

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 80/2

10906 HOUSE JUDICIARY

- 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.

2003 Monthly Federal Poverty Guidelines for Alaska

Effective 9/1/2002

Household Size	QMB Working Disabled (Premium Level)	SLMB Base	SLMB Plus	Denali KidCare (limit for insured children)	Denali KidCare (limit for uninsured children) Pregnant Women	Transitional Medicaid DET	QDWI	Working Disabled (eligibility)
	100%	120%	135%	150%	175%	185%	200%	250%
1	\$935	\$1,121	\$1,262	\$1,402	\$1,635	\$1,729	\$1,869	\$2,336
2	\$1,262	\$1,514	\$1,704	\$1,893	\$2,208	\$2,335	\$2,524	\$3,155
3	\$1,590			\$2,384	\$2,782	\$2,940	\$3,179	\$3,973
4	\$1,917			\$2,875	\$3,355	\$3,546	\$3,834	\$4,792
5	\$2,245			\$3,367	\$3,928	\$4,152	\$4,489	\$5,611
6	\$2,572			\$3,858	\$4,501	\$4,758	\$5,144	\$6,430
7	\$2,900			\$4,349	\$5,074	\$5,364	\$5,799	\$7,248
8	\$3,227			\$4,840	\$5,647	\$5,970	\$6,454	\$8,086
Ea Addl	\$328			\$492	\$574	\$606	\$655	\$819

Proposed DET Monitoring Process

DBT Admission & Review Process	Existing Practice	Administered by DBH/API/1 st Health
<p>I. Registration: Provides ability to identify level of utilization for program management. Type of Information obtained:</p> <ul style="list-style-type: none"> • Basic demographics • Program Criteria: <ul style="list-style-type: none"> • Mental status • Level of acuity (dangerousness) <p>(Note: Discharge Planning is to begin at Day 1)</p>	<p>I. Registration: 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>I. Registration: 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>II. Eight Day Review:</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>II. Eight Day Review: 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)</p> <p>Reference 7 AAC 75.520(b) and (c).</p>	<p>II. Eight Day Review: (est. # 60-70) DBH/API staff would conduct the 8 day review.</p> <p>1. Does the evaluation period exceed 7 days?</p> <ul style="list-style-type: none"> • No.....No review is conducted • Yes... Medical necessity of extension is reviewed: Criteria met? <ul style="list-style-type: none"> • Yes...extension is approved. • No....provider contacted for more information. Criteria met? <ul style="list-style-type: none"> • Yes...extension is approved. • No...DBH medical director consults with provider. Criteria met? <ul style="list-style-type: none"> • Yes...extension approved • No... payment denied
<p>III. Retrospective Review</p> <p>This review would occur within 90 days of admission, after discharge.</p> <ul style="list-style-type: none"> • Same as time limit for bill submission • Note: this would involve, on average, 275 clients annually. 	<p>III. Retrospective Review 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)</p> <p>Reference 7 AAC 75.520(b) and (c).</p>	<p>III. Retrospective Review API staff would conduct review. Sources used: the client file</p> <p>Process:</p> <ol style="list-style-type: none"> 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?

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		
	Statewide	226	291	286	244		
		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		
	Statewide	1206	1323	1364	1686		
		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		
	Statewide	3	2.9	3.6	6		
		Cost of Increase 01 to 03				Estimated	
	Statewide		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 polices and procedures
 - o 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 1,645.91
- 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 8th 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.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 364
 (S) 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						
TOTAL OPERATING	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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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)						
TOTAL	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)

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
 Division: Behavioral Health
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-3371
 Date/Time 02/05/2004
 Date 02/06/2004

FISCAL NOTE
FN # 1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

SB 364

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.

SJR

5



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER
CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
VICE-CHAIR, SENATE RESOURCES COMMITTEE

April 14, 2003

MEMORANDUM

To: Representative Lesil McGuire, Chair
House Judiciary Committee

From: Senator Thomas Wagoner *T. Wagoner*

Subject: CS SJR5(STA) – committee hearing request

I would appreciate your hearing CS for SJR5 (STA) in the House Judiciary Committee at your earliest convenience.

I have attached the sponsor statement, and other information pertaining to this measure.

If you have any questions please call my staff Amy Seitz, 465-3421. Thank you.



ALASKA STATE LEGISLATURE

SENATOR THOMAS H. WAGONER
CHAIR, SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
VICE-CHAIR, SENATE RESOURCES COMMITTEE

Senator Tom Wagoner Sponsor Statement

SJR 5 - BRADY BILL INSTANT CHECK SYSTEM

In 1993 the United States Congress passed the Brady Handgun Bill, which established a system to keep firearms out of the hands of criminals. The "national instant criminal background check system", established by the Brady Bill, is used to check for a criminal background during firearm purchases. To ensure that non-criminal records were not retained, language was included addressing this issue. It clearly states that the intent is to destroy all records relating to non-criminal persons, except the identifying number and the date the number was assigned.

The problem arose when the Administration gave this clearly stated section a novel interpretation. Instead of immediately destroying all records of legitimate firearm purchases, these records would be retained for "audit" purposes and may be retained for a maximum of six months.

When the Administration extended the holding of non-criminal records for up to one hundred and eighty days, they violated both the spirit and letter of the Brady Handgun Bill.

This Senate Joint Resolution urges the President of the United States and the Congress to ensure that federal agencies do not use the Brady bill Act as a means to unlawfully collect data about legitimate firearm owners. Also, this resolution requests that the Congress make necessary changes to prevent this from occurring in the future.

I respectfully ask you to join me in supporting this resolution.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SJR 5
(S) Publish Date: 2/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
Title: "Urging the President of the United States and the Congress to act to ensure that federal agencies...." BRU: Legislative Council
Sponsor: Senators Wagoner, Therriault,..... Component: Session Expenses
Requester: Senator Taylor Component No.: 782

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check 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)

SJR 5 has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director
Division: Administrative Services
Approved by: Pamela A. Varni, Executive Director
Agency: Legislative Affairs Agency

Phone 465-3852
Date/Time 2/11/03 2:19 PM
Date 2/11/2003

(1)(A)(i) with respect to the statement. "(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law-- "(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III); "(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and "(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

"(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

"(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages-- "(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or "(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

"(8) For purposes of this subsection, the term 'chief law enforcement officer' means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

"(9) The Secretary shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public." (2) HANDGUN DEFINED.--Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(29) The term 'handgun' means-- "(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and "(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled."

(b) PERMANENT PROVISION.--Section 922 of title 18, United States Code, as amended by subsection (a)(1), is amended by adding at the end the following:

"(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless-- "(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act; "(B)(i) the system provides the licensee with a unique identification number; or "(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and "(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d)(1) of this title) of the transferee containing a photograph of the transferee.

"(2) If receipt of a firearm would not violate section 922 (g) or (n) or State law, the system shall-- "(A) assign a unique identification number to the transfer; "(B) provide the licensee with the number; and "(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

"(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if-- "(A)(i) such other person has presented to the licensee a permit that-- "(I) allows such other person to possess or acquire a firearm; and "(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and "(ii) the law of the State

it shall be unlawful for any licensed dealer, manufacturer, or importer to transfer a firearm to any other person who is not licensed unless prior to the completion of the transfer:

A. the prospective purchaser has presented to the licensee a valid picture identification and the licensee has contacted NICBCS to verify that the purchaser is not a disqualified person. If NICBCS verifies that the purchaser is not a disqualified individual the sale may proceed.

- When a purchaser is approved, a unique identification number shall be assigned to the transaction. The licensee shall record the number on the Form 4473 as proof that NICBCS has been contacted.

- NICBCS shall record only the transaction number and the date on which the query took place. No other information related to a query concerning an individual who is not disqualified from receiving a firearm may be retained.

** In the event that the licensee contacts NICBCS and the system is unable to respond, the sale must be delayed for a time period not to exceed three days.

B. A sale may also proceed immediately if:

- the purchaser has presented a permit, that has been issued within the last five years as a result of the verification by an authorized government official that the purchaser is eligible to possess or acquire a handgun;

- the transfer has been approved by the Secretary of the Treasury (would apply only to those firearms which would fall under the purview of the National Firearms Act); or,

- by reason of geographic circumstance (as defined by the bill and certified by the Secretary of the Treasury upon application of the licensee) contacting NICBCS would be impracticable.

** An individual who is denied a firearm because of information provided by NICBCS shall, upon request, be provided with the information related to that denial within five days of the request.

C. If a licensee allows a transfer to take place without contacting the system, and the information that was available would have disqualified the purchaser from having a firearm, the Secretary may, after notice and hearing, revoke or suspend a Federal Firearms License for a period not to exceed six months and may impose a civil fine of not more than \$5,000. D. Whoever knowingly violates this Act (such as by selling a firearm to an individual who may lawfully possess it but without observing the letter of the law) may be fined not more than \$1,000, or imprisoned for not more than one year, or both.

IV. REMEDY FOR ERRONEOUS DENIAL OF FIREARMS

Any person denied a firearm due to the provision of erroneous information or who is denied a firearm but is not prohibited from receipt of a firearm, may bring an action against the state or political subdivision responsible for providing the erroneous information or for the denial, directing that the information be corrected or the transfer approved. In any action the court may award reasonable attorney's fees as part of the costs.

V. FUNDING FOR IMPROVEMENT OF CRIMINAL RECORDS

There are authorized to be appropriated \$200 million for fiscal years 1994 and all years thereafter to expedite the improvement of state criminal history records and access.

OTHER PROVISIONS

A. MULTIPLE FIREARMS PURCHASE REPORTING NOTIFICATION TO STATE AND LOCAL POLICE.

SJR

8

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: May 3, 2003
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0628\D, SJR 8, incorporating the attached amendment. The bill passed out of committee yesterday. I have also written the changes into the attached copy of the resolution for clarification of the amendment.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

Amendment #1

by Rep. Gara

P. 3, L. 19

After "decision"

Delete, "such as the 1996 Ninth Circuit decision in Alaska v. Village of Venetie"

~~XXXXXXXXXX~~

P. 3, L. 20

After "which", Insert "have"

P. 3, L. 20 - 21

(Semicolon)

After "Alaska" Insert ";"

And delete "before being unanimously reversed by the United States Supreme Court;"

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

MEMORANDUM

Date: April 23, 2003

To: Office of Representative McGuire

From: Senator Ralph Seekins

Re: Request for Hearing of SJR 8

A handwritten signature in black ink, appearing to read "A. McGuire" or similar, with a flourish at the end.

Attached please find Senate Joint Resolution 8 along with the corresponding sponsor statement and supporting documentation.

The Resolution requests the United States Congress to divide the Ninth Circuit Court of Appeals into two smaller Circuit Courts. The new smaller, and hopefully wiser, Twelfth Circuit would basically encompass the Northwestern states including Alaska. This Resolution enjoyed bipartisan support in the Senate passing out on a 16 to 3 vote.

I respectfully request a hearing before your committee on this Bill at your earliest convenience. Thank you.

ALASKA STATE SENATE

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax



Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Joint Resolution 8 Sponsor Statement

Division of the Ninth Circuit Court of Appeals

On February 28, 2003 the Ninth Circuit Court of Appeals upheld its controversial June 2002 decision declaring a portion of the Pledge of Allegiance unconstitutional. This ruling clearly illustrates the disconnect between the Ninth Circuit Court and the state of Alaska.

Senate Joint Resolution 8 calls upon Congress to divide the Ninth Circuit Court. This action is necessitated for a variety of reasons not the least of which includes the vast geographical *and* philosophical distance separating Alaska from the San Francisco based Court.

The Ninth Circuit Court oversees a caseload far beyond that which is reasonably manageable. In total, there are *eleven* circuit courts of appeal throughout the country, yet the Ninth Circuit Court oversees nearly *20%* of the U.S. population. In other words, the Ninth Circuit is *twice* the ideal size. This size disparity is cited as the principal reason for the Ninth Circuit Court's relatively high reversal record in cases heard by the U.S. Supreme Court.

SJR 8 endorses legislation introduced in the 106th and 107th Congress by Senators Ted Stevens and Frank Murkowski that would split the Ninth Circuit Court in two. The reconfigured Ninth would encompass Arizona, California and Nevada. The new Twelfth Circuit Court would take in Alaska, Hawaii, Idaho, Montana, Oregon and Washington (as well as the Northern Marianas and Guam). Similar legislation was recently introduced in the 108th Congress by Senator Lisa Murkowski.

SJR 8 simply seeks to accomplish two objectives: (1) correct a considerable imbalance in the Ninth Circuit Courts' caseload, and; (2) provide the disparate regions falling within the Ninth Circuit Court's current purview with a better informed panel of judges. These objectives are best accomplished by splitting the Ninth Circuit Court. The benefit accruing to Alaska of a smaller, closer Twelfth Circuit Court is self evident and undoubtedly long overdue.

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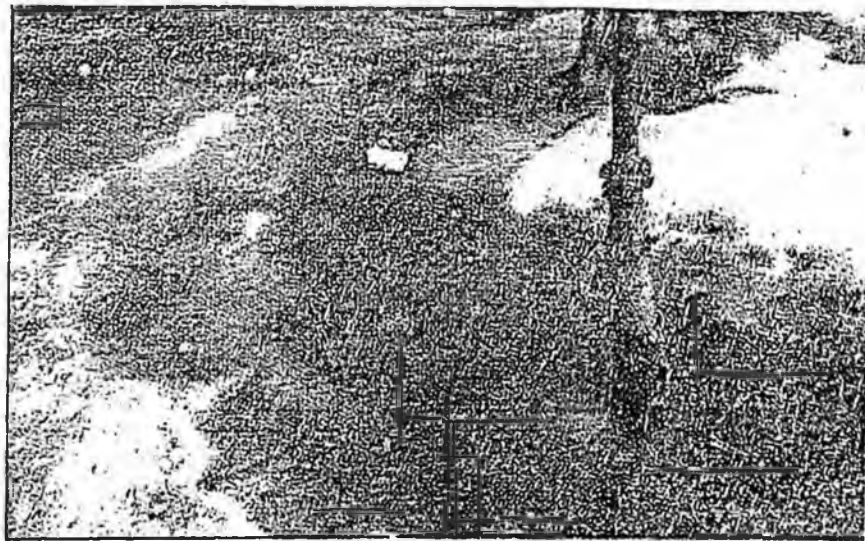
It seems race manager Jack Nigge-
meyer and executive director Stan
Hooley have dealt with as many chal-
lenges before the race as the 64 mush-
ers will encounter during it.

This year's restart was moved to
Fairbanks from the Wasilla-Willow area
because of a lack of snow created by
unseasonably warm weather in South-
central Alaska, necessitating a last-
minute scramble by organizers. The
restart begins at 10 a.m. Monday on
the Chena River at Pike's Landing.

"Obviously, when you have to make
a decision of this magnitude, sleep
becomes a forgotten memory at this
time of the year," Nigge-meyer said
from his office at the Iditarod head-
quarters in Wasilla.

For Iditarod officials, getting good
rest these days has been as difficult as
a bad singer getting to the finals of
American Idol. Nigge-meyer admits

See IDITAROD, Page A9



Al Grillo/The Associated Pres

SCRAPING THE BOTTOM—City of Anchorage snow removal personnel gather snow in Anchorage Thursday for the ceremonial start of the 2003 Iditarod Trail Sled Dog Race. Due to the warm weather and the lack of snow in Anchorage, the Iditarod Trail Committee has been gathering snow to lay down along the 11 mile race route through Anchorage.



Sourdough
Jack
Sez:

h off to those
school students—
know how to appre-
a ski race."

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Appeals court upholds ban on 'under God' in pledge

The New York Times

The federal appeals court that outraged much of the country last summer when it declared the Pledge of Allegiance unconstitutional because of the words "under God" refused Friday to reconsider that ruling.

At least until the U.S. Supreme Court takes up the case, which legal experts consider highly likely, children in public schools in the nine Western states that the appeals court covers will be barred from reciting the full pledge.

Over the vehement objections of nine of its 24 judges, the appeals court, the U.S. Court of Appeals for the 9th Circuit, in San

Francisco, let stand a slightly modified version of the 2-1 decision that a three-judge panel of that court handed down in June. The panel said then that the phrase "under God" in the pledge violated the separation of church and state mandated by the Constitution. On Friday, the panel shifted the focus to public school decisions that allow the voluntary recitation of the words.

The June ruling was almost immediately stayed, pending a review and decision by the full court. The decision on Friday surprised legal experts. Some experts speculated that some of the judges had voted against rehear-

See PLEDGE, Page A10

Iraq to begin destroying missiles

The Associated Press

BAGHDAD, Iraq—A top U.N. weapons inspector met with an Iraqi general Saturday to work out final details of Iraq's destruction of its Al Samoud 2 missile program, expected to begin within hours.

The dismantling of the finned white rockets was seen as a key test of Baghdad's resolve to disarm and avert a U.S.-led war. Chief U.N. weapons inspector Hans Blix, who ordered the missiles' destruction, praised the Iraqi decision as "a very significant piece of real disarmament."

Iraqi sources in the capital, speaking on condition of anonymity, said destruction of the missiles would start today. Predictably, the 11th-hour concession was greeted with celebration by governments opposed to war and skepticism by those advocating it.

In Washington, White House spokesman Ari Fleischer dismissed the idea that the Iraqi move reflected progress. "This is the deception the president predicted," he said Friday.

He said President Bush expected Iraq to

See IRAQ, Page A9

Ski race ta



Jenny Coe, center, tries to holden, right, as they lo School Activities Associ Hill Recreation Area Frid rying the couch around t mates who were comp Babcock laughed as the ground, drags a barbec with them to make haml

3/1/03 FONM

GNC

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PLEDGE: Judges, federal officials expect Supreme Court to take up issue

Continued from Page A1

ing the case simply to hasten a Supreme Court review.

Attorney General John Ashcroft indicated that the government would ask the Supreme Court to review the case. "The Justice Department," Ashcroft said in a statement, "will spare no effort to preserve the rights of all our citizens to pledge allegiance to the American flag. We will defend the ability of Americans to declare their patriotism through the time-honored tradition of voluntarily reciting the pledge."

Lawyers for the states and the federal government did not respond to questions about asking the Supreme Court to stay the decision, which formally takes effect next Friday. The appeals court covers Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.

Gov. Gray Davis of California said: "At the start of every court session, the Supreme Court invokes God's blessing. So does the Senate and the House of Representatives. Surely, the Supreme Court will permit schoolchildren to invoke God's name while recit-

ing the Pledge of Allegiance."

Eugene Volokh, a professor of law at the University of California at Los Angeles, said that "the Supreme Court will almost certainly agree to hear the case," partly because "this is a hot button issue in which a majority of the justices probably disagree with the panel" and partly because of a disagreement between two appeals courts. The 9th Circuit decision is at odds with a decision in 1992 by the U.S. Court of Appeals for the 7th Circuit, in Chicago.

The 9th Circuit panel that ren-

dered the pledge ruling in June issued an amended version of that decision on Friday. Like the earlier decision, the vote was 2-1. The decision now stops short of declaring the law passed by Congress in 1954 that added the words "under God" to the pledge unconstitutional. The panel focuses instead on public school decisions that allow voluntary recitations of the words.

The distinction makes the decision less sweeping. It may now not apply by implication to reciting the pledge in other official settings or to similar phrases

in other laws and governmental statements.

The panel majority sided with the plaintiff, Michael A. Newdow of Sacramento, an atheist who said his daughter was injured when forced to listen to teachers lead a pledge that includes the assertion that there is a God. Newdow did not respond to requests for comment.

Denials of petitions for full-court rehearings are usually dry one- or two-sentence affairs. That was not so on Friday.

Judge Diarmuid F. O'Scannlain, writing for six judges,

called very w ing th simply two-ju as a r preced wrong conflic circuit, commo

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TODAY ONLY! 9AM TO 9PM

SUPER

Sealy

the ing the Pledge of Allegiance." Eugene Volokh, a professor of law at the University of California at Los Angeles, said that "the Supreme Court will almost certainly agree to hear the case," partly because "this is a hot button issue in which a majority of the justices probably disagree with the panel" and partly because of a disagreement between two appeals courts. The 9th Circuit decision is at odds with a decision in 1992 by the U.S. Court of Appeals for the 7th Circuit, in Chicago.

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Denials of petitions for full-court rehearings are usually dry one- or two-sentence affairs. That was not so on Friday.

Judge Diarmuid F. O'Scannlain, writing for six judges,

called the panel decision "wrong, very wrong—wrong because reciting the Pledge of Allegiance is simply not a 'religious act' as the two-judge majority asserts, wrong as a matter of Supreme Court precedent properly understood, wrong because it set up a direct conflict with the law of another circuit, and wrong as a matter of common sense.

"If reciting the pledge is truly 'a religious act' in violation of the Establishment Clause, then so is the recitation of the Constitution itself, the Declaration of Independence, the Gettysburg Address, the National Motto or the singing of the national anthem," a verse of which says, 'And this our motto: In God is our trust.'

The Constitution refers to the "year of our Lord," and the National Motto is "In God we trust."

Judge Stephen Reinhardt, who along with Alfred T. Goodwin, was one of the two judges in the original majority, was the sole judge who explained his vote against rehearing. Such explanations are uncommon, and Reinhardt said he wrote because he felt "compelled to discuss a disturbingly wrongheaded approach to constitutional law manifested in the dissent authored by Judge O'Scannlain" that noted the exceptional "public and political reaction" to the original decision.

"We may not—we must not—allow public sentiment or outcry to guide our decisions," Reinhardt wrote. "Any suggestion, whenever or wherever made, that federal judges should be encouraged by the approval of the majority or deterred by popular disfavor is fundamentally inconsistent with the Constitution and must be firmly rejected."

O'Scannlain responded that his opinion had "nothing to do with bending to the will of an outraged populace and everything to do with the fact that Judge Goodwin and Judge Reinhardt misinterpret the Constitution and 40 years of Supreme Court precedent. That most people understand this makes the decision no less wrong."

O'Scannlain conceded, however, that Supreme Court precedent in this area could be "fractured and incoherent." Legal experts on both sides have said the original decision was a careful and coherent work of judicial craftsmanship.

Supreme Court decisions have prohibited many forms of reli-

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Plush
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Ultra Plush
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Queen Set

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gious observance in public schools, including prayers, Bible readings and minutes of silence. O'Scannlain said the pledge was at bottom not about religion.

"Most assuredly," he wrote, "to pledge allegiance to flag and country is a patriotic act. After the public and political reaction last summer, it is difficult to believe that anyone can continue to think otherwise."

A number of Supreme Court decisions have indicated that the pledge is constitutional. The panel's decision said that those statements were observations made in passing, points that lawyers call dicta, and that they did not bind lower courts.

Legal experts said the 15 judges who voted not to rehear the case might have done so for any number of reasons, including agreeing with the original decision.

"There is a good argument that the 9th Circuit's ruling is correct under United States Supreme Court case law, which is unclear," said Howard J. Bashman of Philadelphia, a specialist in appellate litigation.

The judges may have believed that case was not exceptionally important, the showing required by the rules that seek to discourage petitions for rehearings by the full court.

Four judges, including one who also joined O'Scannlain's decision, would have granted the rehearing not on the ground that it was necessarily wrong, but because, as Judge M. Margaret McKeown said, "The recitation of the Pledge of Allegiance by schoolchildren presents a constitutional question of exceptional importance."

They may have been wary of the makeup of the 11-judge panel that would rehear the case. The 9th Circuit is alone among the federal appeals courts in not having every active judge participate in so-called en banc, or full court, rehearings.

Some judges may have just wanted to hasten what they viewed as the inevitable Supreme Court review.

"You know this has the Supreme Court written all over it," Volokh said. "So let them figure it out."

Rod Boyce, Assistant Managing Editor: 459-7574; e-mail: letters@newsminer.com

3/6/03

FAIRBANKS

Daily News - Miner

"Independent in All Things ... Neutral in None"
Established in 1903

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Publisher

KELLY BOSTIAN
Managing Editor

DERMOT COLE
Columnist

ROD BOYCE
Assistant Managing Editor

Please, God, split the 9th Circuit

If there was any doubt that Alaska needed to be separated from the exceptionally liberal, San Francisco-based (need we say more?) 9th Circuit, consider the fiasco of the court's ruling that it is unconstitutional for students to recite the Pledge of Allegiance in public schools.

Although the court on Tuesday temporarily suspended its ruling, which stated the words "under God" in the pledge amount to a government endorsement of religion, the court's general tenor does not match that of Alaska. The 9th Circuit has jurisdiction over nine Western states, including Alaska.

There are many other reasons, of a more practical and less political nature, to split the 9th Circuit into two or even three additional appellate courts, however:

The court consists of 28 judges and is by far the nation's largest appellate circuit, with jurisdiction over one-fifth of the U.S. population. The number of cases the 9th Circuit accepts each year does not allow each judge sufficient time to analyze rulings of the court's three-judge panels, from which most rulings stem. That leads to inconsistency and a propensity, more so than with other circuit courts, to have rulings overturned by the U.S. Supreme Court.

From Alaska's interest, the court is so large that judges cannot become as familiar as we would like with laws that affect our state. The Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act, for example, are complex and controversial laws that touch on many facets of Alaska life. A smaller circuit court would allow judges to visit the state more often.

Creating additional circuits out of the 9th Circuit is not a new idea. Nor is the general concept of dividing Circuit Courts: In 1980 the 5th Circuit, because of its size, was broken apart to create the 11th Circuit.

The idea for remaking the 9th Circuit is one that could be gaining momentum after years of struggle. U.S. Sen. Lisa Murkowski said this week that she will introduce legislation to split the 9th Circuit, and the state Legislature will consider a resolution by Fairbanks Sen. Ralph Seekins calling for the court's breakup.

We rule in favor of both.



Art enhanc

Quick, name the first 10 things that come to mind when I say Fairbanks arts. Jo Scott, June Rogers, Peggy Ferguson, the University of Alaska Museum, Fairbanks Drama, concert and symphony associations, New Horizons Gallery, Summer Music Festival, Denali Bank.

Denali Bank?

Yes. Last year the bank won the first ever Business in the Arts Award for its extraordinary support of Fairbanks' cultural community.

This award is presented by the Fairbanks Business Committee for the Arts, in partnership with the national Business Committee for the Arts and the Greater Fairbanks Chamber of Commerce.

Arts often suffer from a narrow focus on the aesthetic and cultural. However, Fairbanks

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FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SJR 8
(S) Publish Date: 3/13/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Relating to the division of the Ninth BRU _____
Circuit Court of Appeals Component _____
Sponsor Senator Seekins _____
Requester Senate Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
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)

Prepared by: SENATE JUDICIARY COMMITTEE Phone 465-2327
Division _____ Date/Time 3/12/03 11:33 AM
Approved by: /s/Senator Seekins, Chair Date 3/13/2003
Agency _____

SJR

10

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: May 5, 2003
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0756VI, SJR 10, incorporating the amendment that I have written on Page 2, Lines 29-30, of the attached version. The resolution passed out of committee today.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

SENATE JOINT RESOLUTION NO. 10
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATORS GREEN, Bunde, Cowdery, Dyson, Ogan, Seekins, Ben Stevens, Gary Stevens, Taylor, Therriault, Wagoner, Wilken, Davis, Ellis, Elton, French, Lincoln, Olson, Guess

REPRESENTATIVES Lynn, Wilson

Introduced: 3/10/03
Referred: State Affairs

A RESOLUTION

1 **Relating to the Pledge of Allegiance.**

2 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **WHEREAS** this country was founded on religious freedom by founders, many of
4 whom were deeply religious; and

5 **WHEREAS** the First Amendment to the United States Constitution embodies
6 principles intended to guarantee freedom of religion both through the free exercise of religion
7 and by prohibiting the government's establishing a religion; and

8 **WHEREAS** the Pledge of Allegiance was written by Francis Bellamy, a Baptist
9 minister, and was first published in the September 8, 1892, issue of Youth's Companion; and

10 **WHEREAS**, in 1954, the United States Congress added the words "under God" to the
11 Pledge of Allegiance; and

12 **WHEREAS** President Eisenhower, in adding these words, said "These words will
13 remind Americans that despite our great physical strength we must remain humble. They will
14 help us to keep constantly in our minds and hearts the spiritual and moral principles which
15 alone give dignity to man, and upon which our way of life is founded."; and

16 **WHEREAS**, for nearly 50 years, the Pledge of Allegiance has included references to

1 the United States flag and the country; this country has been established as a union "under
2 God," being dedicated to securing "liberty and justice for all"; and

3 **WHEREAS**, in 1954, the United States Congress believed it was acting
4 constitutionally when it revised the Pledge of Allegiance; and

5 **WHEREAS** patriotic songs, engravings on United States legal tender, engravings on
6 federal buildings, and the Preamble to the Constitution of the State of Alaska also contain
7 general references to "God"; and

8 **WHEREAS**, in accordance with decisions of the United States Supreme Court, public
9 school students cannot be forced to recite the Pledge of Allegiance without violating their
10 First Amendment rights; and

11 **WHEREAS** a three-judge panel of the United States Court of Appeals for the Ninth
12 Circuit has ruled in *Newdow v. U.S. Congress* that the words "under God" in the Pledge of
13 Allegiance violate the Establishment Clause when recited by students in public schools; and

14 **WHEREAS** the Ninth Circuit Court of Appeals has voted not to have the full court,
15 en banc, reconsider the decision of the panel; and

16 **WHEREAS** the Senate of the 108th United States Congress strongly disapproves of a
17 decision by a panel of the Ninth Circuit in *Newdow v. U.S. Congress*, and the decision of the
18 full court not to reconsider this case en banc; and resolves to authorize and instruct the Senate
19 Legal Counsel either to seek to intervene in the case to defend the constitutionality of the
20 words "under God" in the Pledge of Allegiance, or to file an amicus curiae brief in support of
21 the continuing constitutionality of the words "under God" in the Pledge of Allegiance;

22 **BE IT RESOLVED** that the Alaska State Legislature concurs with and supports
23 review by the United States Supreme Court of the decision, *Newdow v. U.S. Congress*.

24 **COPIES** of this resolution shall be sent to the Honorable George W. Bush, President
25 of the United States; the Honorable Richard B. Cheney, Vice-President of the United States
26 and President of the U.S. Senate; the Honorable Ted Stevens, President Pro Tempore of the
27 U.S. Senate and member of the Alaska delegation in Congress; the Honorable J. Dennis
28 Hastert, Speaker of the U.S. House of Representatives; and to the Honorable Lisa Murkowski,
29 U.S. Senator, ^{and} the Honorable Don Young, U.S. Representative, members of the Alaska
30 delegation in Congress, and Theodore B. Olson, Solicitor General of the United States.

ALASKA STATE LEGISLATURE



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

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

SENATOR LYDA GREEN SENATE DISTRICT G

MEMO

DATE: 3/31/2003

To: House Judiciary Committee
Representative Lesil McGuire
Attn: Vanessa Tondini

From: Senator Lyda Green
Jacqueline Tupou

RE: Request for scheduling SJR10
Pledge of Allegiance

A handwritten signature in cursive script that reads "Lyda Green".

I am requesting SJR10, Pledge of Allegiance, be scheduled in House Judiciary at your earliest convenience. I have attached the resolution, fiscal note and sponsor statement. Thank you in advance for your time and attention to this matter.

Questions....please feel free to call x3712 JT

ALASKA STATE LEGISLATURE

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Session:
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SENATOR LYDA GREEN SENATE DISTRICT G

SPONSOR STATEMENT Senate Joint Resolution 10

"Relating to the Pledge of Allegiance"

Senate Joint Resolution 10 resolves that the Alaska State Legislature supports a review by the United States Supreme Court of the *Newdow V. U.S. Congress* decision.

In *Newdow vs. United States Congress*, a panel of the Ninth Circuit decided that the recitation of the Pledge of Allegiance in public schools was unconstitutional. The Ninth Circuit Court of Appeals confirmed this decision and granted a 90 day stay to the California School District to appeal to the Supreme Court. If this decision is not reviewed, public schools in nine western states, including Alaska, will be banned from reciting the pledge.

SJR 10 expresses the support of the Alaska State Legislature for the review of *Newdow vs. U.S. Congress* by the United States Supreme Court and of our firm belief of the principles and ideals stated in our nation's Pledge of Allegiance.

I ask for your support in the passage of this resolution.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SJR 10
(S) Publish Date: 3/20/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Pledge of Allegiance Resolution BRU _____
Sponsor Senator Green Component _____
Requester Senate State Affairs Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
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)

Prepared by: SENATE STATE AFFAIRS COMMITTEE Phone 465-4522
Division _____ Date/Time 3/19/03 12:36 PM
Approved by: Senator Gary Stevens, Chair Date 3/19/2003
Agency _____

SJR

33

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

MEMORANDUM

Date: May 3, 2004

To: Office of Representative McGuire

From: Senator Ralph Seekins

Re: Request for Hearing of SJR 33

Handwritten initials in cursive script, appearing to be "A", "L", and "R.S.".

Attached please find Senate Joint Resolution 33.

Senate Joint Resolution 33 requests the United States Senate to expedite the floor vote on all judicial nominations.

I respectfully request this resolution be scheduled in your committee at your convenience. *In the alternative, it may be preferable to waive it from committee particularly given the lateness of the session. I will defer to your best judgment.*

Thank you for your kind consideration.

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

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119 N. Cushman, Suite 201
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Senator_Ralph_Seekins@legis.state.ak.us

SENATE JUDICIARY COMMITTEE

Senator Ralph Seekins, Chairman
District D

Senate Joint Resolution 33 Sponsor Statement

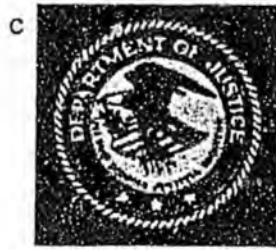
“Urging our United States Senators to work to allow a timely vote on the floor on all judicial nominations.”

Senate Joint Resolution 33 respectfully requests the U.S. Senate move forward with President Bush’s judicial nominations.

Our U.S. Constitution provides the President with the power to nominate qualified candidates for federal judicial positions *with* the consent of the Senate. But, many of these nominations are currently being blocked through parliamentary delay tactics carried out by a minority of senators. This has created needless hardship within the judiciary branch of our government.

In fact, the Administrative Office of the United States Courts has classified 24 judgeships as “judicial emergencies”. Many of President Bush’s nominees are intended to fill these seats. Furthermore, a majority of the United States Senate stands ready to approve these individuals. Nevertheless, they — and the judiciary branch they are to serve — remain mired in political limbo.

Senate Joint Resolution 33 requests the U.S. Senate move forward with these nominations thus allowing the judicial branch to function as the Constitution intended.



U.S. Department of Justice
Office of Legal Policy

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Last Updated: 4/26/04

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Judicial Nominations

43* = Vacancies in the 877-member Article III federal judiciary.

46 = Pending Article III Nominees.

- Number of nominees may exceed number of vacancies because the President may name individuals to fill vacancies that will occur in the near future.
- [Information about judicial nominations during the 107th Congress.](#)

o *This figure does not take into account recess appointments.

Counter

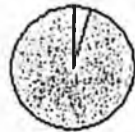
Hits from 4/19-4/26:

743

Total hits since 7/10/01:

117679

Judicial Vacancies



- ▣ 43 Vacant (5%)
- ▣ 832 Filled (95%)

Hearings for Nominees



- ▣ 102 Had Hearing (84%)
- ▣ 20 No Hearing (16%)

Confirmations*



- ▣ 73 Confirmed (61%)
- ▣ 46 Not Confirmed (39%)

Circuit Vacancies



16 Vacant (9%)
163 Filled (91%)

Hearings for Circuit Nominees



29 Had Hearing (81%)
7 No Hearing (19%)

Circuit Confirmations**



13 Confirmed (42%)
18 Not Confirmed (58%)

* These numbers only include Article III courts. The President has nominated 6 people to the Article I Court of Federal Claims, 5 of whom have been confirmed. There is also one Article I District Court nominee.

** One nominee withdrew and one nominee was recess appointed.

	Current Vacancies	Nominations Since 1/2003	Confirmations	Current Pending Nominations
Circuit	18* (of 179) — 10%	33	13	18
District	29 (of 680) — 4%	86	60	28
TOTAL	45 (of 877) — 5%	119	73	46

*This figure does not take into account recess appointments.

- Complete list of nominations.
 - Complete list of confirmed nominees.
 - Complete list of vacancies.
-
- 25 of the 46 vacancies are so-called "judicial emergency" vacancies.
 - There are 24 nominees pending against positions designated as a "judicial emergency" vacancy.
 - Complete list of "judicial emergency" vacancies.

[Back to top](#)

- Total nominations pending before the Senate:
 - 18 Circuit Court
 - 28 District Court
 - 0 International Trade Court
 - 0 Court of Federal Claims
- Nominations pending before the Senate Judiciary Committee awaiting a hearing:
 - 7 Circuit Court
 - 15 District Court
 - 0 International Trade Court
 - 0 Court of Federal Claims
- Nominations scheduled for a hearing:
 - 1 Circuit Court
 - 2 District Court
 - 0 International Trade Court
 - 0 Court of Federal Claims
- Nominations pending before the Senate Judiciary Committee awaiting a vote:
 - 4 Circuit Court
 - 5 District Court
 - 0 International Trade Court
 - 0 Court of Federal Claims
- Nominations pending before the full Senate awaiting a vote:
 - 9 Circuit Court
 - 13 District Court
 - 0 International Trade Court
 - 0 Court of Federal Claims
- Nominations confirmed by the Senate:
 - 13 Circuit Court
 - 60 District Court
 - 1 International Trade Court
 - 6 Court of Federal Claims

[Back to top](#)

- No nominations have been rejected by the Senate, one nomination has been withdrawn during the 108th Congress and one was returned at the end of the first session.

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- Blue Slips

- A blue slip is the traditional method of allowing the home state senators of a judicial nominee to express their approval or disapproval. Blue slips are generally given substantial weight by the Judiciary Committee in its consideration of a judicial nominee. The process dates back several decades and is grounded in the tradition of "senatorial courtesy," which traces its roots back to the presidency of George Washington.
- Current status of Blue Slips.

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- **In the News...**

- 5/6/03 Letter from Counsel to the President Alberto R. Gonzales to Senator Schumer Regarding the Judicial Confirmation Process

"[T]he solution to the broken judicial confirmation process is for the Senate to exercise its constitutional responsibility to vote up or down on judicial nominees within a reasonable time after nomination, no matter who is President or which party controls the Senate."

- 2/25/03 Letter from Bipartisan Majority of U.S. Senators Expressing Support for Miguel Estrada's Nomination

"Despite his obvious qualifications and remarkable personal story, we have been unable to obtain fair consideration on the Senate floor for Mr. Estrada's nomination. Nevertheless, we, the undersigned majority in the United States Senate, commend you for your outstanding choice, and will continue to work diligently to ensure Mr. Estrada receives a simple up or down vote on the Senate Floor."

- 6/24/02 Letter from former Solicitors General Regarding Chairman Leahy's Request for Deliberative Material

"Our decisionmaking process required the unbridled, open exchange of ideas - an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality."

- "White House Counsel Alberto Gonzales Discusses the Crisis in Our Courts"

"President Bush has responded to the vacancy crisis by nominating a record number of federal judges: 90 since taking office, almost double the nominations that any of the past six presidents submitted in the first

year. Despite his decisive action, the Senate has not done enough to meet its constitutional responsibility. It has voted on less than half of the nominees. Indeed, it has voted on only six of the 29 nominees to the courts of appeals. . . .

"As Congress returns to work, the administration respectfully calls on the Senate to make the vacancy crisis a priority and to ensure prompt hearings and votes for all nominees. The Senate should make this practice permanent, adhering to it well after President Bush leaves office, so as to ensure that every judicial nominee by a president of either party receives a prompt hearing and vote." *The Wall Street Journal, Editorial, January 25, 2002.*

- "Chief Justice Warns More Judges Need to be Confirmed"

"Chief Justice William Rehnquist has offered a timely assist to the Republican minority in the U.S. Senate, which has been accusing Democrats of dragging their feet on confirming new federal judges.

"And although the chief justice is a Republican appointee, there is nothing partisan about his plea that the Democratic-controlled Senate "act with reasonable promptness" on President Bush's judicial nominees and vote them "up or down" instead of ensaring them in procedural delays." *Pittsburgh Post Gazette, Editorial, January 3, 2002.*

- "Sixth Circuit Crisis"

"With eight openings, the 16-member court [the 6th Circuit Court of Appeals] is operating at half strength...Four of those Sixth Circuit openings have been deemed judicial emergencies by the Administrative Office of the U.S. Courts, based on the number of years a judgeship has been open and the size of the court's caseload.

"President Bush addressed this crisis with seven nominations to the Sixth Circuit last year, including two in his first batch of nominees last May 9. And the Senate? Mr. Leahy has yet to grant a single hearing for a Sixth Circuit nominee." *The Wall Street Journal, Editorial, January 3, 2002.*

- **Judicial Emergency:**

The formula by which a judicial vacancy is determined to be a "judicial emergency" has been changed by the Administrative Office of the U.S. Courts effective December 2001, to identify courts where vacancies have resulted in only one active judge.

The formula now used is:

Any vacancy in a district court where weighted filings are in excess of 600 per judgeship; **OR** any vacancy in existence more than 18 months where weighted filings are between 430 to 600 per judgeship; **OR** any court with more than one authorized judgeship and only one active judge;

AND

Any vacancy in a court of appeals where adjusted filings per panel are in excess of 700; **OR** any vacancy in existence more than 18 months where adjusted filings are between 500 to 700 per panel.

Complete list of "judicial emergency" vacancies.

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Judicial Emergencies

(See attachment for revised definition.)

April 6, 2004

Prepared by the AOUSC Office of Legislative Affairs

Court	Vacancy Created By	Reason	Vacancy Date	Da Pendi Adjusted filings*
02	CCA Parker, Fred I.	Deceased	8/12/2003	238 879
02	NY-E Johnson, Sterling Jr.	Senior	6/1/2003	310 667
02	NY-E Raggi, Reena	Elevated	9/20/2002	564 667
03	PA-E Hutton, Herbert J.	Senior	9/6/2003	213 620
03	PA-E Waldman, Jay C.	Deceased	5/30/2003	312 620
03	PA-E Buckwalter, Ronald L.	Senior	12/11/2003	117 620
03	PA-E Yohn, William H. Jr.	Senior	11/20/2003	138 620
04	CCA Murnaghan, Francis	Deceased	8/31/2000	1314 599
04	CCA Phillips, J. Dickson Jr.	Senior	7/31/1994	3537 599
04	NC-E Britt, W. Earl	Senior	12/7/1997	2312 537
04	VA-E Morgan, Henry C. Jr.	Senior	2/8/2004	58 632
05	CCA Garwood, William L.	Senior	1/23/1997	2630 1009
05	MS-S Pickering, Charles W. Sr.	Elevated	1/16/2004	81 1223
06	CCA Suhrheinrich, Richard F.	Senior	8/15/2001	965 588
06	CCA			

	Kennedy, Cornelia	Senior	3/1/1999	1863	588
06	CCA Ryan, James L.	Senior	1/1/2000	1557	588
06	CCA Keith, Damon	Senior	5/1/1995	3263	588
09	CA-S PL 107-273	New Position	7/15/2003	266	610
09	CCA Browning, James R.	Senior	9/1/2000	1313	956
09	HI Kay, Alan C.	Senior	1/1/2000	1557	431
09	WA-W Zilly, Thomas S.	Senior	1/1/2004	96	682
09	WA-W 28 USC 133 (per Barbara Rothstein, FJC Director)	FJC Director	9/8/2003	211	682
10	NM Parker, James A.	Senior	9/1/2003	218	681
11	FL-S Ferguson, Wilkie D. Jr.	Deceased	6/9/2003	302	615
Total Judicial Emergencies				24	

* A judicial emergency is defined as the following: 1) any vacancy in a district court where weighted filings are in excess of 600 per judgeship, OR any vacancy in existence more than 18 months where weighted filings are between 430 and 600 per judgeship, OR any court with more than one authorized judgeship and only one active judge; and 2) any vacancy in a court of appeals where adjusted filings per panel are in excess of 700; OR any vacancy in existence more than 18 months where adjusted filings are between 500 to 700 per panel.