because of the disruption in the debt service payments, no contributions from the Four Dam Pool will be made in either fiscal year 1997 or 1998 to the Power Cost Equalization and Rural Capitalization Fund, the Southeast Energy Fund, or the Power Project Fund.

C. Divestiture Discussions with Purchasing Utilities

In August 1994, the utilities and AEA agreed to mutually explore the possibility of transferring ownership of the Four Dam Pool projects to the utilities. As part of the settlement of the 1995 litigation with the utilities, AEA agreed that it would continue these discussions with the utilities. Chief of Staff Ayers sent a letter to the utilities which described certain requirements which must be met for the Administration to support a transfer of the projects to the utilities. The requirements were that (1) the PSA remain in effect through the transfer, (2) AEA's duties and obligations under the PSA be completely transferred to a joint utility entity and AEA be fully released from those obligations and duties, (3) the State receive adequate value (to be determined) for the projects, and (4) the transfer be subject to review by the legislature.

Authority staff met with the utilities in several meetings over the course of the period from August, 1995 to February, 1996. Ultimately, these discussions broke down over the proper value to be paid by the utilities for the projects. AEA proposed that the reasonable value of the facilities, assuming the utilities completed, at their own cost, the repairs to the Tye Transmission Line, was \$84 million. AEA arrived at this purchase price by first discounting to present value the payment stream of the debt service payments that would be made to the State over the remaining term of the PSA. The present value of the payment stream utilizing a 7% discount rate was approximately \$165 million dollars. From this amount, AEA subtracted the estimated cost of AEA's continuing repair and risk obligations under the PSA. To arrive at this number, AEA utilized the results of an engineering and risk analysis prepared for the projects by

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Harza Engineering Corporation. This study was jointly directed and funded by the purchasing utilities and AEA.

The utilities rejected AEA's proposal. The utilities indicated that, if they were to be required to complete the Tyee repairs, they believed the value of the projects to be somewhere between \$0 - \$20 million. The primary differences between the State and utility values were that the utilities perceived a high risk that energy loads for the region could significantly decline and that inflation could significantly increase the costs of ownership. In addition, the utilities stated that they believed that any transfer of the project would have to result in an immediate significant rate reduction in the wholesale power rate. The utilities factored in a 1 cent per kWh reduction in rates as part of their review of value.

Because the utility and AEA opinions of value were so disparate, the parties agreed to take a hiatus in the discussions to determine if other approaches were possible. Recently, AEA sent a letter to the utilities indicating that divestiture discussions could be reopened if the discussions looked promising and requesting that the utilities bring forth a new proposal in which to open discussions. The purchasing utilities are meeting in February, 1997 and will be preparing a response and counter proposal to AEA.

III. PROPOSAL FROM FORMER U.S. SENATOR GRAVEL

In September, 1996, the Authority received an unsolicited proposal from Former United States Senator Mike Gravel indicating a desire on behalf of the Energy Group to purchase the Four Dam Pool projects from the State for \$84 million plus additional funds to repair the projects up to a cap of \$100 million. The Authority indicated to Mr. Gravel that AEA was in discussions with the purchasing utilities regarding divestiture and, pending the conclusion of those discussions, that the Authority would not entertain discussions regarding other options. Mr. Gravel took his proposals to the communities themselves and began preliminary due diligence with respect to the projects. To our knowledge, the purchasing utilities, while not receptive to the proposal, have nonetheless been courteous and cooperated with Mr. Gravel's due diligence. In December, 1996, at Mr. Gravel's request AEA staff met with Mr. Gravel. Once again, Mr. Gravel was informed that the Authority would not open discussions or entertain proposals regarding the purchase of the Four Dam Pool until and unless the utilities agreed that AEA entertain such discussions.

Mr. Gravel nonetheless went on to explain his proposal. Under Mr. Gravel's proposal, a new entity would acquire the Four Dam Pool Projects from the State. Ownership of the new entity would be comprised of two ownership groups. The first group would be the lower 48 utility investor group that Mr. Gravel represents. The second group would be a community stock ownership plan ("CSOP") under which utility purchasers in the various communities served by the Four Dam Pool would gain ownership shares. As proposed, the utility investor group would obtain financing for one half of the project purchase price while the trustee of the CSOP would obtain financing for the other half of the purchase price. Under the proposal, the community

stock ownership plan trustee would obtain a guarantee or other financial assistance from the State in order to facilitate the CSOP financing.

An important element of Mr. Gravel's proposal is the termination of the PSA. According to Mr. Gravel, the sale would not be viable unless the PSA were terminated and a new power sales agreement or agreements were entered into. The Energy Group proposal calls for a rate of return to the Energy Group investors of between 12% and 15%. Mr. Gravel indicated that under his proposal the communities would be guaranteed a wholesale power rate of 6.5 cents per kWh for 30 years, the period of the anticipated financing necessary to consummate the purchase. The operational component of that rate, however, would be subject to regular adjustments utilizing an index such as the Consumer Price Index.

Mr. Gravel indicated that the new entity could obtain operational savings by consolidating operational responsibility in the new entity. Mr. Gravel stated that this would likely result in the elimination of a number of jobs. Under the proposal, the new entity would be responsible for compensating those employees whose jobs are eliminated.

Mr. Gravel has commenced efforts in the local communities to increase knowledge about his proposal and has met with various community groups. Mr. Gravel has indicated to AEA that, unless the communities or the utilities come up with some sort of fatal flaw with his proposal, he intended to pursue the proposal with the legislature. I understand that Mr. Gravel has begun his legislative efforts in earnest by engaging several lobbyists on behalf of his investor group.

IV. PURCHASING UTILITY POSITION ON GRAVEL PROPOSAL

The purchasing utilities have sent a letter advising AEA of the utilities' continuing interest in pursuing divestiture discussions with the State. A copy of that letter is attached as Exhibit A. In addition, the utilities have asked AEA to reject the Gravel group's proposal and that AEA negotiate a sale with the utilities. The utilities have indicated that they have numerous objections to the proposal provided by Senator Gravel. It is our understanding that the principle objections are that any savings or profits that could be created by the projects would be shared 50% with Outside investors and that the Energy Group would be a "limited liability" company. In the utilities view, all savings or profits should benefit the communities. In addition, the utilities have stated that it would be difficult, if not impossible to gain the consent of all the communities to any change in the current PSA.

V. CONCLUSION

The proposal submitted by former Senator Gravel focuses attention on the existing structure of the Four Dam Pool and the need to develop a long term plan to put the projects on a sound economic footing. Should you require any additional information, please let me know.

PMC RESOLUTION TO RESUME DIVESTITURE NEGOTIATIONS WITH AEA

RESOLUTION 99-51

WHEREAS, the State of Alaska, through the Alaska Energy Authority (AEA) is the owner of four hydroelectric facilities commonly known as the Four Dam Pool (Lake Tyee, Swan Lake, Solomon Gulch and Terror Lake); and

WHEREAS, in 1985 the AEA and Kodiak Electric Association, Copper Valley Electric Association, and the municipal utilities in Wrangell, Petersburg and Ketchikan ("Purchasing Utilities") entered into the Long-Term Power Sales Agreement (PSA) providing for the sale of energy from the projects to the Purchasing Utilities; and

WHEREAS, the PSA identifies each of the projects as a "Dedicated Facility" for the respective utility or utilities taking delivery of energy from such project; and

WHEREAS, each of the projects is the principle source of electricity for each of the Purchasing Utilities and has a substantial impact on the economic welfare of each community; and

WHEREAS, the Purchasing Utilities and AEA have devoted substantial resources to the negotiation of transfer of project ownership from AEA to the Purchasing Utilities; and

WHEREAS, to assist in developing ownership transfer terms, the Purchasing Utilities and AEA jointly funded a detailed study of project conditions and risks; and

WHEREAS, in July 1997, the Purchasing Utilities presented to AEA a proposal for the purchase of the facilities; and

WHEREAS, AEA ended transfer negotiations in December 1997 and no negotiations have occurred since that time; and

WHEREAS, the Purchasing Utilities have been and remain willing to resume good faith negotiations of an ownership transfer;

NOW, THEREFORE BE IT RESOLVED:

The Purchasing Utilities of the Four Dam Pool desire to resume negotiations with AEA for the transfer of ownership of the Four Dam Pool projects to the Purchasing Utilities.

DATED this 5th day of APRIL, 1999.

PROJECT MANAGEMENT COMMITTEE

By: *Donald E. Lewis*

Chairman

Approved at the PMC meeting held March 31, 1999.

PROJECT MANAGEMENT COMMITTEE

THE STATE ENERGY PROGRAM

Following the dramatic increase in oil prices in 1979-1980, the State was in a financial position to pump massive amounts of money into the development of energy projects.

During the early 1980s, the Alaska Energy Authority constructed or acquired four projects – Tyee Lake, Terror Lake, Swan Lake, and Solomon Gulch. The costs for constructing or acquiring the projects was initially paid by bond financing. Eventually, the bonds were replaced with money lent to the Authority by the Department of Commerce and Economic Development, from the Power Development Revolving Loan Fund.

In an effort to equalize power costs for the communities served by the four projects, the Alaska legislature provided that these four projects would be considered as one project – the Initial Project. Together they would be operated and managed jointly and the wholesale power rate for power sales would be the same for all four projects.

Between May and October of 1985, the parties engaged in intense negotiations. The Memorandum of Understanding between the Authority and the Representatives of the Four Dam Pool communities (signed on May 8, 1985), forged the basic tenets of what was to become the Long-term Power Sales Agreement for the Four Dam Pool.

THE POWER SALES AGREEMENT

On October 28, 1985, the Alaska Power Authority (now the Alaska Energy Authority), the Cities of Ketchikan, Wrangell and Petersburg, the Copper Valley Electric Association and the Kodiak Electric Association entered into a Long-term Power Sales Agreement.

- WHO** The long term power sales contract is between the City of Petersburg, the City of Ketchikan, the City of Wrangell, Kodiak Electric Association, Copper Valley Electric Association and the Alaska Energy Authority.
- WHAT** There are four operating hydroelectric projects owned by the State of Alaska: Lake Tyee, serving Petersburg and Wrangell; Swan Lake, serving Ketchikan; Terror Lake, serving Kodiak; and Solomon Gulch, serving Copper Valley.
- WHY** Energy from the projects displaces energy formerly generated by diesel plants in each community. Electricity costs no longer depend upon diesel fuel prices and were projected to be lower than diesel-generated

power. The contract provides a long term resource with a relatively stable cost and predictable economic future.

HOW

Term: The contract is for 45 years (1985 to 2030), renewable for a period up to the useful life of the projects.

Power: Each purchasing utility is entitled to receive, as needed, all the power available from its project and can benefit directly and indirectly from the sale of any surplus power from its project. The utility pays the agreed upon rate for the power it requires. No minimum amount or minimum payment is required.

Wholesale Power Cost: Each community pays the AEA a "postage stamp" rate for energy from the projects. The rate is established at the start of each fiscal year to cover estimated operating costs and agreed contributions toward debt retirement.

Operating Costs: Payments cover actual on-site costs, project-specific costs incurred by the AEA and utility management personnel, maintenance, and a fixed annual contribution of \$500,000 to an equipment renewals and replacement fund.

Debt Service: A schedule of debt service rates is agreed in advance for successive 15-year periods during the contract. The 1986 rate started at 2.6 cents per Kwh, rising in steps to four cents per Kwh for the years 1990-2000. Prior to 2000, a "rate opener" mechanism will establish the basis for rates between the years 2000-2015.

Risks: As owner of the four projects the AEA bears certain risks throughout the term of the contract and any renewals. These risks are:

- Uninsured project failures;
- Substandard project performance;
- Inadequacies in the funds for renewal and replacement of components;
- Failure of any of the participating utilities to pay their share.

Operation and Maintenance: The five utilities operate and maintain the four projects through a combination of local control and oversight by a Project Management Committee. The Committee consists of representatives from each of the five utilities and the AEA, and operating decisions are subject to management procedures adopted by the Committee (see *Four Dam Pool Policies and Rules of Procedure Handbook*).

"UNUSUAL" PROVISIONS OF THE POWER SALES AGREEMENT

1. **Construction financing - substantial State grant**
 - no bonds (loan from general fund)
 - rate not tied to actual debt service
2. **Requirements obligation, no "take or pay" obligation**
3. **Pooling of costs - concept of "Initial Project"**
4. **Division of risks between Authority and Purchasing Utilities**
5. **Use of the PMC for contract implementation**

OBLIGATIONS OF THE AEA, PURCHASING UTILITIES AND PMC

The Long-Term Power Sales Agreement creates a number of duties and responsibilities. Some, such as the financial obligations, rest on the individual parties (the AEA and purchasing utilities). Other responsibilities are vested in the group jointly through the PMC.

A. Financial Obligations of AEA and Purchasing Utilities

The Long-Term Power Sales Agreement imposes certain financial responsibilities on both the Alaska Energy Authority, as seller, and the five utility signatories, as buyers.

Generally speaking, the obligations of the utilities are for regular, recurring expenses that are funded through the rates paid by the utilities to buy power from the AEA. The obligations of the AEA, on the other hand, are for the coverage of various contingencies.

1. *AEA Financial Obligations*

The agreement requires the AEA to pay for any of the following items:

- a. Any costs associated with damage to or premature failure of any Four Dam Pool equipment that is not covered by insurance (Sections 4(d) and 6(b)(ii));
- b. Any costs associated with substandard performance of any of the Four Dam Pool facilities (Sections 4(d) and 6(b)(ii));
- c. Any costs of necessary renewals or replacements of equipment at any of the Four Dam Pool facilities to the extent there are any unexpended proceeds from the loan used to finance the Initial Project (Section 6(b)(iii)(D));
- d. Any costs of necessary renewals or replacements of equipment at any of the Four Dam Pool facilities that exceed the amounts then available in the Renewals and Replacements Fund (Section 4(d)); and
- e. Any costs associated with the failure of any purchasing utility to make its required payments (Section 4(d)).

2. *Purchasing Utility Financial Obligations*

The agreement requires the purchasing utilities to pay for the following items:

- a. The total costs of operating the Four Dam Pool facilities, including the costs of insurance (Sections 5(b)(i)(A) and (B)(I));
- b. The specific administrative and general costs of the AEA required for administration of the Four Dam Pool facilities (Section 5(b)(i)(B)(11));
- c. The costs associated with the Project Management Committee (Section 5(b)(i)(B)(III));
- d. The annual contributions to the Renewals and Replacement Fund (Section 5(b)(i)(C)); and
- e. An agreed-upon contribution to the debt service on the loan from the Alaska Department of Commerce that financed construction of the Four Dam Pool facilities (Section 5(b)(ii)).

B. *Other Duties and Responsibilities*

In addition to financial obligations, the Long-Term Power Sales Agreement imposes duties and responsibilities for the operation and protection of the Initial Project:

1. *AEA Duties*

- a. To sell power to each Purchasing Utility up to the full capability of each dedicated facility (Section 3(a));
- b. To make power continuously available to each Purchasing Utility and subject to certain rights of interruption (Section 4(a));
- c. To construct, maintain and repair any AEA owned facilities in accordance with Prudent Utility Practice (Section 4(b)); and
- d. To maintain records necessary for purposes of the agreement and of FERC licensing requirements (Section 10).

2. *Participating Utility Duties*

- a. To purchase and pay for power needed for utility loads in excess of loads served by pre-existing hydro facilities (Sections 3(a), 3(b) and 3(c));
- b. To construct, maintain and repair any utility owned facilities in accordance with Prudent Utility Practice (Section 4(b));
- c. To maintain records necessary for purposes of the agreement and of FERC licensing requirements (Section 10); and
- d. To take actions necessary to maintain the integrity of the agreement (Section 12).

3. *PMC Duties*

- a. To establish and deposit funds in the Initial Project Revenue Fund (Section 5(e));
- b. To establish, administer and approve expenditures from the R&R Fund (Sections 6(b)(i), 6(b)(iii)(C) and 7(e)(ii));
- c. To disburse funds to pay operating costs and debt service and to make the R&R contribution (Section 5(f));
- d. To meet at least quarterly (Section 7(c));
- e. To adopt rules to govern the Committee's affairs (Sections 7(d) and 7(e)(iv));
- f. To develop annual budgets (Section 7(e)(i));
- g. To arrange for insurance for Initial Project facilities, including determination of coverage limits, choice of insurers and disposition of insurance claim proceeds (Section 7(e)(iii));
- h. To adopt standards and arrange for the annual audit of all power production costs (Sections 7(e)(iv) 7(e)(v) and 7(g));
- i. Develop and adopt technical, operating and maintenance standards for the Initial Project equipment and facilities (Section 7(e)(vi));

- j. Establish an annual rate that is sufficient to pay for all costs under the contract (Sections 7(e)(vii) and 5(f));
- k. Develop load estimates as necessary for the Agreement (Section 7(e)(viii));
- l. Develop standards for capital asset acquisition and accounting (Section 7(e)(ix));
- m. Develop standards for expenditures which acquire unanimous agreement (Sections 7(e)(x) and 1(f));
- n. To adjudicate disputes, or adopt procedures for the adjudication of disputes between parties, prior to litigation (Section 8(a)); and
- o. Various duties relative to rate reopener, the first such duty being to provide a load forecast by 1998 (Section 9(c)).

HCR

11



Alaska State Legislature

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REPRESENTATIVE FRED DYSON

MEMORANDUM

May 1, 1999

To: Representative Pete Kott, Chair
Judiciary Committee

From: Representative Fred Dyson 

Subject: Request to schedule HCR 11

Please schedule a Judiciary Committee hearing on HCR 11, "Relating to substance abuse treatment for offenders in the criminal justice system." Attached is a Sponsor Statement and backup for your review.

- E-mail -
Representative_Fred_Dyson
@Legis.state.ak.us

- Internet -
<http://www.akrepublicans.org>



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REPRESENTATIVE FRED DYSON

HCR 11 Sponsor Statement

"Relating to substance abuse treatment for offenders in the criminal justice system."

Alaskans pay a high price when quality treatment services are not available. These significant impacts increase community hospital costs, court costs, policing and entitlement programs for the delivery of health and social services. They also increase needs for greater capacity in Alaska's correctional facilities.

Studies within the Department of Corrections show that alcoholism and other drug abuse interfere with efforts to rehabilitate offenders. They cite national data that indicate over eighty percent of offenders were either under the influence of alcohol or other drugs when they committed offenses or their addiction contributed to their criminal behavior.

At present, some treatment or education is offered in each correctional facility in the state. No prison provides services to all prisoners who need or want the service. Nor does any prison provide a continuum of services to the prison population. In addition, there are 27 treatment beds in community treatment programs set aside for prisoners after release from correctional facilities. These beds do not meet current needs. This contributes to recidivism by those who cannot receive treatment upon release.

HCR 11 encourages that efforts within the criminal justice system and at the legislative level be spent on responding to substance abuse with the goal of reducing recidivism.

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ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE
Draft Resolution on Treatment In the Criminal Justice System

Position Paper

The Advisory Board has maintained an interest in ensuring that all Alaskans have access to quality treatment services. The Board is keenly aware of the high price Alaskans pay when quality treatment services are not available. These significant impacts increase community hospital costs, court costs, policing and entitlement programs for the delivery of health and social services. They also increase needs for greater capacity in Alaska's correctional facilities.

In the fall of 1997, the Advisory Board asked 1,000 "key informants" in Alaska to indicate their level of agreement with the following statement:

Those incarcerated for criminal offenses related to the abuse of alcohol or other drugs should receive appropriate treatment before release from prison.

Seventy-nine percent of the 521 respondents answered with strong agreement, seventeen percent somewhat agreed, five percent somewhat disagreed and three percent strongly disagreed. This was one of the most agreed upon responses of the fifteen questions that were asked on this survey.

Studies within the Department of Corrections show that alcoholism and other drug abuse interfere with efforts to rehabilitate offenders. They cite national data that indicate over eighty percent of offenders were either under the influence of alcohol or other drugs when they committed offenses or their addiction contributed to their criminal behavior.

With these issues in mind, and strong consensus of survey respondents, the Advisory Board seeks to engage the Alaska Legislature in a dialogue on ways to address this significant continuing problem. It is at the heart of the Advisory Board's recently drafted Alaska State Plan for Alcoholism and Drug Abuse Services, **Results Within Our Reach, 1999-2002**. The primary desired result is: **Alaskans life free from the negative consequences of alcohol and other drug use.**

At present, some treatment or education is offered in each correctional facility in the state. No prison provides services to all prisoners who need or want the service. Nor does any prison provide a continuum of services to the prison population. In addition, there are 27 treatment beds in community treatment programs set aside for prisoners after release from correctional facilities. These beds do not meet current needs. This contributes to recidivism by those who cannot receive treatment upon release.

The Advisory Board, the Department of Health and Social Services, the Department of Corrections and the Alaska Mental Health Trust Authority are currently developing a

pilot program to provide a complete continuum of care for female offenders at the Hiland Mountain Prison. This program is funded by a federal grant and a small matching grant from the Alaska Mental Health Trust. In addition, the Department of Corrections, the Division of Alcoholism and Drug Abuse and the Advisory Board have developed a protocol to follow these women and provide services after release.

There is no method for determining how many prisoners are in need of service. There is no method in place to determine the effectiveness of the treatment in reducing criminal recidivism. It makes sound fiscal sense to spend money on treatment for offenders only if that treatment reduces recidivism.

Any action plan that will reduce recidivism and reduce prison costs must have the following components to meet legislative intent for outcome based funding:

- We must measure "the baseline." This is the number of persons entering the corrections system with alcohol or other drug problems. This screening should be part of the classification process for all prisoners. This will establish the universe of people needing services.
- We must offer appropriate treatment to those who screen-in with substance abuse problems.
- We must measure the recidivism rates for this population after release from prison to determine the effectiveness of the treatment
- We should only continue funding of this effort if the recidivism rates drop.

Don Dapcewich, Executive Director
November 1998

CURRENT DRUG ALCOHOL TREATMENT SERVICES AVAILABLE IN THE CORRECTIONS SYSTEM IN ALASKA

Currently some drug alcohol treatment is available in all of the thirteen correctional institutions in Alaska. Following is a summary of those services available in Alaska:

Drug/alcohol Education: Provides inmates with education, clinical assessments and referrals to treatment after completion of sentences. These services are available in the following institutions:

Ketchikan
Mat-Su Pretrial
Point Mackenzie
Sixth Avenue
Yukon Kuskokwim

Education with introduction to Treatment: Provides inmates with education and an introduction to treatment. It does not include a complete outpatient program but does introduce inmates to a treatment regimen. These services are available at:

Cook Inlet pre-trial
Fairbanks Correctional Center

Outpatient Services: Provides of four phases of treatment; assessment, education, primary care and aftercare. The services are tailored to the inmate "turnaround" with more intensity of services for those who are available for the services for longer periods of time. These services are available at:

Anvil Mountain
Lemon Creek
Meadow Creek
Palmer
Spring Creek
Wildwood
Arizona Detention Center

Residential Services: Residential services include intensive treatment that is provided on a continuing, daily basis. It is intensive and provides a full continuum of care including psychological counseling, nutrition, education, and an introduction to support group activity. This program provides services for women only. This program was initiated in 1998 and has a connection with continuing care provided through the "links" program, which follows inmates after discharge through the cooperation of community programs. This program is available at:

Hiland Mountain Prison (for women only)

Do these programs address existing needs?

In 1997 these programs provided 1,577 clinical assessments, 1,681 inmates received education programs and 807 received outpatient services. The Hiland Mountain project is expected to provide services to 64 inmates at any given time.

We do not know what percentage of need these programs are addressing because we do not do assessments on all prisoners. If Alaska's experience is similar to the rest of the country, 70-85% of inmates are in need of treatment services (from reports from the National Center on Addiction and Substance Abuse) and our services were provided to 13% of the inmates.

How do we close the gap between services provided and service need?

In a perfect world we would simply allocate enough resources to meet the need. This is obviously not within the realm of possibility so what can be done?

- **We need to determine if the services that we provide are effective.** We need to determine whether those who participate in treatment re-offend less than those who do not participate in treatment do. The department of Corrections, the Division of Alcoholism and Drug Abuse and the Advisory Board could collaborate to examine the efficacy of the treatment provided
- **We need to determine the persuasiveness of need for treatment.** Some methodology must be put in place to assess the need for treatment among inmates as they enter the prison system. This would require limited resources.
- **We need to broaden the scope of availability of services.** We should examine the possibility of re-engineering the treatment delivery system, possibly trading "hard" prison beds for "soft" community institutions beds with treatment components of service. We should examine alternative treatment delivery systems that would centralize treatment services at fewer institutions that would offer more intensive services.

HJR

2

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HJR2

Revision Date/Time (Note if correction) _____ Dept. Affected Office of the Governor
 Title Constitutional Amendment: Relating to a BRU Elective Operations
biennial state budget Component Elections
 Sponsor Representative Phillips
 Requester House Judiciary Committee Component No. 21

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	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	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	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gail Fenumia *Gail Fenumia* Phone 465-3935
 Division Division of Elections Date/Time 1/13/00 3:20 PM
 Approved by C. Lt. Governor Fran Ulmer *Fran Ulmer* Date 01/13/2000
 Agency Office of the Lieutenant Governor

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November 7, 1997

MEMORANDUM

TO: Representative Gail Phillips
FROM: Paula d. Scavera and Gina Spartz
Legislative Analysts
RE: Statutory and Constitutional Reference to Biennial Budgeting in Selected States
Research Request 98.009

You asked which states legislatures meet annually but pass biennial budgets. You asked for examples of statutory or constitutional language enabling biennial budgeting.

According to the *Book of the States*, of the 40 states with annual legislative cycles, 13 have statutory or constitutional language enabling biennial budgets. Connecticut, Hawaii, Indiana, Minnesota, Nebraska, New Hampshire, Ohio, Virginia, Washington, and Wyoming, meet annually but pass a budget biennially.¹ Arizona and Kansas also meet annually but pass budgets biennially for specific state agencies which have budgets under certain dollar amounts. Missouri meets annually but passes its capital budget biennially.²

We found statutory reference to biennial budgeting in all the states we surveyed except Indiana. Although the Indiana legislature passes a state budget biennially, state officials informed us there is no statutory or constitutional reference governing the practice. In addition to the statutes, we found specific constitutional reference to biennial budgeting in three states, Hawaii, Missouri and Wyoming. Hawaii's constitution states that the governor shall submit the budget to the legislature in odd-numbered years. Wyoming's constitution states that the legislature shall meet for "budget session" in even-numbered years. Missouri's constitution authorizes the legislature to make appropriations for one or two fiscal years.

The pertinent statutory and constitutional language can be found in the following pages. Indented text is directly quoted from the statute or constitution. Copies of the full statutes and constitutional text are Attachment B. Also attached is a survey examining biennial budgeting in selected states. The survey discusses the advantages, disadvantages and impact of biennial budgeting on states.³

¹Council of State Governments, *Book of the States, 1996-97*, p. 227 (Attachment A).

²Vermont's constitution prescribes a biennial legislature, but in practice the legislature meets and passes a budget annually. We attach Vermont's constitutional provision regarding the legislative session since you specifically asked about this state.

³"Biennial Budgeting Survey," New Jersey Office of Management and Budget, February, 1995 (Attachment C).

Representative Gail Phillips

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Arizona

State agencies in Arizona are divided into *major* budget units and *other* budget units. According to Richard Stravnick of the Arizona Legislative Budget Office, *major* budget units are state agencies with an annual budget of \$50 million or more and are funded annually. Those agencies with less than \$50 million are considered *other* budget units and are funded on a biennial basis. Mr. Stravnick informed us that starting in FY2000, Arizona will use a biennial budget cycle for all state agencies.

Arizona Statutes § 35-121. Format of Appropriations

The format of the appropriations for the support and maintenance of state departments and institutions shall be as follows:

1. Each year the legislature shall appropriate monies to the major budget units for one fiscal year.
2. Every other year the legislature shall appropriate monies to other budget units for two fiscal years, itemized separately for each fiscal year.

Connecticut

Connecticut Statutes § 4-71. Transmission to General Assembly of budget document in odd-numbered year and status report in even-numbered year.

Not later than the first session day following the third day of February in each odd-numbered year, the Governor shall transmit to the General Assembly a budget document setting forth his financial program for the ensuing biennium with a separate budget for each of the two fiscal years and . . . a report which sets forth estimated revenues and expenditures for the three fiscal years next ensuing the biennium to which the budget document relates.

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Hawaii

Hawaii Constitution Art. VII-Sec. 8. The Budget.

Within such time prior to the opening of each regular session in an odd-numbered year as may be provided by law, the governor shall submit to the legislature a budget in a form provided by law setting forth a complete plan of proposed expenditures of the executive branch, estimates as provided by law of the aggregate expenditures of the judicial and legislative branches, and anticipated receipts of the State for the ensuing fiscal biennium, together with such other information as the legislature may require.

Hawaii Statutes § 37-71. The Budget.

(a) Not fewer than thirty days before the legislature convenes in every odd-numbered year, the governor shall submit to the legislature and to each member thereof a budget that shall contain the program and budget recommendations of the governor of the succeeding two fiscal years.

Kansas

The Kansas legislature passes an annual budget for all large state agencies. Some state agencies, however, are on a biennial budget cycle. According to the Kansas Legislative Budget office, these agencies are regulatory, fee-funded boards and commissions with a budget of less than \$100,000.

Kansas Statutes § 75-3717. Budget estimates of state agencies; biennial basis for certain agencies.

(a) As provided in this section, each state agency, not later than October 1 of each year, shall file with the division of the budget its budget estimates for the next fiscal year...except that in lieu of such annual filing, each agency listed in subsection (f) not later than October 1, 1994, and every two years thereafter shall file budget estimates for the next fiscal year and for the ensuing fiscal year thereafter.

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Minnesota

Minnesota Statutes § 16A.11. Budget to Legislature.

Subdivision 1. When. The governor shall submit a four-part budget to the legislature. Parts one and two, the budget message and detailed operating budget, must be submitted by the fourth Tuesday in January in each odd-numbered year. Part three, the detailed recommendations as to capital expenditure, must be submitted . . . by June 15 of each odd-numbered year; . . .

Missouri

According to the *Book of the States*, the Missouri legislature has constitutional authority to pass an annual or a biennial budget. Since FY94 the legislature has passed an annual operating budget and a biennial capital budget.

Missouri Constitution § 23. Fiscal year--limitations on appropriations--specification of amount and purpose.

The general assembly shall make appropriations for one or two fiscal years, . . .

Missouri Statutes § 33.270. Budget to legislature in printed form -- contents.

The budget shall be submitted to the general assembly in printed form. Such budget shall be in two parts:

(1) A budget message outlining the fiscal policy of the state for the biennium . . .

(2) The detailed budget estimates of revenues and expenditures for each fund as provided for in this act showing the recommendations of the governor on each, compared with the figures for each of the fiscal years of the preceding biennium, and giving and explanation of each major change in the recommendations from the revenues and expenditures in the previous biennium.

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Nebraska

Nebraska Statutes § 81-125. State budget; submission to Legislature by Governor; when; contents.

The Governor shall on or before January 15 of each odd-numbered year present to the Legislature a complete budget for all the activities of the state receiving appropriations or requesting appropriations, except that the Governor during his or her first year in office shall present such budget to the Legislature on or before February 1.

New Hampshire

New Hampshire Statutes § 9:8. Formulation of the Budget.

Following his inauguration, the governor shall proceed in the formulation of the budget provided for by RSA 9:2 and 3. In doing so he shall give such weight to the estimates of income as prepared by the commissioner of administrative services and to the estimates of expenditure requirements as submitted by the departments and to the testimony elicited at the hearings thereon as he deems proper, but the proposals contained in the budget shall represent his judgment and recommendations in respect to the provision to be made for meeting the revenue and expenditure needs of the state for each of the fiscal years of the ensuing biennium.

Ohio

Ohio Statutes § 107.03. Governor shall submit budget and estimate of income.

The governor shall submit to the general assembly, not later than four weeks after its organization, a state budget containing a complete financial plan for the ensuing fiscal biennium, except that, in years of a new governor's inauguration, the budget shall be submitted not later than the fifteenth day of March.

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Vermont

The Vermont constitution provides for *biennial sessions* of the state legislature. According to officials with the Vermont State Legislature's Joint Fiscal Committee, in practice the legislature meets and passes a budget annually.

Vermont Constitution § 7. [Biennial sessions]

The General Assembly shall meet biennially on the first Wednesday next after the first Monday of January

Virginia

Virginia Statutes § 2.1-398. Submission of budget to General Assembly.

On or before December 20 in the year immediately prior to the beginning of each regular session held in an even-numbered year of the General Assembly, the Governor shall submit to the presiding officer of each house printed copies of a budget, based on his own conclusions and judgement

Virginia Statutes § 2.1-399.1. Capital projects.

On or before December 20 of the year immediately prior to the beginning of each regular session held in an even-numbered year of the General Assembly, the Governor shall submit to the presiding officer of each house of the General Assembly copies of any tentative bill or bills involving proposed capital appropriations for each year in the ensuing biennial appropriation period.

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Washington

Washington Statutes § 43.88.060. Legislative review of budget document and budget bill or bills--Time for submission

The governor shall submit the budget document for the 1975-77 biennium and each succeeding biennium to the legislature no later than the twentieth day of December in the year preceding the session during which the budget is to be considered.

Washington Statutes § 1.16.020. "Fiscal biennium"

The fiscal biennium of the state shall commence on the first day of July in each odd-numbered year and end on the thirtieth day of June the next succeeding odd-numbered year.

Wyoming

Wyoming Constitution § 7. Time and place of sessions.

The legislature shall meet at the seat of government, . . . on the second Tuesday of January of the odd-numbered years for general and budget session . . .

Wyoming Statutes § 9-2-1013. State budget; distribution of copies to legislators; items to be included; copies and reports of authorizations.

(a) On or before December 1 of the year preceding the year the legislature convenes in budget session, the governor shall distribute to each legislator printed copies of the state budget, covering the next biennial budget period beginning on July 1 of the ensuing year, containing the itemized requests of the agencies for appropriations of other funds, estimated revenues and receipts to the state, and his recommendations and conclusions.

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Page 8

**Wyoming Statutes § 9-2-1010. Duties of budget division;
biennial budgets and appropriations.**

(b) At each budget session budgets shall be prepared and appropriations made for the operation of state government on a biennial basis.

We hope this information is useful for your purposes. If you have any further questions please don't hesitate to call this office.

Attachments

Alaska State Legislature



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Representative Gail Phillips

Sponsor Statement HJR 2 "Biennial State Budget"

Representative Gail Phillips

Alaska's annual budget cycle is an arduous process, beginning in December of one year and ending in May of the next. Every year hundreds of people from State agencies spend countless hours preparing for budget presentations to the legislature. They also prepare for hearings, closeouts and debates. There is no doubt that the budget is the single most important piece of legislation that legislators produce for the people of Alaska.

Shifting to a biennial legislative budget cycle could result in the need for fewer resources while experiencing significant cost savings for the people of Alaska. A biennial State budget process would allow all legislators to deliberate the budget in the first session and focus exclusively on legislation in the next session. A biennial State budget process could also work hand-in-hand with the results based budget concept pursued by the legislature. State agencies would have a chance to initiate advance planning efforts; something which is very difficult under the present annual state budget system. Alaska would not be unique or experimental in adopting a biennial legislative budget cycle.

Research demonstrates that twenty other states operate under a biennial State budget system. HJR.2 proposes an amendment to Alaska's Constitution to allow for biennial budgeting. As written, the first session of the Legislature could be dedicated to writing a two-year budget. HJR.2 authorizes the governor to present the legislature with a budget encompassing two fiscal years.

THE BOOK OF THE STATES

**1996-97 EDITION
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Table 6.1
STATE BUDGETARY CALENDARS

State	Budget guidelines to agencies	Agency requests submitted to governor	Agency hearings held	Governor's budget sent to legislature	Legislature adopts budget	Fiscal year begins	Frequency of legislative/budget cycles
Alabama	September	Nov/Dec	January	February	Feb/May	October	Annual/Annual
Alaska	July	October	November	December	May	July	Annual/Annual
Arizona	June 1	September 1	Nov/Dec	January	Jan/April	July	Annual/Annual (a)
Arkansas	March	July	August	Sept/Dec	Jan/April	July	Biennial/Biennial
California	July/Nov	Aug/Sept	August/Nov	January 10	June 15	July	Annual/Annual
Colorado	June	August 1-15	August/Sept	January 15	May	July	Annual/Annual
Connecticut	July	September	February	February	May/June (b)	July	Annual/Biennial
Delaware	August	Oct/Nov	Oct/Nov	January	June 30	July	Annual/Annual
Florida	June	September	November	December	March	July	Annual/Annual
Georgia	May	September	Nov/Dec	January	March	July	Annual/Annual
Hawaii	July/Aug	September	November	December	April	July	Annual/Biennial
Idaho	June	September	...	January	March	July	Annual/Annual
Illinois	September	Nov/Dec	Nov/Dec	March	June	July	Annual/Annual
Indiana	July	Annual/Biennial
Iowa	June	September	Nov/Dec	January	April/May	July	Annual/Annual
Kansas	June	September	November	January	May	July	Annual/Annual (c)
Kentucky	July	October	...	January	April	July	Biennial/Biennial
Louisiana	September	November	February	February	June	July	Annual/Annual
Maine	July	September	Oct/Dec	January	June	July	Biennial/Biennial
Maryland	June	August 31	Oct/Nov	January	April	July	Annual/Annual
Massachusetts	August	October	October	January	June	July	Annual/Annual
Michigan	October	November	December	(d)	July	October	Annual/Annual
Minnesota	May/June	October 15	Sept/Oct	January (e)	May	July	Annual/Biennial
Mississippi	June	August	...	November 11	...	July	Annual/Annual
Missouri	July	October	...	January	April/May	July	Annual/Annual (f)
Montana	Dec/August	May/Oct	May/Oct	January	April	July	Biennial/Biennial
Nebraska	July	September	Jan/Feb	January	April	July	Annual/Biennial
Nevada	May/June	September	Sept/Dec	January	June	July	Biennial/Biennial
New Hampshire	August	October	November	February	May	July	Annual/Biennial
New Jersey	July/August	October	...	January	June	July	Annual/Annual
New Mexico	July	September	Sept/Dec	January	Feb/March	July	Annual/Annual
New York	July	September	Oct/Nov	January	March	April	Annual/Annual
North Carolina	January	August	Sept/Nov	February	June	July	Biennial/Biennial
North Dakota	March	June/July	July/Oct	December	Jan/April	July	Biennial/Biennial
Ohio	July	Sept/Oct	Oct/Nov	February (g)	June	July	Annual/Biennial
Oklahoma	July	October	Oct/Dec	February (h)	May (i)	July	Annual/Annual
Oregon	Jan/June	September	Sept/Nov	January	Jan/June	July	Biennial/Biennial
Pennsylvania	August	October	Dec/Jan	February (j)	June	July	Annual/Annual
Rhode Island	July	October	Nov/Dec	February	June	July	Annual/Annual
South Carolina	August	September	...	January	June	July	Annual/Annual
South Dakota	June/July	September	Sept/Oct	December	March	July	Annual/Annual
Tennessee	August	October	November	January (k)	April/May	July	Annual/Annual
Texas	March	July/Nov	July/Sept	January	May	September	Biennial/Biennial
Utah	July	September	Oct/Nov	December	February	July	Annual/Annual
Vermont	September	October	Nov/Dec	January	May	July	Annual/Annual (k)
Virginia	April/August	June/Sept	Sept/Oct	December	March/April	July	Annual/Biennial
Washington	April	September	October	December	May	July	Annual/Biennial
West Virginia	July	September	Oct/Nov	January	March	July	Annual/Annual
Wisconsin	June	September	...	January	June/July	July	Biennial/Biennial
Wyoming	May 15	September	November	December	March	July	Annual/Biennial

Source: National Association of State Budget Officers, *Budgetary Processes in the States* (February 1995).

Key:

... — Not applicable

(a) Agencies are divided into major budget units and other budget units. Major budget units submit annual budget requests. Other budget units submit biennial budget requests.

(b) Legislature adopts budget during June of odd years, May of even years.

(c) Twenty agencies are on a biennial budget cycle. The rest are still on an annual cycle.

(d) Within 30 days after legislature convenes in regular session, except when a newly elected governor is inaugurated when presentation must occur within 60 days after legislature convenes.

(e) Fourth Tuesday.

(f) There is a constitutional authority to do annual and biennial budgeting. Beginning in Fiscal 1994, the operating budget has been on an annual basis while the capital budget has been on a biennial basis.

(g) Budget submission delayed to mid-March for new governors.

(h) First Monday.

(i) Last Friday.

(j) Budget is submitted in March when governor has been elected for first full term. In Tennessee, budget may be submitted by March 1 during the first year of a governor's term.

(k) State Constitution prescribes a biennial legislature; in practice, legislature meets annually, in regular and adjourned sessions.