

ALBANY LEGAL CENTER, 2007-2007 7/00

10875 HOUSE JUDICIARY

## SB 364 / HB 535 -- DET Bill Summary -- 3/31/04

### Background/Intent

The existing statutes require the State to cover the costs of diagnosis, evaluation and treatment (DET) for financially eligible patients who need to be involuntarily committed to non-state-operated hospitals. The costs of these services and the related transportation cost have increased over the years. The intent of this bill is to:

- Establish that this is not an entitlement
- Clearly communicate that costs incurred will only be covered up to the amount appropriated by the legislature
- Require hospitals to notify the Department within 24 hours of admission of a potentially eligible individual, allowing the Department to assist in timely and appropriate discharge to community based programs
- Establish that the Department is under no obligation to pay for services a hospital delivers to a patient beyond recommended discharge date
- Funding is decreased between FY04 and FY05

### Program Effects

- Contains costs on an annual basis
- 24-hour registration assists Department to determine costs at time they are incurred and thus allow for fiscal management
- Limit State responsibility to funds appropriated by legislature

### Cost Progression 2000-2005

FY00	\$	1,901,480	
FY01		2,055,420	
FY02		2,284,930	
FY03		3,384,430	
FY 04 Budget		3,096,800	
FY 05 Budget		1,901,480	Strategies being explored to expand federal participation via Disproportionate Share (DSH)

### Cost Saving Strategies

- Update transportation polices and procedures
  - Ambulances

### DET Sites

- Fairbanks
- Juneau

### Other Sites

Palmer, Ketchikan, Cordova, Homer, Valdez, Sitka,  
Bethel, Kodiak

### Cost Comparisons between API and DET/S Facilities

- API daily rate 757.46
- Fairbanks 1,646.91
- Bartlett 1,636.04
- Ketchikan 1,800.68
- Mt. Edgecombe 2,049.00
- Bethel 2,049.00

### Explanation for Cost Increases over years

100% of Hospital cost increases between 01 and 03

27% of Hospital increases in average daily Medicaid between 01 and 03

27% of Hospital increases in total beds used between 01 and 03

### Management of Costs

Costs within existing budget – if retrospective reviews are changed from DBH staff to First Health the cost would be about \$31,800/year based on a current charge of \$111.44/review X 275 reviews (average # of admissions / last 3 years).

If we add an early review at 8<sup>th</sup> day of admission (transitioning from evaluation to treatment) we can also add discussion about eligibility and discharge planning, the cost would increase by \$7,000 based on 63 admissions over 8 days in FY03. The total First Health review costs would be about \$40,000/year.

## Common use of funding limitation to appropriations

### Current grant regulations

**7 AAC 81.220. Limitation of appropriations.** (a) During each state fiscal year, the department [A GRANT AGENCY] may authorize the payment of costs under a provider agreement only to the extent of money allocated in the state budget for the grant program for that fiscal year.

(b) The department [A GRANT AGENCY] may determine the amount of money, if any, that it will keep in reserve at a particular time, based on the part of the fiscal year that remains and the demand for services of the program that the department expects during the balance of the fiscal year.

(c) If authorized financing for a grant program is less than the amount required to provide service to all individuals who meet applicable eligibility criteria and seek those services, the department will [A GRANT AGENCY SHALL] prioritize which individuals will receive services. (Eff. 7/21/2002, Register 163; am \_\_\_/\_\_\_/2004, Register \_\_\_)

## Chapter 14.09. TRANSPORTATION OF PUPILS

### Sec. 14.09.010. Transportation of pupils.

(a) A school district that provides student transportation services is eligible to receive funding for operating the student transportation system. Subject to appropriation, the amount of funding provided by the state under this section is the lesser of the amount determined by multiplying the amount of the school district's ADM less the ADM for the district's correspondence programs during the current fiscal year

(1) by a per student allocation computed by dividing the amount received by the school district under this section during fiscal year 2003 by the school district's ADM less the ADM for the district's correspondence programs during fiscal year 2003; or

(2) by \$1,200 per student.

(b) In this section,

(1) "ADM" has the meaning given in AS 14.17.990;

(2) "district's ADM" means the sum of the ADMs in the district.

Sec. 14.25.020. Powers of the administrator.

(a) The administrator may

(1) formulate and recommend to the Alaska Teachers' Retirement Board regulations to govern the operation of the system;

(2) make expenditures from the retirement fund necessary to administer this chapter.

(b) The administrative expenditures permitted by (a)(2) of this section shall be included in the governor's budget for each fiscal year and are subject to appropriation by the legislature.

**Sec. 14.57.100. Acquisitions.**

Subject to appropriation by the legislature under AS 37.14.530, the director may use the balance of the net income account of the Alaska heritage endowment fund to acquire culturally or historically significant artifacts, natural history specimens, art objects, collections, and other items, materials, or properties that represent and document Alaska's land, natural history, and people for

- (1) the Alaska State Museum; and
- (2) the Sheldon Jackson Museum.

**Sec. 18.56.410. Alaska energy efficient home grant fund.**

(a) There is established in the corporation the Alaska energy efficient home grant fund consisting of money appropriated to it by the legislature and deposited in it by the corporation. The corporation shall administer the Alaska energy efficient home grant fund under the provisions of this section.

(b) Subject to appropriation, the corporation may grant funds from the Alaska energy efficient home grant fund to agencies of the state or federal government, individuals, or businesses that retrofit existing single family dwellings or build new single family dwellings that meet criteria adopted by the corporation.

(c) The corporation shall adopt guidelines and procedures for the fund after consultation with the board of directors of the Alaska Craftsman Home Program.

Sec. 18.56.420. Housing assistance loan fund.

(a) There is created in the corporation, as a revolving loan fund, the housing assistance loan fund consisting of money appropriated to it by the legislature and deposited in it by the corporation, and repayments of principal and interest on loans made or purchased from the assets of the fund. The corporation shall

(1) adopt regulations to administer the housing assistance loan fund under AS 18.56.400 - 18.56.600; and

(2) subject to appropriation, provide money for a rural assistance loan program to originate, purchase, participate in the purchase of, or refinance

(A) small community housing mortgage loans;

(B) loans made for building materials for small community housing;

(C) loans made for renovations or improvements to small community

housing;

(D) loans made for the construction of owner-occupied small community housing other than loans to builders or contractors or loans that compensate an owner for the owner's labor or services in constructing the owner's own housing.

(b) Money in the fund may be used by the legislature to make appropriations for costs of administering the housing assistance program.

Sec. 18.56.650. Low cost and low income multiple family housing development fund and grants.

(a) There is created in the corporation a low cost and low income multiple family housing development fund. Subject to appropriation the corporation shall make grants to municipalities or public or private nonprofit corporations designated as tax exempt under 26 U.S.C. 501(c)(3) and (4) (Internal Revenue Code of 1954) for the purpose of developing low cost, low income multiple family housing.

(b) Application for a grant under (a) of this section shall be in the form prescribed by the corporation. The application

(1) shall demonstrate the need for low cost, low income multiple family housing in the area to be served, the feasibility of the proposed project; and

(2) must include an adequate management plan that shall demonstrate the ability of the eligible recipient to sustain the proposed project.

(c) A low cost and low income multiple family housing project developed under this section

(1) shall be prepared in accordance with facility procurement policies developed by the Department of Transportation and Public Facilities under AS 35.10.160 - 35.10.200; and

(2) is a public facility under AS 35.10.160 - 35.10.200.

(d) The corporation shall adopt regulations under AS 18.56.088 to carry out the purposes of this section.

(e) In this section, "low cost and low income multiple family housing"

(1) means a specific work or improvement undertaken primarily to provide multiple family dwelling accommodations for low income persons;

(2) includes the acquisition, construction, or rehabilitation of land, buildings, improvements, and other nonhousing facilities that are incidental or appurtenant to the housing.

Sec. 29.25.074. Surcharge.

(a) A municipality may not enforce a penalty for violation of an ordinance for which a surcharge is required to be imposed under AS 12.55.039 unless the municipality authorizes the imposition of and provides for the collection of the surcharge. The surcharge shall be deposited into the general fund of the state and accounted for under AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the municipality in collecting the surcharge and transmitting the surcharge to the state. The reimbursement may not exceed 10 percent of the surcharge collected and transmitted to the state.

(b) This section applies to home rule and general law municipalities.

Sec. 36.30.695. Other rules of procedure.

(a) The commissioner may adopt by regulation additional rules of procedure providing for the expeditious arbitration, hearing, and other administrative review of all contract claims, both before the contracting agency and through an appeal heard de novo.

(b) Except as provided by (c) of this section, an arbitrator shall issue a final decision, and a hearing officer shall issue a recommended decision, within the following time limits after the date the record on the claim is closed:

(1) 30 calendar days for a claim of less than \$100,000;

(2) 45 calendar days for a claim of \$100,000 or more but less than \$1,000,000; or

(3) 60 calendar days for a claim of \$1,000,000 or more.

(c) The commissioner of administration or the commissioner of transportation and public facilities may, for good cause shown, grant an arbitrator or a hearing officer additional time to issue a decision.

(d) If an arbitrator or hearing officer fails to issue a decision within the time allowed for a decision under (b) or (c) of this section, the arbitrator or hearing officer is disqualified from acting as an arbitrator or hearing officer in another proceeding under this chapter for one year after the decision is issued.

(e) The venue for an arbitration or hearing under this chapter is the judicial district where the office of the contracting agency is located, unless the agency and the contractor agree on another location.

(f) If a party fails to appear at a proceeding under this chapter, the arbitrator or hearing officer may proceed in the party's absence.

(g) Subject to appropriation, any money awarded by an arbitrator's decision shall be paid within 45 days after the date that the arbitrator's decision is final. Subject to appropriation, any money awarded by a hearing officer's recommended decision that is approved by the commissioner of transportation and public facilities shall be paid within 45 days after the date that the commissioner's decision is delivered to the contractor and the agency, unless the commissioner's decision is appealed under AS 36.30.685.

Sec. 37.14.300. Investment loss trust fund.

(a) There is established as a separate fund in the state treasury the investment loss trust fund. The trust fund consists of money appropriated to it by the legislature. The Department of Revenue is the custodian of the trust fund and shall invest the trust fund in accordance with AS 37.10.071. Subject to appropriation, the amount earned on money in the trust fund shall be retained in the trust fund. The trust fund shall be held in trust for the benefit of participants in the supplemental annuity plan established under AS 39.30.150 - 39.30.180 and for other purposes authorized by this section, subject to the conditions set out in this section.

(b) The Department of Administration shall spend money from the trust fund as necessary to

(1) hold participants in the plan and annuity holders harmless from a loss on investments in guaranteed investment and annuity contracts issued by Executive Life Insurance Company of California;

(2) pursue a right to recover amounts from persons who may have unlawfully caused or contributed to the loss on investments; and

(3) protect the interest of participants in the plan and annuity holders during proceedings to conserve or liquidate the assets of Executive Life Insurance Company of California.

(c) If the plan or an annuity holder does not incur a loss on investments, or, if after compensating the plan and annuity holders for the loss on investments, a balance remains in the trust fund, the trust fund created in (a) of this section is terminated and the balance of the trust fund lapses pro rata into the funds from which the appropriations to the trust fund were made. The state is subrogated to a right of claim held by participants in the plan and annuity holders to the extent of amounts spent from the trust fund.

(d) In this section,

(1) "annuity holder" means

(A) a plan participant who elects to receive an annuity contract acquired by the Department of Administration and issued by Executive Life Insurance Company of California; and

(B) members of the Unlicensed Vessel Personnel Annuity Retirement Plan who receive an annuity contract acquired by the Department of Administration and issued by Executive Life Insurance Company of California;

(2) "loss on investments" means

(A) the difference between the principal amount plus accrued interest earned through May 3, 1991, on the guaranteed investment contracts issued by Executive Life Insurance Company of California, according to the terms of the contracts, and a lesser amount received by the plan upon maturity, sale, or other termination of the contracts; plus

(B) accrued earnings on the amount described in (A) of this subsection, beginning May 4, 1991, and continuing until the earlier of a participant's benefit commencement date or the maturity, sale, or other termination of the contracts, at a rate equal to the rate, less one percent to be used for the purposes of (b)(2) - (3) of this section, earned each month on the investment loss trust fund; or

(C) any unpaid annuity amounts due to annuity holders under an annuity contract issued by Executive Life Insurance Company of California;

(3) "plan" means the supplemental annuity plan established under AS 39.30.150 - 39.30.180;

(4) "trust fund" means the investment loss trust fund established under this section.

Sec. 38.35.145. Agreement to provide for payment of preapplication costs.

(a) To accommodate preliminary work in advance of the receipt of an application for a lease under this chapter, the department may enter into an agreement with a prospective lessee desiring to own an oil or natural gas pipeline that is proposed to be located in whole or in part on state land. The agreement must provide that the prospective lessee reimburse the department for the reasonable costs of work incurred in preparing for activities before receipt of an application.

(b) Expenditure of amounts received by the department under (a) of this section is subject to appropriation by the legislature. Appropriations made to satisfy the requirement of (a) of this section may be made by general appropriations of program receipts conditioned on compliance with the program review provisions of AS 37.07.080(h).

(c) The department may not exercise authority to enter into an agreement under (a) of this section after December 31, 2003, but an agreement entered into before January 1, 2004, is valid and enforceable on and after that date.

**Sec. 39.30.050. Administrative costs.**

The department shall collect from each participating political subdivision its respective pro rata share of the expenses incurred in the administration of AS 39.30.010 - 39.30.080. The amounts collected from participating political subdivisions, together with money appropriated by the state for covering the state's share of administrative costs, shall be deposited in an FICA administration fund and are not allocable to any other purpose. Expenditures from the FICA administration fund shall be included in the governor's budget for each fiscal year and are subject to appropriation by the legislature. At the time of preparation of the governor's annual budget the department shall review the FICA administration fund and adjust the rate of assessment on political subdivisions so as to prevent the accumulation of more money than is needed to administer AS 39.30.010 - 39.30.080.

Sec. 43.77.060. Revenue sharing.

(a) Subject to appropriation by the legislature and except as provided in (b) of this section, the commissioner shall pay to each

(1) unified municipality and to each city located in the unorganized borough, 50 percent of the amount of tax revenue collected from taxes levied under this chapter on the fishery resource landed in the municipality and accounted for under AS 43.77.050(b);

(2) city located within a borough, 25 percent of the amount of the tax revenue collected from taxes levied under this chapter on fishery resources landed in the city and accounted for under AS 43.77.050(b); and

(3) borough

(A) 50 percent of the amount of the tax revenue collected from taxes levied under this chapter on fishery resources landed in the area of the borough outside cities and accounted for under AS 43.77.050(b); and

(B) 25 percent of the amount of the tax revenue collected from taxes levied under this chapter on fishery resources landed in cities located within the borough and accounted for under AS 43.77.050(b).

(b) Notwithstanding the provisions of (a)(2) and (a)(3)(B) of this section, and subject to appropriation by the legislature, the commissioner shall pay to each

(1) city that is located in a borough incorporated after the effective date of this Act, the following percentages of the tax revenue collected from taxes levied under this chapter on fishery resources landed in the city and accounted for under AS 43.77.050(b):

(A) 45 percent of the tax revenue collected during the calendar year in which the borough is incorporated;

(B) 40 percent of the tax revenue collected during the first calendar year after the calendar year in which the borough is incorporated;

(C) 35 percent of the tax revenue collected during the second calendar year after the calendar year in which the borough is incorporated; and

(D) 30 percent of the tax revenue collected during the third calendar year after the calendar year in which the borough is incorporated; and

(2) borough that is incorporated after the effective date of this Act, the following percentages of the tax revenue collected from taxes levied under this chapter on fishery resources landed in the cities located within the borough and accounted for under AS 43.77.050(b):

(A) five percent of the tax revenue collected during the calendar year in which the borough is incorporated;

(B) 10 percent of the tax revenue collected during the first calendar year after the calendar year in which the borough is incorporated;

(C) 15 percent of the tax revenue collected during the second calendar year after the calendar year in which the borough is incorporated; and

(D) 20 percent of the tax revenue collected during the third calendar year after the calendar year in which the borough is incorporated.

(c) Notwithstanding the provisions of (b) of this section, a city may adopt an ordinance to transfer a portion of the funds received under (b)(1) of this section to the borough in which the city is located.

(d) To the extent that appropriations are available for the purpose, and notwithstanding the requirement of AS 37.07.080(e) that approval of the office of management and budget is required, an amount equal to 50 percent of the tax revenue that is collected under this chapter and

is not subject to division with a municipality under (a) - (c) of this section shall be transmitted each fiscal year, without the approval of the office of management and budget, by the department to the Department of Community and Economic Development for disbursal to eligible municipalities under AS 29.60.450.

(e) For purposes of this section, tax revenue collected under AS 43.77.010 from a person entitled to a credit under AS 43.77.035 or 43.77.045 shall be calculated as if the person's tax had been collected without applying the credits.

Sec. 47.37.125. Payment for services.

Subject to appropriation by the legislature, money in the mental health trust settlement income account established in AS 37.14.036 may be used to support a service provided under the authority given in this chapter.







# STATE OF ALASKA

**DEPT. OF HEALTH AND SOCIAL SERVICES**

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030  
FAX: (907) 465-3068

April 28, 2004

Honorable Lesil McGuire Chair  
House Judiciary Committee  
Alaska State Capitol; Rm. 118  
Juneau, AK 99801-1182

Dear Representative McGuire,

The Department of Health and Social Services respectfully requests a hearing in the House Judiciary Committee on House Bill 535 "An Act relating to liability for expenses of placement in certain mental health facilities; relating to the mental health treatment assistance program; and providing for an effective date."

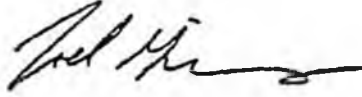
The purpose of this bill is to provide the department with additional tools to contain costs in the Designated Evaluation and Treatment (DET) program. The bill will require hospitals that participate in this program to provide the department with more timely information on persons receiving services, thereby allowing the department to better control total program costs over the course of the year. The bill also makes it clear that the State's obligation to pay for these services is limited to the amount appropriated by the legislature for this purpose.

The House Health, Education and Social Services Committee has heard the bill and recommends it be replaced with a House (HES) Committee Substitute. The department supports the House (HES) amendment.

The Governor's transmittal letter and fiscal note relating to HB 535 are on file with the committee. A brief history of the DET program is attached.

Your favorable consideration of this request will be appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Gilbertson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joel Gilbertson  
Commissioner

cc: Mike Tibbles, Director  
Legislative Office  
Office of the Governor

Bill Hogan, Director  
Division of Behavioral Health

## ATTACHEMENT

### Designated Evaluation and Treatment Program

Beginning in the late 1970s, the Designated Evaluation and Treatment Program provided funding on a fee-for-service basis to local community hospitals and specialty hospitals. This funding covered psychiatric inpatient care to certain persons, enabling them to receive care close to home and family. The population initially served by the program was anyone who did not have the means to pay the bill for hospital and related services. The budget, while limited, enabled the program to compensate hospitals for psychiatric inpatient care provided to "indigent" persons, without any further restrictions.

Growth in the program and increases in hospital rates pushed program costs beyond the available budget, and the first restriction was imposed. The program policy was changed to provide payment only for persons who were under civil commitment. A task force, appointed to resolve payment issues, recommended that the hospitals be paid at the Medicaid rate.

The Designated Evaluation and Treatment Program has become a vital part of the necessary array of community services that must be in place before the Alaska Psychiatric Institute can assume its role as the tertiary care facility for Alaska. It provides acute hospital psychiatric care treatment close to ones home community and support network.

In 1998, the federal government made funds available to assist low-income individuals in paying for evaluation and treatment services in designated mental health facilities. The funding was available through FY 01. During the 21<sup>st</sup> session of the Alaska State Legislature, Senate Bill 97 became law. It created the Mental Health Treatment Assistance Program (AS 47.31.005 – 47.31.100) and directed the department to adopt regulations to implement the program (after consulting with the Alaska Mental Health Trust Authority).

HB 535



FRANK H. MURKOWSKI  
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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 5, 2004

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill related to the mental health treatment assistance program. The bill would give the Department of Health and Social Services additional tools to control costs. Costs would be controlled by limiting financial assistance to persons meeting the eligibility criteria after registration. Registration would require contacting the department in a timely manner and supplying information on medical and financial need. The department would also gain some flexibility to reduce rates when there is a shortfall of funds.

I urge your support of this important bill.

Sincerely yours,

*Frank H. Murkowski*  
Frank H. Murkowski  
Governor

Enclosure

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 535  
 ( H ) Publish Date: 3/8/04  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):  
 Title RELATING TO THE MENTAL HEALTH TREATMENT PROGRAM

RDU Behavioral Health  
 Component Designated Eval & Treatment

Sponsor (RLS) BY REQUEST OF THE GOVERNOR

Requester \_\_\_\_\_

Component No. 1014

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	( 100.0)	( 100.0)	( 100.0)	( 100.0)	( 100.0)	( 100.0)
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>( 100.0)</b>	<b>( 100.0)</b>	<b>( 100.0)</b>	<b>( 100.0)</b>	<b>( 100.0)</b>	<b>( 100.0)</b>

<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES (0)</b>						

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health	( 100.0)	( 100.0)	( 100.0)	( 100.0)	( 100.0)	( 100.0)
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>( 100.0)</b>	<b>( 100.0)</b>	<b>( 100.0)</b>	<b>( 100.0)</b>	<b>( 100.0)</b>	<b>( 100.0)</b>

Estimate of any current year (FY2004) cost: \_\_\_\_\_  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill will provide the Department with management tools necessary to contain costs for DET services on an annual basis. Changes to the eligibility requirements and time frames for applying for financial assistance will allow the department to better project and manage costs within the available funding levels. Current application timelines, i.e. 180 days after date of discharge results in bills for prior year service coming in the first six months of the current fiscal year. This lag makes it extremely difficult for program staff to project the level of funding available for current year program costs. (Continued on next page)

Prepared by: Bill Hogan, Director Phone 465-3371  
 Division: Behavioral Health Date/Time 02/05/2004  
 Approved by: Joel S. Gilbertson, Commissioner Date 02/06/2004  
 Agency: Department of Health and Social Services

FISCAL NOTE

FN # 1

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

BILL NO. HB 535

ANALYSIS CONTINUATION

DET program expenditures for the last few years have averaged \$500.0 more in general funds than the original budget. In past years, either a supplemental budget request has been appropriated or excess year-end funds within the appropriation were available to cover these additional costs. However, with FY04 budget reductions this is not an option. The program currently anticipates approximately \$500.0 in FY03 claims being received between July 1 - December 31, 2003 having to be paid out of its FY04 budget.

In FY2005 this program will lose federal receipts of \$724.9 (which are reflected in the Governor's budget) that have previously been available for program costs. With these compounding circumstances it is important to implement changes to allow for fiscal management of this program to stay within budgetary authorization. This bill will allow the department to cap payments to the funding levels available, rather than the current open-ended process.

Due to the FY04 and FY05 budget reductions the most that could be expected in FY05 general fund savings would be \$100.0. This represents approximately a 10% general fund reduction.

If these legislative changes are not made to the DET program, the only alternatives available to the department for this program would be requests for supplemental appropriations or to decline payment of the bill which could result in legal action.

**Changes between HB 535 Version A and CS for HB 535(HES) Version D**

1. Section 7, Page 4, Lines 23-28 on HB 535 Version A was deleted on the CS.
2. On the CS – there were two lines added on Page 2, Lines 28-29:
  - (2) assist affected facilities in transferring patients to another available facility as necessary and as the patient's condition permits.

Alaska State Hospital & Nursing Home Association  
Comments on HB 535 Before House Health, Education and Social Services  
April 13, 2004

ASHNHA requests that the intent of HB 535 be further clarified either by adding the following sentence to the Letter of Intent submitted by the Department (Option 1), or by amending HB 535 to add the following subsection (Option 2).

**OPTION 1** - Add the following sentence to the Letter of Intent:

If the department implements Section 2 of HB 535 due to insufficient funding, the department will work with impacted community hospitals to transfer these patients to API as soon as their medical condition permits.

**OPTION 2** - **Sec. 2.** AS 47.31 is amended by adding a new subsection to read:

(c) If the department must implement the provisions of AS 47.31.007 due to lack of sufficient appropriation, the department will work with impacted community hospitals to transfer these patients to API as soon as their medical condition permits.

23G-2  
3/31/2004  
(9:37 AM)

**AMENDMENT**

OFFERED IN THE HOUSE HEALTH,

BY \_\_\_\_\_

EDUCATION AND SOCIAL SERVICES COMMITTEE

TO: HB 535

1 Page 2, line 28:

2 Delete "~~may~~ [SHALL]"

3 Insert "shall"

4

5 Page 4, lines 23 - 28:

6 Delete all material

7

8 Remember the following bill sections accordingly.

9

10 Page 5, line 12 - 13:

11 Delete "secs. 1 - 9"

12 Insert "secs. 1 - 8"

13

14 Page 5, line 20:

15 Delete "Section 11 of this Act"

16 Insert "Section 10 of this Act"

17

18 Page 5, line 21:

19 Delete "sec. 12 of this Act"

20 Insert "sec. 11 of this Act"

23G-2  
3/31/2004  
(9:38 AM)

**AMENDMENT**

OFFERED IN THE SENATE HEALTH,

BY \_\_\_\_\_

EDUCATION AND SOCIAL SERVICES COMMITTEE

TO: SB 364

- 1 Page 2, line 28:
- 2 Delete "~~may~~ [SHALL]"
- 3 Insert "shall"
- 4
- 5 Page 4, lines 23 - 28:
- 6 Delete all material
- 7
- 8 Renumber the following bill sections accordingly.
- 9
- 10 Page 5, line 12 - 13:
- 11 Delete "secs. 1 - 9"
- 12 Insert "secs. 1 - 8"
- 13
- 14 Page 5, line 20:
- 15 Delete "Section 11 of this Act"
- 16 Insert "Section 10 of this Act"
- 17
- 18 Page 5, line 21:
- 19 Delete "sec. 12 of this Act"
- 20 Insert "sec. 11 of this Act"

**SENATE HEALTH, EDUCATION AND SOCIAL  
SERVICES COMMITTEE (HES)**

**LETTER OF INTENT  
TO SB 364**

It is the intent of the legislature that the Department of Health and Social Services continue to develop and support a continuum of mental health care that includes community-based outpatient and supportive services, community hospital-based inpatient evaluation and treatment services, and tertiary mental health care through the Alaska Psychiatric Institute. In developing this system the Department of Health and Social Services shall be guided by the principles that mental health services should be clinically appropriate, cost effective, offered in the least restrictive setting available, and provided as close to the client's home as possible.

It is further the intent of the legislature that in the event of a shortfall in appropriations for mental health evaluation and treatment at community hospitals to stabilize persons experiencing a psychiatric emergency or crisis, and who meet the criteria for involuntary commitment under AS 47.30.700 - 47.30.915, the Department of Health and Social Services shall make every effort to identify additional financing sources or reallocate appropriations available for the purpose from lesser priorities to continue these important services for the remainder of the fiscal year.

*Part of language in operating budget*

House HESS Questions 3/25/04 HB 535

Draft 3/31/04

- 1) If a person has been sent to a DET facility on a court order, would the DBH have any authority to question or overthrow the court order.

Attn Gen – the DBH would be obligated to follow that order

However, the treating physician can discharge a person who does not meet admission criteria.

- 2) How many youth are treated in DET facilities?

Seven (under 3%) admissions occurred in FY 03 out of a total 244 admissions; one youth entered the hospital twice. None exceeded the evaluation phase of up to 7 days.

- 3) What is the explanation for the increased length of stay at Bartlett?

See attached list of reasons for extended stays as explained by Bartlett justified by clinical reasons in the best interests of the patient

- 4) Why is cost of care at Mt. Edgecumbe so high compared to Bethel for example?

All IHS hospitals have a nationally determined rate that is the same for all hospitals

General answer is full cost studies are conducted every four years which include facility depreciation and are used to collect Medicaid funds.

- 5) What would happen if API were full?

- See # 3 – We can ask a DET facility to keep someone longer
- API is being more assertively managed to avoid being full – Current CEO has not turned anyone away

- 6) Could we send anyone to a correctional facility if API is full?

Attn Gen. -- DHSS will pay for another placement – we will not send to correctional facility (notwithstanding hold in jail while transportation being arranged for combative patients – leads to discussions about developing more assertive local DET and other medication options including Dr. to Dr. discussions with local physicians and API physicians.

- 7) Why are there different poverty levels eligibility definitions -- example between DET and Denali Kid Care.

There are at least 9 categorical programs using poverty definitions ranging from 100 – 250% of federal poverty guidelines. Each was developed at different times, under different climates and different administrations.

See attached data summary sheet.

- 8) What is the comparable API Daily Medicaid Rate?

I was in error reporting the daily cost at API as \$669. That rate did not include depreciated facility costs. The Medicaid Rate was calculated at \$757.46/day calculated with the same standardized procedure used to calculate the other Medicaid rates used for other hospitals.

A rate for the new facility has not been calculated.

- 9) Are the Medicaid Rates cost shifting from higher Medical Costs such as surgery?

(Note: DHSS efforts to restructure psychiatric hospital rate.)

- 10) How will be using First Health and MD to monitor program?

See Summary of Proposed DET Monitoring Process

- 11) How have other states managed DET like programs in terms of an entitlement vs. limitations of budget.

Dan Branch, Att. Gen. Office has been asked to attend on 4/2/04

### Length of Stay Extensions at Bartlett FY 03

- Difficulty in stabilizing on medications; developed many side effects to medications
- Placement, working w/ courts to get guardianship
- Difficulty in stabilizing medications, many reactions
- Placement, unable to release safely by self, not appropriate for API
- MD felt API placement inappropriate, better to stay within the southeast community
- Stabilizing on medications
- Difficulty in stabilizing on medications related to reactions/EPS
- Was off medication completely, restarted and stabilized
- Stabilizing on medications
- Co-occurring ETOH abuse, needing extra time
- Newly diagnosed, stabilizing on medication

Hospital CEO notes that most delays occurred with patients sent from across the region where resources tend to be less than in Juneau. Sixty-four percent of the delays were related to medication issues. More assertive discharge planning may be able to facilitate earlier discharges. Discharge planning should begin on Day of Admission by hospital staff and local programs. More active management by DBH/API/First Health may facilitate more timely discharges.

**2004 Monthly Federal Poverty Guidelines for Alaska**  
Effective 4/1/2004

<b>HOUSEHOLD SIZE</b>	<b>QMB Working Disabled (premium level)</b>	<b>SLMB Base</b>	<b>SLMB Plus</b>	<b>Denali KidCare (limit for insured children)</b>	<b>Denali KidCare (limit for uninsured children) and Pregnant Women</b>	<b>Transitional Medicaid (DET)</b>	<b>QDWI</b>	<b>Working Disabled (Transition Back to Work)</b>
	<b>100%</b>	<b>120%</b>	<b>135%</b>	<b>150%</b>		<b>185%</b>	<b>200%</b>	<b>250%</b>
<b>1</b>	\$970	\$1,163	\$1,309	\$1,454	\$1,635	\$1,793	\$1,939	\$2,423
<b>2</b>	\$1,301	\$1,561	\$1,757	\$1,952	\$2,208	\$2,407	\$2,602	\$3,253
<b>3</b>	\$1,633			\$2,449	\$2,782	\$3,021	\$3,265	\$4,082
<b>4</b>	\$1,965			\$2,947	\$3,355	\$3,634	\$3,929	\$4,911
<b>5</b>	\$2,296			\$3,444	\$3,928	\$4,248	\$4,592	\$5,740
<b>6</b>	\$2,628			\$3,942	\$4,501	\$4,861	\$5,255	\$6,569
<b>7</b>	\$2,960			\$4,439	\$5,074	\$5,475	\$5,919	\$7,398
<b>8</b>	\$3,291			\$4,937	\$5,647	\$6,089	\$6,582	\$8,228
<b>Ea Addl</b>	\$332			\$498	\$574	\$614	\$664	\$830

QMB – Qualified Medicare Beneficiary

SLMB Base – Special Low Income Medicare Beneficiary

SLMB Plus – Special Low Income Medicare Beneficiary with Special Circumstances

QDWI – Qualified Disabled and Working Individuals

Proposed DET Monitoring Process 4/5/04 draft

DET Admission & Review Process	Existing Practice	Administered by DBH/API/1 <sup>st</sup> Health
<p><b>I. Registration:</b> Provides ability to identify level of utilization for program management. Type of Information obtained:</p> <ul style="list-style-type: none"> <li>• Basic demographics</li> <li>• Program Criteria:               <ul style="list-style-type: none"> <li>• Mental status</li> <li>• Level of acuity (dangerousness)</li> </ul> </li> </ul> <p>(Note: Discharge Planning is to begin at Day 1)</p>	<p><b>I. Registration:</b> 1. The treating physician certifies on admission that the patient meets involuntary commitment criteria. Reference AS 47.30.700-47.30.915</p> <p>Note: registration does not involve authorizing admission.</p>	<p><b>I. Registration:</b> All registration would be sent to DBH/API</p> <p>(Note: it is possible to have online data entry into AKAIMS from the provider or API)</p>
<p><b>II. Eight Day Review:</b></p> <p>It is assumed that the "evaluation" period is up to three days, and can be extended to 7 days. The "treatment" period is implemented from this point forward.</p> <p>Note: Updating the means for documentation to more clearly articulate that criteria for continued stay is evident.</p> <p>(NOTE: Discharge planning should be updated)</p>	<p><b>II. Eight Day Review:</b> 1. The treating physician makes a daily notation n each patient's care chart regarding whether the patient continues to meet the involuntary commitment criteria, and recertifies every 7 days, whether the patient continues to meet criteria.* (Reference the <u>Mental Health Treatment Assistance Eligibility Manual</u>, p.3)</p> <p>2. "The division will reimburse a designated evaluation facility for no more than 7 days for evaluation and crisis stabilization or for transition to community-based services if the division determines the amount of time is clinically appropriate" Reference the <u>Mental Health Treatment Assistance Eligibility Manual</u>, p.6) Reference 7 AAC 75.520(b) and (c).</p>	<p><b>II. Eight Day Review: (est. # 60-70)</b> DBH/API staff would conduct the 8 day review. 1. Does the evaluation period exceed 7 days? • No.....No review is conducted • Yes... Medical necessity of extension is reviewed: Criteria met? • Yes...extension is approved. • No....provider contacted for more information. Criteria met? • Yes...extension is approved. • No...DBH medical director consults with provider. Criteria met? • Yes...extension approved • No... payment denied</p>
<p><b>III. Retrospective Review</b></p> <p>This review would occur within 90 days of admission, after discharge.</p> <ul style="list-style-type: none"> <li>• Same as time limit for bill submission</li> <li>• Note: this would involve, on average, 275 clients annually.</li> </ul>	<p><b>III. Retrospective Review</b> 1. The division will reimburse a designated treatment facility for no more than 40 days for evaluation, treatment, and crisis stabilization or for transition to community-based services if the division determines the amount of time is clinically appropriate</p> <p>Reference the <u>Mental Health Treatment Assistance Eligibility Manual</u>, p.7) Reference 7 AAC 75.520(b) and (c).</p>	<p><b>III. Retrospective Review</b> API staff would conduct review. Sources used: the client file Process: 1. Paperwork is filed in a timely manner 2. Admission criteria is met? 3. File contains medical necessity that matches length of stay with client need? 4. File contains discharge planning that includes referral linkage to community based programs?</p>

## Summary of DES/T for FY00 to FY03 Hospitals Only

		Clients Served in Fiscal Year			
Region	Facility	FY00	FY01	FY02	FY03
ARO	Providence Hospital	2	0	0	0
ARO	North Star Hospital	0	0	2	0
NRO	Fairbanks Memorial Hospital	127	185	207	178
NRO	YKHC	6	6	2	0
SCRO	Providence Kodiak Island Medical	12	9	0	1
SCRO	Valdez Community Hospital	0	0	2	0
SERO	Bartlett Memorial Hospital	44	68	65	57
SERO	Ketchikan General Hospital	33	21	0	0
SERO	Mt Edgecombe Hospital	2	1	8	8
SERO	Petersburg General	0	1	0	0
	<b>Statewide</b>	<b>226</b>	<b>291</b>	<b>286</b>	<b>244</b>

		Days of Evaluation and Treatment Services in Fiscal Year			
Region	Facility	FY00	FY01	FY02	FY03
ARO	Providence Hospital	6	0	0	0
ARO	North Star Hospital	0	0	6	0
NRO	Fairbanks Memorial Hospital	874	791	892	991
NRO	YKHC	8	12	2	0
SCRO	Providence Kodiak Island Medical	22	24	0	4
SCRO	Valdez Community Hospital	0	0	6	0
SERO	Bartlett Memorial Hospital	235	460	430	670
SERO	Ketchikan General Hospital	59	33	0	0
SERO	Mt Edgecombe Hospital	2	2	28	21
SERO	Petersburg General	0	1	0	0
	<b>Statewide</b>	<b>1206</b>	<b>1323</b>	<b>1364</b>	<b>1686</b>

		Average Length of Stay in Fiscal Year			
Region	Facility	FY00	FY01	FY02	FY03
ARO	Providence Hospital	3	0	0	0
ARO	North Star Hospital	0	0	3	0
NRO	Fairbanks Memorial Hospital	6.9	4.3	4.33	5.6
NRO	YKHC	1.3	2	1	0
SCRO	Providence Kodiak Island Medical	1.8	2.7	0	4
SCRO	Valdez Community Hospital	0	0	3	0
SERO	Bartlett Memorial Hospital	5.3	6.8	6.6	11.8
SERO	Ketchikan General Hospital	1.8	1.6	0	0
SERO	Mt Edgecombe Hospital	1	2	3.5	2.6
SERO	Petersburg General	0	1	0	0
	<b>Statewide</b>	<b>3</b>	<b>2.9</b>	<b>3.6</b>	<b>6</b>

		Cost of Increase 01 to 03			Estimated
<b>Statewide</b>		FY01	FY02	FY03	Cost Increases
Average Daily Medicaid Rate		1178	1449	1493	
Percentage of Increase in Rate					27%    \$534,090
Total Bed Days		1323	1364	1686	
Percentage of Increase in Days					27%    \$612,018
Total DES/T		\$1,410,745	\$2,470,511	\$2,831,728	
Percentage of Increase in Cost					100%    \$1,420,938

## **SB 364 / HB 535 -- DET Bill Summary -- 3/31/04**

### **Background/Intent**

The existing statutes require the State to cover the costs of diagnosis, evaluation and treatment (DET) for financially eligible patients who need to be involuntarily committed to non-state-operated hospitals. The costs of these services and the related transportation cost have increased over the years. The intent of this bill is to:

- Establish that this is not an entitlement
- Clearly communicate that costs incurred will only be covered up to the amount appropriated by the legislature
- Require hospitals to notify the Department within 24 hours of admission of a potentially eligible individual, allowing the Department to assist in timely and appropriate discharge to community based programs
- Establish that the Department is under no obligation to pay for services a hospital delivers to a patient beyond recommended discharge date
- Funding is decreased between FY04 and FY05

### **Program Effects**

- Contains costs on an annual basis
- 24-hour registration assists Department to determine costs at time they are incurred and thus allow for fiscal management
- Limit State responsibility to funds appropriated by legislature

### **Cost Progression 2000-2005**

FY00	\$	1,901,480	
FY01		2,055,420	
FY02		2,284,930	
FY03		3,384,430	
FY 04 Budget		3,096,800	
FY 05 Budget		1,901,480	Strategies being explored to expand federal participation via Disproportionate Share (DSH)

### **Cost Saving Strategies**

- Update transportation policies and procedures
  - Ambulances

### **DET Sites**

- Fairbanks
- Juneau

### **Other Sites**

Palmer, Ketchikan, Cordova, Homer, Valdez, Sitka,  
Bethel, Kodiak

### **Cost Comparisons between API and DET/S Facilities**

- API daily rate 757.46
- Fairbanks 1,646.91
- Bartlett 1,636.04
- Ketchikan 1,800.68
- Mt. Edgecombe 2,049.00
- Bethel 2,049.00

### Explanation for Cost Increases over years

100% of Hospital cost increases between 01 and 03

27% of Hospital increases in average daily Medicaid between 01 and 03

27% of Hospital increases in total beds used between 01 and 03

### Management of Costs

Costs within existing budget – if retrospective reviews are changed from DBH staff to First Health the cost would be about \$31,800/year based on a current charge of \$111.44/review X 275 reviews (average # of admissions / last 3 years).

If we add an early review at 8<sup>th</sup> day of admission (transitioning from evaluation to treatment) we can also add discussion about eligibility and discharge planning, the cost would increase by \$7,000 based on 63 admissions over 8 days in FY03. The total First Health review costs would be about \$40,000/year.

## Common use of funding limitation to appropriations

### Current grant regulations

**7 AAC 81.220. Limitation of appropriations.** (a) During each state fiscal year, the department [A GRANT AGENCY] may authorize the payment of costs under a provider agreement only to the extent of money allocated in the state budget for the grant program for that fiscal year.

(b) The department [A GRANT AGENCY] may determine the amount of money, if any, that it will keep in reserve at a particular time, based on the part of the fiscal year that remains and the demand for services of the program that the department expects during the balance of the fiscal year.

(c) If authorized financing for a grant program is less than the amount required to provide service to all individuals who meet applicable eligibility criteria and seek those services, the department will [A GRANT AGENCY SHALL] prioritize which individuals will receive services. (Eff. 7/21/2002, Register 163; am \_\_\_/\_\_\_/2004, Register \_\_\_\_\_)

## Chapter 14.09. TRANSPORTATION OF PUPILS

### Sec. 14.09.010. Transportation of pupils.

(a) A school district that provides student transportation services is eligible to receive funding for operating the student transportation system. Subject to appropriation, the amount of funding provided by the state under this section is the lesser of the amount determined by multiplying the amount of the school district's ADM less the ADM for the district's correspondence programs during the current fiscal year

(1) by a per student allocation computed by dividing the amount received by the school district under this section during fiscal year 2003 by the school district's ADM less the ADM for the district's correspondence programs during fiscal year 2003; or

(2) by \$1,200 per student.

(b) In this section,

(1) "ADM" has the meaning given in AS 14.17.990;

(2) "district's ADM" means the sum of the ADMs in the district.

Sec. 14.25.020. Powers of the administrator.

(a) The administrator may

(1) formulate and recommend to the Alaska Teachers' Retirement Board regulations to govern the operation of the system;

(2) make expenditures from the retirement fund necessary to administer this chapter.

(b) The administrative expenditures permitted by (a)(2) of this section shall be included in the governor's budget for each fiscal year and are subject to appropriation by the legislature.

**Sec. 14.57.100. Acquisitions.**

Subject to appropriation by the legislature under AS 37.14.530, the director may use the balance of the net income account of the Alaska heritage endowment fund to acquire culturally or historically significant artifacts, natural history specimens, art objects, collections, and other items, materials, or properties that represent and document Alaska's land, natural history, and people for

- (1) the Alaska State Museum; and
- (2) the Sheldon Jackson Museum.

Sec. 18.56.410. Alaska energy efficient home grant fund.

(a) There is established in the corporation the Alaska energy efficient home grant fund consisting of money appropriated to it by the legislature and deposited in it by the corporation. The corporation shall administer the Alaska energy efficient home grant fund under the provisions of this section.

(b) Subject to appropriation, the corporation may grant funds from the Alaska energy efficient home grant fund to agencies of the state or federal government, individuals, or businesses that retrofit existing single family dwellings or build new single family dwellings that meet criteria adopted by the corporation.

(c) The corporation shall adopt guidelines and procedures for the fund after consultation with the board of directors of the Alaska Craftsman Home Program.

Sec. 18.56.420. Housing assistance loan fund.

(a) There is created in the corporation, as a revolving loan fund, the housing assistance loan fund consisting of money appropriated to it by the legislature and deposited in it by the corporation, and repayments of principal and interest on loans made or purchased from the assets of the fund. The corporation shall

(1) adopt regulations to administer the housing assistance loan fund under AS 18.56.400 - 18.56.600; and

(2) subject to appropriation, provide money for a rural assistance loan program to originate, purchase, participate in the purchase of, or refinance

(A) small community housing mortgage loans;

(B) loans made for building materials for small community housing;

(C) loans made for renovations or improvements to small community

housing;

(D) loans made for the construction of owner-occupied small community housing other than loans to builders or contractors or loans that compensate an owner for the owner's labor or services in constructing the owner's own housing.

(b) Money in the fund may be used by the legislature to make appropriations for costs of administering the housing assistance program.

Sec. 18.56.650. Low cost and low income multiple family housing development fund and grants.

(a) There is created in the corporation a low cost and low income multiple family housing development fund. Subject to appropriation the corporation shall make grants to municipalities or public or private nonprofit corporations designated as tax exempt under 26 U.S.C. 501(c)(3) and (4) (Internal Revenue Code of 1954) for the purpose of developing low cost, low income multiple family housing.

(b) Application for a grant under (a) of this section shall be in the form prescribed by the corporation. The application

(1) shall demonstrate the need for low cost, low income multiple family housing in the area to be served, the feasibility of the proposed project; and

(2) must include an adequate management plan that shall demonstrate the ability of the eligible recipient to sustain the proposed project.

(c) A low cost and low income multiple family housing project developed under this section

(1) shall be prepared in accordance with facility procurement policies developed by the Department of Transportation and Public Facilities under AS 35.10.160 - 35.10.200; and

(2) is a public facility under AS 35.10.160 - 35.10.200.

(d) The corporation shall adopt regulations under AS 18.56.088 to carry out the purposes of this section.

(e) In this section, "low cost and low income multiple family housing"

(1) means a specific work or improvement undertaken primarily to provide multiple family dwelling accommodations for low income persons;

(2) includes the acquisition, construction, or rehabilitation of land, buildings, improvements, and other nonhousing facilities that are incidental or appurtenant to the housing.

Sec. 29.25.074. Surcharge.

(a) A municipality may not enforce a penalty for violation of an ordinance for which a surcharge is required to be imposed under AS 12.55.039 unless the municipality authorizes the imposition of and provides for the collection of the surcharge. The surcharge shall be deposited into the general fund of the state and accounted for under AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the municipality in collecting the surcharge and transmitting the surcharge to the state. The reimbursement may not exceed 10 percent of the surcharge collected and transmitted to the state.

(b) This section applies to home rule and general law municipalities.

Sec. 36.30.695. Other rules of procedure.

(a) The commissioner may adopt by regulation additional rules of procedure providing for the expeditious arbitration, hearing, and other administrative review of all contract claims, both before the contracting agency and through an appeal heard de novo.

(b) Except as provided by (c) of this section, an arbitrator shall issue a final decision, and a hearing officer shall issue a recommended decision, within the following time limits after the date the record on the claim is closed:

- (1) 30 calendar days for a claim of less than \$100,000;
- (2) 45 calendar days for a claim of \$100,000 or more but less than \$1,000,000; or
- (3) 60 calendar days for a claim of \$1,000,000 or more.

(c) The commissioner of administration or the commissioner of transportation and public facilities may, for good cause shown, grant an arbitrator or a hearing officer additional time to issue a decision.

(d) If an arbitrator or hearing officer fails to issue a decision within the time allowed for a decision under (b) or (c) of this section, the arbitrator or hearing officer is disqualified from acting as an arbitrator or hearing officer in another proceeding under this chapter for one year after the decision is issued.

(e) The venue for an arbitration or hearing under this chapter is the judicial district where the office of the contracting agency is located, unless the agency and the contractor agree on another location.

(f) If a party fails to appear at a proceeding under this chapter, the arbitrator or hearing officer may proceed in the party's absence.

(g) Subject to appropriation, any money awarded by an arbitrator's decision shall be paid within 45 days after the date that the arbitrator's decision is final. Subject to appropriation, any money awarded by a hearing officer's recommended decision that is approved by the commissioner of transportation and public facilities shall be paid within 45 days after the date that the commissioner's decision is delivered to the contractor and the agency, unless the commissioner's decision is appealed under AS 36.30.685.

Sec. 37.14.300. Investment loss trust fund.

(a) There is established as a separate fund in the state treasury the investment loss trust fund. The trust fund consists of money appropriated to it by the legislature. The Department of Revenue is the custodian of the trust fund and shall invest the trust fund in accordance with AS 37.10.071. Subject to appropriation, the amount earned on money in the trust fund shall be retained in the trust fund. The trust fund shall be held in trust for the benefit of participants in the supplemental annuity plan established under AS 39.30.150 - 39.30.180 and for other purposes authorized by this section, subject to the conditions set out in this section.

(b) The Department of Administration shall spend money from the trust fund as necessary to

(1) hold participants in the plan and annuity holders harmless from a loss on investments in guaranteed investment and annuity contracts issued by Executive Life Insurance Company of California;

(2) pursue a right to recover amounts from persons who may have unlawfully caused or contributed to the loss on investments; and

(3) protect the interest of participants in the plan and annuity holders during proceedings to conserve or liquidate the assets of Executive Life Insurance Company of California.

(c) If the plan or an annuity holder does not incur a loss on investments, or, if after compensating the plan and annuity holders for the loss on investments, a balance remains in the trust fund, the trust fund created in (a) of this section is terminated and the balance of the trust fund lapses pro rata into the funds from which the appropriations to the trust fund were made. The state is subrogated to a right of claim held by participants in the plan and annuity holders to the extent of amounts spent from the trust fund.

(d) In this section,

(1) "annuity holder" means

(A) a plan participant who elects to receive an annuity contract acquired by the Department of Administration and issued by Executive Life Insurance Company of California; and

(B) members of the Unlicensed Vessel Personnel Annuity Retirement Plan who receive an annuity contract acquired by the Department of Administration and issued by Executive Life Insurance Company of California;

(2) "loss on investments" means

(A) the difference between the principal amount plus accrued interest earned through May 3, 1991, on the guaranteed investment contracts issued by Executive Life Insurance Company of California, according to the terms of the contracts, and a lesser amount received by the plan upon maturity, sale, or other termination of the contracts; plus

(B) accrued earnings on the amount described in (A) of this subsection, beginning May 4, 1991, and continuing until the earlier of a participant's benefit commencement date or the maturity, sale, or other termination of the contracts, at a rate equal to the rate, less one percent to be used for the purposes of (b)(2) - (3) of this section, earned each month on the investment loss trust fund; or

(C) any unpaid annuity amounts due to annuity holders under an annuity contract issued by Executive Life Insurance Company of California;

(3) "plan" means the supplemental annuity plan established under AS 39.30.150 - 39.30.180;

(4) "trust fund" means the investment loss trust fund established under this section.

Sec. 38.35.145. Agreement to provide for payment of preapplication costs.

(a) To accommodate preliminary work in advance of the receipt of an application for a lease under this chapter, the department may enter into an agreement with a prospective lessee desiring to own an oil or natural gas pipeline that is proposed to be located in whole or in part on state land. The agreement must provide that the prospective lessee reimburse the department for the reasonable costs of work incurred in preparing for activities before receipt of an application.

(b) Expenditure of amounts received by the department under (a) of this section is subject to appropriation by the legislature. Appropriations made to satisfy the requirement of (a) of this section may be made by general appropriations of program receipts conditioned on compliance with the program review provisions of AS 37.07.080(h).

(c) The department may not exercise authority to enter into an agreement under (a) of this section after December 31, 2003, but an agreement entered into before January 1, 2004, is valid and enforceable on and after that date.

Sec. 39.30.050. Administrative costs.

The department shall collect from each participating political subdivision its respective pro rata share of the expenses incurred in the administration of AS 39.30.010 - 39.30.080. The amounts collected from participating political subdivisions, together with money appropriated by the state for covering the state's share of administrative costs, shall be deposited in an FICA administration fund and are not allocable to any other purpose. Expenditures from the FICA administration fund shall be included in the governor's budget for each fiscal year and are subject to appropriation by the legislature. At the time of preparation of the governor's annual budget the department shall review the FICA administration fund and adjust the rate of assessment on political subdivisions so as to prevent the accumulation of more money than is needed to administer AS 39.30.010 - 39.30.080.

Sec. 43.77.060. Revenue sharing.

(a) Subject to appropriation by the legislature and except as provided in (b) of this section, the commissioner shall pay to each

(1) unified municipality and to each city located in the unorganized borough, 50 percent of the amount of tax revenue collected from taxes levied under this chapter on the fishery resource landed in the municipality and accounted for under AS 43.77.050(b);

(2) city located within a borough, 25 percent of the amount of the tax revenue collected from taxes levied under this chapter on fishery resources landed in the city and accounted for under AS 43.77.050(b); and

(3) borough

(A) 50 percent of the amount of the tax revenue collected from taxes levied under this chapter on fishery resources landed in the area of the borough outside cities and accounted for under AS 43.77.050(b); and

(B) 25 percent of the amount of the tax revenue collected from taxes levied under this chapter on fishery resources landed in cities located within the borough and accounted for under AS 43.77.050(b).

(b) Notwithstanding the provisions of (a)(2) and (a)(3)(B) of this section, and subject to appropriation by the legislature, the commissioner shall pay to each

(1) city that is located in a borough incorporated after the effective date of this Act, the following percentages of the tax revenue collected from taxes levied under this chapter on fishery resources landed in the city and accounted for under AS 43.77.050(b):

(A) 45 percent of the tax revenue collected during the calendar year in which the borough is incorporated;

(B) 40 percent of the tax revenue collected during the first calendar year after the calendar year in which the borough is incorporated;

(C) 35 percent of the tax revenue collected during the second calendar year after the calendar year in which the borough is incorporated; and

(D) 30 percent of the tax revenue collected during the third calendar year after the calendar year in which the borough is incorporated; and

(2) borough that is incorporated after the effective date of this Act, the following percentages of the tax revenue collected from taxes levied under this chapter on fishery resources landed in the cities located within the borough and accounted for under AS 43.77.050(b):

(A) five percent of the tax revenue collected during the calendar year in which the borough is incorporated;

(B) 10 percent of the tax revenue collected during the first calendar year after the calendar year in which the borough is incorporated;

(C) 15 percent of the tax revenue collected during the second calendar year after the calendar year in which the borough is incorporated; and

(D) 20 percent of the tax revenue collected during the third calendar year after the calendar year in which the borough is incorporated.

(c) Notwithstanding the provisions of (b) of this section, a city may adopt an ordinance to transfer a portion of the funds received under (b)(1) of this section to the borough in which the city is located.

(d) To the extent that appropriations are available for the purpose, and notwithstanding the requirement of AS 37.07.080(e) that approval of the office of management and budget is required, an amount equal to 50 percent of the tax revenue that is collected under this chapter and

is not subject to division with a municipality under (a) - (c) of this section shall be transmitted each fiscal year, without the approval of the office of management and budget, by the department to the Department of Community and Economic Development for disbursal to eligible municipalities under AS 29.60.450.

(e) For purposes of this section, tax revenue collected under AS 43.77.010 from a person entitled to a credit under AS 43.77.035 or 43.77.045 shall be calculated as if the person's tax had been collected without applying the credits.

**Sec. 47.37.125. Payment for services.**

Subject to appropriation by the legislature, money in the mental health trust settlement income account established in AS 37.14.036 may be used to support a service provided under the authority given in this chapter.

HB

539



# HOUSE COMMITTEE REPORT

4-19-04

(7)

Date Referred to Committee: March 18, 2004

FURTHER REFERRALS: Judiciary

Date of Committee Action: April 16, 2004

The LABOR AND COMMERCE Committee considered:

HB 539

HOUSE BILL NO. 539

UNIV. STUDENT PRACTICUM LIABILITY/WAGES

"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."

Recommends it be replaced with [ ] HCS or [] CS for HB 539 (L<sup>3</sup>C)  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_ [ ] Same Title [] New Title

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LEG  
 LAW  
 LWF  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

4 φ FN

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
UA	4			X
LWF	3			X
LWF	2			X
LAW	1			X

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	CRAWFORD				<input checked="" type="checkbox"/>
	LYNN				<input checked="" type="checkbox"/>
	GATTO				<input checked="" type="checkbox"/>
	ROKBERG				<input checked="" type="checkbox"/>
	DAHLSTROM				<input checked="" type="checkbox"/>
	FUTTNERBERG				<input checked="" type="checkbox"/>
Chair:	ANDERSON				<input checked="" type="checkbox"/>
Chair:					

# Alaska State Legislature

Session:  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2995  
Fax: (907) 465-6592



Interim:  
716 W 4<sup>th</sup> Avenue, Suite 430  
Anchorage, AK 99501-2133  
Phone: (907) 269-0250  
Fax: (907) 269-0249

## Representative Lesil McGuire

Chair, Judiciary Committee

### SPONSOR STATEMENT

#### HB 539

*"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."*

HB 539 provides the same employment liability for university intern programs that already exist in statute for high schools throughout the state.

University health and construction programs have had difficulty obtaining sites for unpaid practicum placement positions, more commonly known as interns. This has been especially problematic with dental students, but can be expected to also be a problem with other professions, especially medical professions where the risk of serious injury is a potential. The legitimate concern of placement sites is that without statutory clarification students could be considered as employees of the site for:

- 1.) Negligence liability;
- 2.) Fair Labor Standards Act responsibility for minimum wage and overtime compensation; and

Though they are unpaid, intern positions need the exemption from the Fair Labor Standards Act and Workers Compensation to ensure that experimental benefits, which accrue to the intern, cannot be equated to wages for purposes of compensation, liability and Workers comp.

Given the current legal structure, practicum placement sites have suggested that the university agree to indemnify the site for claims based on the acts of the students, or to agree that the students will be the employees of the university for liability purposes. From the university's perspective, neither of these suggestions is realistic. The university does not supervise the students. There is a substantial risk that indemnity could be interpreted to cover damages which are caused by the negligence of the site. The time required to negotiate around these potential liabilities is substantial. All of which is counterproductive to training Alaskans for good in-state jobs.

HB 539 proposes three cumulative statutory fixes designed to protect the sites that offer their services to UA interns on an unpaid basis. The threshold requirement that the students not be paid ensures that sites will not use practicum placement immunity to take advantage of employees who are also students.

From a liability perspective, this proposal is designed to leave each participant—the university, the student, and the site—responsible for its own fault. Thus, this proposal does not alter a party's responsibility for its own negligence, but it does limit vicarious liability of one party for the fault of another.

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX (907) 465 2029  
Mail Stop 3101

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

## MEMORANDUM

April 16, 2004

**SUBJECT:** Student Practicum Immunity, CSHB 539( ),  
(Work Order No. 23-LS1837D)

**TO:** Representative Lesil McGuire  
Attn: Heath Halyard

**FROM:** Barbara R. Craver *BRC*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** This section adds a new section to the University of Alaska title, AS 14.40, to define a student practicum and to state that a person who provides the practical experience is not considered to be an employer of the student in a lawsuit based on the vicarious liability of the employer for an employee.

**Section 2.** This section adds a student who is participating in a student practicum to the list of exemptions to the Alaska Wage and Hour Act.

**Section 3.** This sets an effective date for this bill.

BRC:mdr  
04-157.mdr

As enrollments rise across the UA system, more students are entering fields of study which require placements in the work world as a portion of their study. Two such courses of study are construction and health education.

For instance, enrollment in health education programs such as nursing, dental, medical laboratory, and radiology are growing rapidly. As a portion of their study, students must complete clinical practicum with providers in their offices, clinics and hospitals.

Health providers have been hosting UA students for many years, and with great success. To date there have not been any liability claims against providers for actions that students have taken while working with providers. UA has long-standing and successful partnerships with hospitals, doctors, dentists and many other health care professionals. These are formalized in agreements between the University and the provider which state that the providers are not responsible or liable for any malpractice claims, workers compensation claims, or fair labor standards actions of the student.

Why do we need legislation to address liability if we have not had problems and if we have provider agreements? As more students are enrolled in programs and as programs branch out to more communities, UA is finding that potential new providers are reluctant to participate in practicum programs due to liability concerns. UA can no longer rely on historic arrangements that were put in place when liability concerns of providers were not as critical as they are today.

This last year, for instance, UAF needed clinical sites for its dental assisting students. The dental assisting program is growing rapidly in Fairbanks and new dentists needed to be recruited into the practicum program. While dentists were very interested in taking students, many declined. A bare minimum of practicum were obtained so existing students could graduate. Without this legislation, it is unlikely the dental education programs across the state will continue and grow to meet community needs. Lack of clarity about liability is having a negative impact on the private sector's willingness to be involved in vital practicum programs.

Legislation is needed to state clearly what the University believes is existing policy. The legislation clarifies that students are not employees, and therefore not subject to negligence liability, fair labor standards for minimum wage and overtime compensation.

This legislation is intended to give providers and placement sites the clarity in statute to protect them when offering their facilities and services to University students. The threshold requirement that students not be paid ensures that the sites will not use practicum students immunity to take advantage of employees who are also students. From a liability perspective, this proposal is designed to leave each entity - the university, the student, and the site responsible for their own liability.

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 539(L&C)  
(H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title: "An Act excepting a person who allows a student RDU: CIVIL  
of the University of Alaska....from liability as an employer..." Component: Torts and Workers' Compensation  
Sponsor: House Judiciary Committee  
Requester: House Labor and Commerce Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill allows an employer to allow a university student to gain practical work experience as part of the student's curriculum without incurring vicarious liability as an employer, and exempting the student from the Alaska Wage and Hour Act and workers' compensation coverage.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughetee, Director Phone 465-3673  
Division: Administrative Services Date/Time 4/14/04 11:52 AM  
Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General Date 4/14/2004  
Agency: Department of Law

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 539(L&C)  
(H) Publish Date: 4/19/04

Revision: Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: Univ. Student Practicum Liability/Wages RDU: Workers' Compensation  
Sponsor: House Judiciary Component: Workers' Compensation  
Requester: House L&C Component Number: 344

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Paul Lisankle, Director Phone 465-2790  
Division: Division of Workers' Compensation Date/Time 4/12/04 9:47 AM  
Approved by: Greg O'Clary, Commissioner Date 4/12/2004  
Agency: Department of Labor and Workforce Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSHB 539(L&C)  
(H) Publish Date: 4/19/04

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
Title: Univ. Student Practicum Liability/Wages RDU: Labor Standards & Safety  
Component: Wage & Hour  
Sponsor: House Judiciary  
Requester: House L&C Component Number: 345

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: None  
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Grey Mitchell, Director Phone 465-4855  
Division: Labor Standards & Safety Date/Time 4/12/04 7:55 AM  
Approved by: Greg O'Claray, Commissioner Date 4/12/2004  
Agency: Department of Labor and Workforce Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4  
Bill Version: CSHB 539(L&C)  
(H) Publish Date: 4/19/04

Revision Date/Time (Note if correction):  
Title UNIV. STUDENT PRACTICUM LIABILITY/WAGES

Dept. Affected: University of Alaska  
RDU \_\_\_\_\_  
Component \_\_\_\_\_

Sponsor Judiciary  
Requester \_\_\_\_\_

Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would have no fiscal impact on the University.

Prepared by: Pat Pitney  
Division: University of Alaska  
Approved by: Pat Pitney  
Agency: University of Alaska

Phone 907-474-7958  
Date/Time 4/12/04 10:47 AM  
Date 4/12/2004

23-LS1837D  
Craver  
4/16/04

**CS FOR HOUSE BILL NO. 539( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): HOUSE JUDICIARY COMMITTEE**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act exempting a person who allows a student of the University of Alaska to gain**  
2 **practical work experience with the person while participating in a practicum from**  
3 **vicarious liability as an employer, and exempting the student participating in a**  
4 **practicum from the Alaska Wage and Hour Act; and providing for an effective date."**

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

6 **\* Section 1. AS 14.40 is amended by adding a new section to read:**

7 **Sec. 14.40.065. Student practicums immunity.** A person is not considered  
8 to be an employer of a student of the University of Alaska in a civil action based on  
9 the vicarious liability of an employer for the acts or omissions of an employee if the  
10 person

11 (1) has agreed to allow the student to gain practical work experience  
12 with the person in a practicum that is part of the student's curriculum; and

13 (2) pays no compensation to the student.

14 **\* Sec. 2. AS 23.10.055 is amended to read:**

1           **Sec. 23.10.055. Exemptions.** The provisions of AS 23.10.050 - 23.10.150 do  
2 not apply to

3           (1) an individual employed in agriculture, which includes farming in  
4 all its branches and, among other things, includes the cultivation and tillage of the soil,  
5 dairying, the production, cultivation, growing, and harvesting of any agricultural or  
6 horticultural commodities, the raising of livestock, bees, fur-bearing animals, or  
7 poultry, and any practices, including forestry and lumbering operations, performed by  
8 a farmer or on a farm as an incident to or in conjunction with the farming operations,  
9 including preparation for market, delivery to storage or to market or to carriers for  
10 transportation to market;

11           (2) an individual employed in the catching, trapping, cultivating or  
12 farming, netting, or taking of any kind of fish, shellfish, or other aquatic forms of  
13 animal and vegetable life;

14           (3) an individual employed in the hand picking of shrimp;

15           (4) an individual employed in domestic service, including a baby-  
16 sitter, in or about a private home;

17           (5) an individual employed by the United States or by the state or  
18 political subdivision of the state, except as provided in AS 23.10.065(b), including  
19 prisoners not on furlough detained or confined in prison facilities;

20           (6) an individual engaged in the nonprofit activities of a nonprofit  
21 religious, charitable, cemetery, or educational organization or other nonprofit  
22 organization where the employer-employee relationship does not, in fact, exist, and  
23 where services rendered to the organization are on a voluntary basis and are related  
24 only to the organization's nonprofit activities; for purposes of this paragraph,  
25 "nonprofit activities" means activities for which the nonprofit organization does not  
26 incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended;

27           (7) an employee engaged in the delivery of newspapers to the  
28 consumer;

29           (8) an individual employed solely as a watchman or caretaker of a  
30 plant or property that is not in productive use for a period of four months or more;

31           (9) an individual employed in a bona fide executive, administrative, or

1 professional capacity or in the capacity of an outside salesman or a salesman who is  
2 employed on a straight commission basis;

3 (10) an individual employed in the search for placer or hard rock  
4 minerals;

5 (11) an individual under 18 years of age employed on a part-time basis  
6 not more than 30 hours in a week;

7 (12) employment by a nonprofit educational or child care facility to  
8 serve as a parent of children while the children are in residence at the facility if the  
9 employment requires residence at the facility and is compensated on a cash basis  
10 exclusive of room and board at an annual rate of not less than

11 (A) \$10,000 for an unmarried person; or

12 (B) \$15,000 for a married couple;

13 (13) an individual who drives a taxicab, is compensated for taxicab  
14 services exclusively by customers of the service, whose written contractual  
15 arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch  
16 services are based upon flat contractual rates and not based on a percentage share of  
17 the individual's receipts from customers, and whose written contract with owners of  
18 taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that  
19 the contract places no restrictions on hours worked by the individual or on areas in  
20 which the individual may work except to comply with local ordinances;

21 (14) a person who holds a license under AS 08.54 and who is  
22 employed by a registered guide or master guide licensed under AS 08.54, for the first  
23 60 work days in which the person is employed by the registered guide or master guide  
24 during a calendar year;

25 (15) an individual engaged in activities for a nonprofit religious,  
26 charitable, civic, cemetery, recreational, or educational organization where the  
27 employer-employee relationship does not, in fact, exist, and where services are  
28 rendered to the organization under a work activity requirement of AS 47.27 (Alaska  
29 temporary assistance program); [OR]

30 (16) an individual who

31 (A) provides emergency medical services only on a voluntary

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basis;

(B) serves with a full-time fire department only on a voluntary

basis; or

(C) provides ski patrol services on a voluntary basis; or

(17) a student participating in a University of Alaska practicum  
described under AS 14.40.065.

\* Sec. 3. This Act takes effect July 1, 2004.

# Alaska State Legislature

Session:  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2995  
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Interim:  
716 W 4<sup>th</sup> Avenue, Suite 430  
Anchorage, AK 99501-2133  
Phone: (907) 269-0250  
Fax: (907) 269-0249

## Representative Lesil McGuire

Chair, Judiciary Committee

### SPONSOR STATEMENT

#### HB 539

*"An Act exempting a person who allows a student of the University of Alaska to gain practical work experience with the person while participating in a practicum from vicarious liability as an employer, and exempting the student participating in a practicum from the Alaska Wage and Hour Act and workers' compensation coverage."*

HB 539 provides the same employment liability for university intern programs that already exist in statute for high schools throughout the state.

University health and construction programs have had difficulty obtaining sites for unpaid practicum placement positions, more commonly known as interns. This has been especially problematic with dental students, but can be expected to also be a problem with other professions, especially medical professions where the risk of serious injury is a potential. The legitimate concern of placement sites is that without statutory clarification students could be considered as employees of the site for:

- 1.) Negligence liability;
- 2.) Fair Labor Standards Act responsibility for minimum wage and overtime compensation; and
- 3.) Workers compensation responsibility

Though they are unpaid, intern positions need the exemption from the Fair Labor Standards Act and Workers Compensation to ensure that experimental benefits, which accrue to the intern, cannot be equated to wages for purposes of compensation, liability and Workers comp.

Given the current legal structure, practicum placement sites have suggested that the university agree to indemnify the site for claims based on the acts of the students, or to agree that the students will be the employees of the university for liability purposes. From the university's perspective, neither of these suggestions is realistic. The university does not supervise the students. There is a substantial risk that indemnity could be interpreted to cover damages which are caused by the negligence of the site. The time required to negotiate around these potential liabilities is substantial. All of which is counterproductive to training Alaskans for good in-state jobs.

HB 539 proposes three cumulative statutory fixes designed to protect the sites that offer their services to UA interns on an unpaid basis. The threshold requirement that the students not be paid ensures that sites will not use practicum placement immunity to take advantage of employees who are also students.

From a liability perspective, this proposal is designed to leave each participant—the university, the student, and the site—responsible for its own fault. Thus, this proposal does not alter a party's responsibility for its own negligence, but it does limit vicarious liability of one party for the fault of another.

As enrollments rise across the UA system, more students are entering fields of study which require placements in the work world as a portion of their study. Two such courses of study are construction and health education.

For instance, enrollment in health education programs such as nursing, dental, medical laboratory, and radiology are growing rapidly. As a portion of their study, students must complete clinical practicum with providers in their offices, clinics and hospitals.

Health providers have been hosting UA students for many years, and with great success. To date there have not been any liability claims against providers for actions that students have taken while working with providers. UA has long-standing and successful partnerships with hospitals, doctors, dentists and many other health care professionals. These are formalized in agreements between the University and the provider which state that the providers are not responsible or liable for any malpractice claims, workers compensation claims, or fair labor standards actions of the student.

Why do we need legislation to address liability if we have not had problems and if we have provider agreements? As more students are enrolled in programs and as programs branch out to more communities, UA is finding that potential new providers are reluctant to participate in practicum programs due to liability concerns. UA can no longer rely on historic arrangements that were put in place when liability concerns of providers were not as critical as they are today.

This last year, for instance, UAF needed clinical sites for its dental assisting students. The dental assisting program is growing rapidly in Fairbanks and new dentists needed to be recruited into the practicum program. While dentists were very interested in taking students, many declined. A bare minimum of practicum were obtained so existing students could graduate. Without this legislation, it is unlikely the dental education programs across the state will continue and grow to meet community needs. Lack of clarity about liability is having a negative impact on the private sector's willingness to be involved in vital practicum programs.

Legislation is needed to state clearly what the University believes is existing policy. The legislation clarifies that students are not employees, and therefore not subject to negligence liability, fair labor standards for minimum wage and overtime compensation.

This legislation is intended to give providers and placement sites the clarity in statute to protect them when offering their facilities and services to University students. The threshold requirement that students not be paid ensures that the sites will not use practicum students immunity to take advantage of employees who are also students. From a liability perspective, this proposal is designed to leave each entity - the university, the student, and the site responsible for their own liability.

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

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

## MEMORANDUM

April 16, 2004

**SUBJECT:** Student Practicum Immunity, CSHB 539( ),  
(Work Order No. 23-LS1837D)

**TO:** Representative Lesil McGuire  
Attn: Heath Halyard

**FROM:** Barbara R. Craver *BRC*  
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** This section adds a new section to the University of Alaska title, AS 14.40, to define a student practicum and to state that a person who provides the practical experience is not considered to be an employer of the student in a lawsuit based on the vicarious liability of the employer for an employee.

**Section 2.** This section adds a student who is participating in a student practicum to the list of exemptions to the Alaska Wage and Hour Act.

**Section 3.** This sets an effective date for this bill.

BRC:mdr  
04-157.mdr

# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 539  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title UNIV. STUDENT PRACTICUM LIABILITY/WAGES

Dept. Affected: University of Alaska  
 RDU \_\_\_\_\_  
 Component \_\_\_\_\_

Sponsor Judiciary  
 Requester \_\_\_\_\_

Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would have no fiscal impact on the University.

Prepared by: Pat Pitney  
 Division: University of Alaska  
 Approved by: Pat Pitney  
 Agency: University of Alaska

Phone 907-474-7958  
 Date/Time 4/12/04 10:47 AM  
 Date 4/12/2004

HB

545





# FISCAL NOTE

**STATE OF ALASKA  
2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 545  
 ( ) Publish Date: 3/25/2004

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title A bill relating to the State Procurement Code RDU Leases  
lease and contract extensions... Component Leases  
 Sponsor Rules  
 Requester Governor Component No. 81

**Expenditures/Revenues (Thousands of Dollars)**

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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						
Various in all state agencies						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would provide lease and contract extensions for real property up to a maximum extension of 10 years if a minimum cost saving of at least ten percent below market rates on the rent due under the lease are achieved. No additional funds will be necessary as a result of this bill.

Prepared by: Vern Jones, Chief Procurement Officer Phone 465-5684  
 Division General Services Date/Time 4/21/04 9:05 AM  
 Approved by: Kevin Jardell, Deputy Commissioner Date 4/21/2004  
 Agency Administration

FRANK H. MURKOWSKI  
GOVERNOR

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HB 545

March 24, 2004

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18 of the Alaska Constitution, I am transmitting a bill relating to the extension of terms for leases and terms for contracts for goods and services under the State Procurement Code.

This bill would make several changes to the State Procurement Code. Section one of the bill would authorize the state to negotiate lease rate reductions on existing leases in exchange for certain term extensions when favorable lease rates are available. The current process only authorizes lease extensions if the property owner agrees to either (1) reduce the lease rate by ten percent and perform modifications to bring the property into Americans with Disabilities Act compliance, or (2) reduce the lease rate by 15 percent. The problem is, the current process does not take into account whether the current lease rate is already below market. Due to market conditions and current lease rates, this high discount is often not acceptable to property owners.

Many of our current lease rates are already below market and leave the lessor unwilling to meet the 10 or 15 percent reduction to extend the lease. In fact, only a small percentage of lease extensions have been negotiated under the existing provisions. The only option left for the state is to issue a new request for proposals. Often this results in additional moving costs and market rates, which can represent a substantial increase in costs to the state.

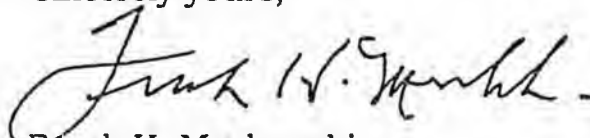
The method proposed in this bill would ensure that the state receives the best value for its leasing dollars. Lease extensions would only be authorized where the rates are a minimum of five percent below market. This would allow the state to maintain its presence in leases which are already well below market rates. Additional savings beyond the five percent would be negotiated depending on a number of factors such as location, current market value, existing vacancies, and market trends.

The Honorable Pete Kott  
March 24, 2004  
Page 2

The bill also would authorize term extensions for up to five years for contracts for goods and services provided a minimum cost savings of at least five percent could be achieved on the price of the goods or services as set in the current contract. Under present law, at the end of the contract term, contracts for goods or services must be resolicited through a competitive process or a new contract awarded based upon alternative procurement methods regardless of price reductions that may be offered by the contractor if the contract were extended.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frank H. Murkowski".

Frank H. Murkowski  
Governor

Enclosure

# Memorandum

Department of Administration  
Office of the Commissioner

**To:** Representative Tom Anderson  
Attention: Josh Applebee

**Date:** April 13, 2003

**From:** Kevin Jardell  
Assistant Commissioner  
Department of Administration

**Phone:** 465-2200

**Subject:** Lease Negotiations

Lease extensions under the current law (AS 36.30.083) require a minimum 15% discount from the current lease rate. DOA's proposed change would require a minimum 5% discount from a market rate.

In the past, DOA leases consisted of a constant rental rate throughout the life of the lease. This was unduly costly for the state, since initial construction and tenant improvements (TI) of office buildings are generally financed and amortized only over the initial lease period, not the optional renewal periods. The state was effectively paying multiple times for one-time costs.

Several years ago, DOA changed this practice by requiring lessors to identify up front construction and TI costs from ongoing rental rates and bid them separately. This generally results in declining costs in the option periods, because the rates for option periods no longer include amortized construction and TI costs. A net present value calculation is applied to ensure the state considers the time value of money when awarding leases.

Given this change, we can not expect to gain significant savings in the future under AS 36.30.083. For example:

A lease could be established at a market rate of \$2.20/sf (Class A, downtown Anchorage) for the initial 9 year period of a lease, dropping to \$0.98/sf for each of the two, five year renewal periods. It would be impossible to negotiate a 15% reduction to a lease rate of \$0.98/sf when the market rate for the space is \$2.20/sf.

As more and more older leases are replaced by those with the new cost model, the requirement of a minimum reduction of 15% below the current lease rate will effectively prevent us from achieving any negotiated savings.

KJ/aw