

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11279 SENATE LABOR & COMMERCE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 549(JUD)
(H) Publish Date: 4/7/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Unsolicited Communication: BRU Alaska Court System
Aircraft Crash Component Trial Courts
Sponsor House Judiciary Committee
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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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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 (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)

The court system does not anticipate any fiscal impact from the passage of HB 549.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
Division: Alaska Court System Date/Time 4/2/04 11:52 AM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 4/2/2004
Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 549(JUD)
 (H) Publish Date: 4/7/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to unsolicited communications RDU CIVIL
following an aircraft accident..." Component Various
 Sponsor House Judiciary Committee
 Requester House Judiciary Committee 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						
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						
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Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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 adds a new section to AS 02-40 prohibiting an attorney or potential party from initiating contact with an individual injured in an accident involving an air carrier within 45 days following the accident.

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

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division Administrative Services Date/Time 4/4/04 1:10 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 4/4/2004
 Agency Department of Law

Rule 7.1

ALASKA RULES OF COURT

need not identify the client. (SCO 1123 effective July 15, 1993)

ALASKA COMMENT

The Committee amended the last sentence in order to state more clearly the nature of the disclosure which must be made by the lawyer.

COMMENT

Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. *See also* Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's Services.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services or any prospective client's need for legal services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) compares the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated. (SCO 1123 effective July 15, 1993)

ALASKA COMMENT

The Committee revised Model Rule 7.1 to address the situation in which a lawyer might provide misleading information with regard to a potential client's needs for legal services from a particular lawyer.

COMMENT

This rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them should be truthful. The prohibition in paragraph (b) of statements that may create "unjustified expectations" would ordinarily preclude advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, and advertisements containing client endorsements. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

Rule 7.2. Advertising.

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor advertising, radio or television or through written or recorded communication.

(b) A copy or recording of each advertisement or communication shall be retained by the lawyer for two years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

(1) pay the reasonable cost of advertising or written communication permitted by this rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or other legal service organization; and

(3) pay for a law practice in accordance with Rule 1.17.

(d) Any communication made pursuant to this rule shall include the name of at least one lawyer responsible for its content. (SCO 1123 effective July 15, 1993)

COMMENT

To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in

the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

This rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant.

Neither this rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising

Paragraph (b) requires that a record of the content and use of advertising be kept in order to facilitate enforcement of this rule. It does not require that advertising be subject to review prior to dissemination. Such a requirement would be burdensome and expensive relative to its possible benefits, and may be of doubtful constitutionality.

Paying Others to Recommend a Lawyer

A lawyer is allowed to pay for advertising permitted by this rule and for the purchase of a law practice in accordance with the provisions of Rule 1.17, but otherwise is not permitted to pay another person for channeling professional work. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services may pay to advertise legal services

provided under its auspices. Likewise, a lawyer may participate in not-for-profit lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this rule.

Rule 7.3. Direct Contact with Prospective Clients.

(a) A lawyer shall not solicit by in-person or live telephone contact professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

(b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress or harassment.

(c) Every written or recorded communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship, shall include the words "Advertising Material" on the front of the outside envelope and at the beginning and ending of any recorded communication.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate in a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. (SCO 1123 effective July 15, 1993; amended by SCO 1426 effective April 15, 2001)

COMMENT

There is a potential for abuse inherent in direct in-person or live telephone contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giv-

ing rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the fact of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

This potential for abuse inherent in direct in-person or live telephone solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person or telephone persuasion that may overwhelm the client's judgment.

The use of general advertising and written and recorded communications to transmit information from lawyer to prospective client, rather than direct in-person or live telephone contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 are permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person or live telephone conversations between a lawyer to a prospective client can be disputed and are not subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

There is far less likelihood that a lawyer would engage in abusive practices against an individual with whom the lawyer has a prior personal or professional relationship or where the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations.

But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospec-

tive client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for its members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or the lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

The requirement in Rule 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

Paragraph (d) of this Rule would permit an attorney to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization referred in paragraph (d) must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but it is to be designed to inform potential plan members generally of another

means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a)

Rule 7.4. Communication of Fields of Practice and Certification.

A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a "specialist," "certified," or words of similar import except as follows:

(a) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation; and

(b) a lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization or authority, but only if that certification is granted by an organization or authority whose specialty certification program is accredited by the American Bar Association.

(SCO 1123 effective July 15, 1993; amended by SCO 1370 effective April 15, 2000)

ALASKA COMMENT

Paragraph (b) was deleted from ABA Model Rule 7.4 because the Committee concluded that under modern practice the field of admiralty is no longer a unique specialization.

COMMENT

Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office.

This rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to so indicate. All communications are, however, subject to the "false and misleading" standard of Rule 7.1 in respect to communications concerning a lawyer's services.

A lawyer may not communicate that the lawyer is a specialist or has been recognized or certified as a specialist in a particular field of law, except as provided by this rule. Recognition of specialization in patent matters is a matter of long established policy of the Patent and Trademark Office, as reflected in paragraph (a). The American Bar Association's Model Rule 7.4 also permits attorneys who specialize in admiralty law to use the designa-

tion "proctor in admiralty" or otherwise hold themselves out as specialists in admiralty. This exception was not included in Alaska's Professional Conduct Rule 7.4 because the Alaska Bar Association's Committee on the Rules of Professional Conduct concluded that under modern practice the field of admiralty is no longer a unique specialization.

Paragraph (b) permits a lawyer to communicate that the lawyer has been certified as specialist in a field of law when the American Bar Association has accredited the organization's specialty program to grant such certification. Certification procedures imply that an objective entity has recognized a lawyer's higher degree of specialized ability than is suggested by general licensure to practice law. Those objective entities may be expected to apply standards of competence, experience, and knowledge to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful certification information, the name of the certifying organization or agency must be included in any communication regarding the certification.

See *Peel v. Attorney Registration & Disciplinary Comm'n*, 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990).

Rule 7.5. Firm Names and Letterheads.

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers shall not state or imply that they practice in a partnership or other organization unless the relationship stated or implied in fact exists.

(e) The term "of counsel" shall be used only to refer to a lawyer who has a close continuing rela-

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SUBCHAPTER III - AUTHORITY

- Sec. 1131. General authority
- Sec. 1132. Civil aircraft accident investigations
- Sec. 1133. Review of other agency action
- Sec. 1134. Inspections and autopsies
- Sec. 1135. Secretary of Transportation's responses to safety recommendations
- Sec. 1136. Assistance to families of passengers involved in aircraft accidents
- Sec. 1137. Authority of the Inspector General

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Sec. 1136. - Assistance to families of passengers involved in aircraft accidents

(a) In General. -

As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall -

(1)

designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

(2)

designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) Responsibilities of the Board. -

The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).

(c) Responsibilities of Designated Organization. -

The organization designated for an accident under

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subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

(1)

To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.

(2)

To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3)

To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

(4)

To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.

(5)

To arrange a suitable memorial service, in consultation with the families.

(d) Passenger Lists. -

(1) Requests for passenger lists. -

(A) Requests by director of family support services. -

It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

(B) Requests by designated organization. -

The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

(2) Use of information. -

The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

(e) Continuing Responsibilities of the Board. -

In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident -

(1)

are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

(2)

are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) Use of Air Carrier Resources. -

To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization's responsibilities under this section.

(g) Prohibited Actions. -**(1) Actions to Impede the board. -**

No person (including a State or political subdivision) may impede the ability of the Board (including the

director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) Unsolicited communications. -

In the event of an accident involving an air carrier providing interstate or foreign air transportation and in the event of an accident involving a foreign air carrier that occurs within the United States, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.



*Amended
2000*

P.L. 106-181

-30 → 45

- expanded "attorney"

- added foreign air carrier.

(3) Prohibition on actions to prevent mental health and counseling services. -

No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

(h) Definitions. -

In this section, the following definitions apply:

(1) Aircraft accident. -

The term "aircraft accident" means any aviation disaster regardless of its cause or suspected cause.

(2) Passenger. -

The term "passenger" includes -

(A)

an employee of an air carrier or foreign air carrier
aboard an aircraft; and

(B)

any other person aboard the aircraft without
regard to whether the person paid for the
transportation, occupied a seat, or held a reservation
for the flight.

(i) Statutory Construction. -

Nothing in this section may be construed as limiting the
actions that an air carrier may take, or the obligations that
an air carrier may have, in providing assistance to the
families of passengers involved in an aircraft accident.

*Added
2000
also
to protect air
carrier performing
"CARE" duties.*

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Sec. 1151. - Aviation enforcement

(a) Civil Actions by Board. -

The National Transportation Safety Board may bring a civil action in a district court of the United States against a person to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections. An action under this subsection may be brought in the judicial district in which the person does business or the violation occurred.

(b) Civil Actions by Attorney General. -

On request of the Board, the Attorney General may bring a civil action in an appropriate court -

(1)

to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections; and

(2)

to prosecute a person violating those sections or a regulation prescribed or order issued under any of those sections.

(c) Participation of Board. -

On request of the Attorney General, the Board may participate in a civil action to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title.

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Sec. 1155. - Aviation penalties

(a) Civil Penalty. -

(1)

A person violating section 1132, section 1134(b), section 1134(f)(1), or section 1136(g) (related to an aircraft accident) of this title or a regulation prescribed or order issued under any of those sections is liable to the United States Government for a civil penalty of not more than \$1,000. A separate violation occurs for each day a violation continues.

(2)

This subsection does not apply to a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of Military Justice when the member or employee is performing official duties. The appropriate military authorities are responsible for taking necessary disciplinary action and submitting to the National Transportation Safety Board a timely report on action taken.

(3)

The Board may compromise the amount of a civil penalty imposed under this subsection.

(4)

The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5)

A civil penalty under this subsection may be collected

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"No Teeth"

by bringing a civil action against the person liable for the penalty. The action shall conform as nearly as practicable to a civil action in admiralty.

(b) Criminal Penalty. -

A person that knowingly and without authority removes, conceals, or withholds a part of a civil aircraft involved in an accident, or property on the aircraft at the time of the accident, shall be fined under title 18, imprisoned for not more than 10 years, or both.

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Although defendant's offenses were closely intertwined, his thefts from the retail businesses and his misrepresentations to the pawn shops violated sufficiently distinct social norms to warrant a consecutive sentence. *Buckwalter v. State*, 23 P.3d 81 (Alaska Ct. App. 2001).

Sentence vacated. — Trial court should not have imposed a five-year sentence for tampering with physical evidence consecutively to a 99-year sentence for murder, where the record would not support the conclusion that defendant must be incarcerated for the remainder of his life without any possibility of parole. *Thompson v. State*, 768 P.2d 127 (Alaska Ct. App. 1989), habeas corpus denied, 34 F.3d 1073 (9th Cir. 1994).

Upon revocation of probation, imposition of a term of imprisonment consecutive to another term for an intervening offense does not impermissibly enlarge or enhance the scope of the sentence which was originally suspended. *Tritt v. State*, 625 P.2d 882 (Alaska Ct. App. 1981).

Where a defendant's probation on a conviction for burglary in the first degree, AS 11.46.300, was revoked because of his conviction of bank robbery in federal district court, a sentence of four years with two years suspended, consecutive to his federal robbery sentence, was not excessive. *Dodd v. State*, 686 P.2d 737 (Alaska Ct. App. 1984).

Under subsection (e), a sentence which is imposed on a new offense must be consecutive to a sentence that is reimposed upon a revocation of probation. *Betzner v. State*, 768 P.2d 1150 (Alaska Ct. App. 1989).

Credit where consecutive sentences imposed. — When consecutive sentences are imposed for two or more offenses, periods of presentence incarceration may be credited only against the aggregate of all terms imposed. An offender who receives consecutive sentences is entitled to credit against only the first sentence imposed, while an offender sentenced to concurrent terms in effect receives credit against each

sentence. *Endell v. Johnson*, 738 P.2d 769 (Alaska Ct. App. 1987).

At the time defendant was sentenced he had spent 266 days in jail and his sentence in the case was to run consecutively to his sentence from his previous felony, therefore, his 266 days in jail could be applied against only one of these sentences. *Smith v. State*, 892 P.2d 202 (Alaska Ct. App. 1995).

IV. CONCURRENT SENTENCES.

Trial courts have discretion under this section to impose concurrent sentences. *Drumbarger v. State*, 716 P.2d 6 (Alaska Ct. App. 1986).

When concurrent sentences may be imposed. — If a defendant's conduct falls within paragraphs (4), (5) or (6) of subsection (g) the court may not impose a concurrent sentence. However, if the defendant's conduct falls within paragraphs (1), (2) or (3) of subsection (g) the court is authorized to impose concurrent sentences. *Griffith v. State*, 675 P.2d 662 (Alaska Ct. App. 1984), overruled on other grounds, *State v. Andrews*, 723 P.2d 85 (Alaska 1986).

Concurrent sentences may be given if any of the six paragraphs of subsection (g) are met. *State v. Andrews*, 723 P.2d 85 (Alaska 1986).

Where defendant's various check forgery cases violated similar societal interests, he could therefore receive concurrent sentences. *Winfrey v. State*, 683 P.2d 284 (Alaska Ct. App. 1984).

Correction of judgment unlawfully imposing concurrent sentences. — See *Joseph v. State*, 712 P.2d 904 (Alaska Ct. App. 1986).

Sentence was remanded for consideration of alternatives to correct the illegality of concurrent sentences without increasing the total time to serve, where the trial court had erred in imposing a one-year sentence on a probation revocation concurrently to the other sentences. *Napayonak v. State*, 793 P.2d 1059 (Alaska Ct. App. 1990).

Collateral references. — Right of convicted defendant or prosecution to receive updated presentence report at sentencing proceedings, 22 ALR5th 660.

Sec. 12.55.030. Discharge of indigents imprisoned for nonpayment of fine. [Repealed, § 16 ch 53 SLA 1973.]

Sec. 12.55.035. Fines. (a) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) \$500,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) \$250,000 for a class A felony;

(3) \$100,000 for a class B felony;

(4) \$50,000 for a class C felony;

(5) \$10,000 for a class A misdemeanor;

(6) \$2,000 for a class B misdemeanor;

(7) \$500 for a violation.

(c) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) \$1,000,000 for a felony offense or for a misdemeanor offense that results in death;

(B) \$200,000 for a class A misdemeanor offense that does not result in death;

(C) \$25,000 for a class B misdemeanor offense that does not result in death;

(D) \$10,000 for a violation;

(2) three times the pecuniary gain realized by the defendant as a result of the offense;

or

(3) three times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider

(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine.

(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense. (§ 12 ch 166 SLA 1978; am § 17 ch 45 SLA 1982; am § 26 ch 143 SLA 1982; am § 4 ch 59 SLA 1988; am § 18 ch 85 SLA 1988; am §§ 1, 2 ch 142 SLA 1990; am § 2 ch 71 SLA 1992; am §§ 2 — 4 ch 79 SLA 1994; am § 3 ch 56 SLA 1998; am §§ 1, 2 ch 131 SLA 2002)

Cross references. — For classification of offenses, see AS 11.81.250; for sentences of imprisonment for felonies, see AS 12.55.125; for sentences of imprisonment for misdemeanors, see AS 12.55.135.

Effect of amendments. — The 1992 amendment, effective September 14, 1992, deleted the last two sentences in subsection (a).

The 1994 amendment, effective July 1, 1994, substituted "Except as provided in AS 12.55.036, upon" for "Upon" at the beginning of subsections (a)-(c).

The 1998 amendment, effective August 27, 1998, added subsection (f).

The 2002 amendment, effective October 3, 2002, in subsection (b) substituted "\$500,000" for "\$75,000" in paragraph (1) and increased maximum fines in paragraphs (2)-(7), rewriting those paragraphs; and in subsection (c) substituted "\$1,000,000" for "\$500,000" in subparagraph (1)(A) and substituted "three times" for "two times" in paragraphs (2) and (3).

Editor's notes. — Section 6, ch. 131, SLA 2002, provides that the 2002 amendments to subsections (b) and (c) "apply to offenses committed on or after October 3, 2002."

NOTES TO DECISIONS

No financial inquiry required. — Because the legislature amended this section in 1992, deleting the language in subsection (a) upon which DWI defendant relied, the language and thus the law in effect at the time of defendant's sentencing imposed no duty upon the court to inquire into defendant's ability to pay the fine imposed. *Dodge v. Municipality of Anchorage*, 877 P.2d 270 (Alaska Ct. App. 1994).

Court is under duty to consider defendant's earning capacity in connection with any imposition of a fine or restitution. Failure to do so requires automatic reversal and remand. *Ashton v. State*, 737 P.2d 1365 (Alaska Ct. App. 1987) decided before 1992 amendment deleted requirement that court consider defendant's ability to pay).

Forfeitures. — The monetary limits set out in this section do not apply to forfeitures. *Hillman v. Munic-*

ipality of Anchorage, 941 P.2d 211 (Alaska Ct. App. 1997).

Forfeiture of an airplane worth \$40,000 was not grossly disproportionate to defendant's offense of possessing and transporting illegally taken game, because under AS 8.54.720 when a licensed guide violates a hunting statute or regulation, or aids another person in doing so, the penalty for a first offense includes a fine of not more than \$30,000, while the penalty for a second or subsequent offense includes a fine of up to \$50,000. *Baum v. State*, 24 P.3d 577 (Alaska Ct. App. 2001).

Construction with other statutes. — Where an assistant district attorney erroneously informed the defendant that a payment was not a fine under AS 08.54.605, referring to this section rather than AS 12.55.100, his statement was not technically inconsis-

inary circumstances warranting harsher treatment than defendant would have been subject to as a second felony offender. *Sorenson v. State*, 938 P.2d 1084 (Alaska Ct. App. 1997).

Justification not to suspend. — One-year unsuspended portion of composite sentence for first felony offender was justified where defendant's separate acts of perjury were not particularly mitigated, since they exposed an officer to potential harm and defendant's motivation might have been characterized as vindictiveness or spite. *Jerrel v. State*, 851 P.2d 1365 (Alaska Ct. App. 1993), cert. denied, 510 U.S. 1100, 114 S. Ct. 942, 127 L. Ed. 2d 232 (1994).

Standard for finding exception to Austin rule. — The clear and convincing evidence standard should be applied to finding an exception to the rule in *Austin v. State*, 627 P.2d 657 (Alaska Ct. App. 1981), which held that first felony offenders convicted of offenses for which no presumptive term is specified should normally receive more favorable sentences than the presumptive term for second felony offenders convicted of like crimes. *Buoy v. State*, 818 P.2d 1165 (Alaska Ct. App. 1991).

When conduct amounting to a probation violation is the sole basis for a finding of extraordinary circumstances, the conduct should be established by clear and convincing evidence (not merely a preponderance of the evidence) before an exceptional sentence under *Austin* (i.e., a sentence for a first offender which is greater than the presumptive sentence for a second offender) is imposed. *Andrew v. State*, 835 P.2d 1251 (Alaska Ct. App. 1992).

The "clear and convincing evidence" standard did not apply to the court's sentence of a first offender above the *Austin* ceiling; the standard governs a sentencing judge's findings regarding aggravating and mitigating factors under AS 12.55.155 and AS 12.55.165, but does not apply to the judge's exercise of sentencing discretion under the facts of the case. *Reese v. State*, 930 P.2d 1295 (Alaska Ct. App. 1996).

Notice of sentence above Austin ceiling. — Even though a defendant is entitled to advance notice when the sentencing judge believes that a sentence above the normal *Austin* limit should be imposed, where, in negotiations leading to a plea bargain, defendant rejected a predetermined sentence, bargained for an open sentence, and stipulated to the existence of an aggravator, he was on notice that his sentence could exceed the *Austin* ceiling. *Reese v. State*, 930 P.2d 1295 (Alaska Ct. App. 1996).

Exception to Austin rule proper. — The defendant's longstanding history of sexually assaultive con-

duct, his psychological problems, his past failure to make any realistic effort toward rehabilitation, the potentially life-threatening nature of the defendant's physical attack on his current victim, and the fact that the defendant's ensuing acts in effect amounted to attempted rape and kidnapping, qualified the defendant's crimes for treatment as extraordinarily aggravated first offense class B felonies. *Carroll v. State*, 859 P.2d 718 (Alaska Ct. App. 1993).

Use of circumstance established by preponderance of evidence. — In probation violation cases, because the defendant's poor potential for rehabilitation, and not the probation violation itself, was the circumstance justifying an *Austin* rule exception, it was the former, not the latter, that had to be established by clear and convincing evidence. Hence, even when established by a mere preponderance of evidence, a probation violation could be factored together with other evidence concerning the defendant's rehabilitative potential. *Andrew v. State*, 835 P.2d 1251 (Alaska Ct. App. 1992).

Sentence in accord with Austin rule. — Where defendant was a first-felony offender convicted of a class B felony, sexual abuse of a minor, and, had the defendant been subject to presumptive sentencing, the circumstances would have been sufficiently extraordinary to warrant a substantial increase in the applicable presumptive term, the case qualified as an exception. One under *Austin v. State*, 627 P.2d 657 (Alaska Ct. App. 1981); and the imposition of a sentence in excess of the four-year presumptive term for second offenders did not violate the *Austin* rule. *Skrepich v. State*, 740 P.2d 950 (Alaska Ct. App. 1987).

First felony offender's sentence of four years imprisonment, with three years suspended, was substantially more lenient than the two-year presumptive term that would have been applicable to a second felony offender, and therefore did not violate the *Austin* rule. *Long v. State*, 772 P.2d 1099 (Alaska Ct. App. 1989).

Sentence of defendant with no prior criminal convictions to consecutive terms of four years with one year suspended and one year with six months suspended for two second-degree assaults and to a concurrent term of one year with nine months suspended for a third-degree assault, a composite term of five years with one and one-half years suspended was more favorable than the corresponding second offense presumptive term for the individual offenses and was not excessive. *Splain v. State*, 924 P.2d 435 (Alaska Ct. App. 1996).

Collateral references. — Use of prior military conviction to establish repeat offender status, 11 ALR5th 218.

Pardoned or expunged conviction as "prior offense" under state statute or regulation enhancing punishment for subsequent conviction. 97 ALR5th 293.

Sec. 12.55.135. Sentences of imprisonment for misdemeanors. (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

(c) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence committed in violation of the provisions of an order issued or filed

under AS 12.30.027 or AS 18.66.100 — 18.66.180 and not subject to sentencing under (g) of this section shall be sentenced to a minimum term of imprisonment of 20 days.

(d) A defendant convicted of assault in the fourth degree who knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the assault shall be sentenced to a minimum term of imprisonment of

(1) 60 days if the defendant violated AS 11.41.230(a)(1) or (2);

(2) 30 days if the defendant violated AS 11.41.230(a)(3).

(e) If a defendant is sentenced under (c), (d), or (h) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of a sentence may not be suspended except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in the section; and

(3) the minimum term of imprisonment may not otherwise be reduced.

(f) A defendant convicted of vehicle theft in the second degree in violation of AS 11.46.365(a)(1) shall be sentenced to a definite term of imprisonment of at least 72 hours but not more than one year.

(g) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence shall be sentenced to a minimum term of imprisonment of

(1) 30 days if the defendant has been previously convicted of a crime against a person or a crime involving domestic violence;

(2) 60 days if the defendant has been previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes.

(h) A defendant convicted of failure to register as a sex offender or child kidnapper in the second degree under AS 11.56.840 shall be sentenced to a minimum term of imprisonment of 35 days.

(i) If a defendant is sentenced under (g) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of sentence may not be suspended;

(3) the minimum term of imprisonment may not otherwise be reduced.

(j) In this section,

(1) "crime against a person" means a crime under AS 11.41, or a crime in this or another jurisdiction having elements similar to those of a crime under AS 11.41;

(2) "crime involving domestic violence" has the meaning given in AS 18.66.990. (§ 12 ch 166 SLA 1978; am § 2 ch 139 SLA 1980; am § 22 ch 59 SLA 1982; am § 13 ch 61 SLA 1982; am § 31 ch 143 SLA 1982; am §§ 4, 5 ch 92 SLA 1983; am §§ 5, 6 ch 53 SLA 1991; am § 3 ch 6 SLA 1996; am § 14 ch 64 SLA 1996; am §§ 5, 6 ch 71 SLA 1996; am §§ 8, 9 ch 86 SLA 1998; am §§ 3, 4 ch 106 SLA 1998)

Revisor's notes. — Subsection (h) was enacted as (g). Relettered in 1998, at which time the cross-reference in subsection (e) was conformed.

Subsections (i) and (j) were enacted as (h) and (i), respectively. Relettered in 1998.

Cross references. — For legislative findings and purpose in connection with the enactment of subsection (f), see §§ 1 and 2, ch. 53, SLA 1991 in the Temporary and Special Acts.

Effect of amendments. — The 1991 amendment, effective September 13, 1991, rewrote subsection (e) and added subsection (f).

The first 1996 amendment, effective June 27, 1996, in subsection (d), substituted "who knowingly directed

the conduct constituting the offense at" for "upon," "correctional employee" for "correctional officer," and paragraphs (1) and (2) for "30 days."

The second 1996 amendment, effective July 1, 1996, in subsection (c), inserted "or filed" and "or issued under former" and inserted section references.

The third 1996 amendment, effective June 20, 1996, in the introductory language in subsection (e), deleted "Except as provided in AS 12.55.055(f)," from the beginning and ", or (f)" following "(d)" and made related stylistic changes and rewrote subsection (f).

The first 1998 amendment, effective June 13, 1998, rewrote subsection (c) and added subsections (g), (i), and (j).

374 (Alaska 1977); *Amidon v. State*, 565 P.2d 1248 (Alaska 1977); *Black v. State*, 569 P.2d 804 (Alaska 1977); *Sumabat v. State*, 580 P.2d 323 (Alaska 1978); *Hansen v. State*, 582 P.2d 1041 (Alaska 1978); *Kanipe v. State*, 620 P.2d 678 (Alaska 1980); *Hintz v. State*, 627 P.2d 207 (Alaska 1981); *State v. Hooper*, 750 P.2d 840 (Alaska Ct. App. 1988).

Inclusion of improper reference to unverified police contacts did not require remand for resentencing before different judge. — See *Parks v. State*, 571 P.2d 1003 (Alaska 1977).

Reference to unverified police contacts in a presentence report does not require a remand for resentencing where the record indicates that the sentencing judge was not unduly or improperly influenced by reference to the unverified police contacts. *Pascoe v. State*, 628 P.2d 547 (Alaska 1980).

Case remanded for resentencing. — See *Neal v.*

State, 628 P.2d 19 (Alaska 1981).

Case remanded for sentence review. — Although a sentence of 15 years' imprisonment with eligibility for parole at the discretion of the parole board upon conviction of manslaughter was not excessive, since the trial court had sentenced defendant as if his conviction had been obtained within one year of the crime and therefore substantially ignored his subsequent history of steady employment, his meritorious service in the army, and his lack of involvement in any criminal activity other than a few traffic offenses in the 12 years since the commission of the crime, the case was remanded for the purpose of permitting the trial court to review the sentence it imposed, in light of all available information concerning defendant without excluding the time period commencing one year from the time of the killing until the present. *Padie v. State*, 594 P.2d 50 (Alaska 1979).

Sec. 12.55.125. Sentences of imprisonment for felonies. (a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 — 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) A defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the

offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (l) of this section, 15 years.

(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, four years;

(2) if the offense is a third felony conviction, six years.

(3) [Repealed, § 6 ch 6 SLA 1996.]

(e) A defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years.

(3) [Repealed, § 6 ch 6 SLA 1996.]

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) of this section, except to the extent permitted under AS 12.55.155 — 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, eight years;

(2) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(3) if the offense is a second felony conviction, 15 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (l) of this section, 25 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(1) may be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second or third felony offender convicted of the same crime if the offender is convicted of criminally negligent homicide and the victim is a child under the age of 16;

(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155(c) is present, or that circumstances exist that would warrant a referral to the three-judge panel under AS 12.55.165.

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the time the defendant was arraigned in superior court. If a defendant is sentenced to a definite term under this section,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28 — 30 ch 143 SLA 1982; am § 8 ch 78 SLA 1983; am §§ 1 — 3 ch 92 SLA 1983; am § 5 ch 59 SLA 1988; am § 4 ch 37 SLA 1989; am §§ 23 — 25 ch 79 SLA 1992; am § 5 ch 3 SLA 1994; am §§ 1, 2, 6 ch 6 SLA 1996; am §§ 3 — 7 ch 7 SLA 1996; am § 8 ch 30 SLA 1996; am § 4 ch 33 SLA 1996; am §§ 9 — 11 ch 54 SLA 1999; am § 1 ch 65 SLA 1999; am §§ 1, 2 ch 49 SLA 2000; am § 4 ch 60 SLA 2002)

Cross references. — For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010; for effect of the enactment of (j) of this section on Alaska Rule of Criminal Procedure 35, see § 34, ch. 79, SLA 1992 in the Temporary and Special Acts; for findings related to the addition of subsection (l), see § 1, ch. 7, SLA 1996 in the Temporary and Special Acts; for the effect of amendments to (j) of this section made by ch. 7, SLA 1996 on Alaska Rule of Criminal Procedure 35, see § 20, ch. 7, SLA 1996 in the Temporary and Special Acts; for applicability provisions relating to the 1999 amendment of subsection (b) by § 9, ch. 54, SLA 1999,

and relating to the 1999 amendment of subsections (c) and (k), see § 16, ch. 54, SLA 1999 in the 1999 Temporary & Special Acts; for applicability provisions relating to the 1999 amendment of subsection (b) by § 1, ch. 65, SLA 1999, see § 2, ch. 64, SLA 1999 in the 1999 Temporary & Special Acts; for applicability provisions relating to the 2000 amendment of subsection (a) by sec. 1, ch. 49, SLA 2000, and the addition of subsection (m) by sec. 2, ch. 49, SLA 2000, see sec. 3, ch. 49, SLA 2000 in the 2000 Temporary & Special Acts.

Effect of amendments. — The 1992 amendment, effective September 14, 1992, in subsection (a), added the second sentence and paragraphs (1) to (3); added

Subject: Support for HB 549

Date: Tue, 06 Apr 2004 14:35:08 -0800

From: Tom Nicolos <tom.nicolos@capesmythe.com>

To: Representative_Lesil_McGuire@legis.state.ak.us

Good afternoon and thank you for the opportunity to testify in support of HB 549. I recognize you have been busy so I will try to be brief. My name is Tom Nicolos, I live in Barrow and I am the General Manager for Cape Smythe Air Service. Additionally, I currently serve on the Board of Directors as Vice-President of the Alaska Air Carriers Association.

As I hope you are aware the Federal government recognized that a problem existed and had attempted to address this issue in the Aviation Disaster Family Assistance Act of 1996. They failed however to put into effect any substantial deterrent to prevent the continual occurrences of abuse of the Act.

Cape Smythe Air Service and the Alaska Air Carriers Association strongly support HB 549 and encourage the Alaska Legislature to act to correct oversights in the Federal legislation. Cape Smythe Air Service has seen first hand, attorneys who operate with disregard to the Federal Act. When inquiries are made as to why this is allowed to happen, we are informed it is because there are no teeth in the Federal Statue.

Recently, Cape Smythe had an aircraft involved in an incident where an aircraft ran off the end of the runway barely the full aircraft length. Because of past issues it has become our policy to request everyone be checked at the local hospital. Almost before we could have the passengers checked, several passengers were on there way to the local snow machine dealer to pick out the what they expected to get from having the fortune to have been involved in an aircraft mishap.

While it is important that individuals injured any accident or occurrence be properly provided for, we must stop this expectation of entitlement that has been fostered by attorneys who know the system and know they can muscle settlements out of air carrier insurers. We are not trying to impact the freedoms and choices of the citizens. But we are trying to correct the problem by keeping lawyers from starting the cycle by taking advantage of passengers and their families when they are most vulnerable and creating inappropriate expectations immediately after an accident.

I strongly urge you to correct this oversight and put HB 549 forward to the Alaskan Legislature for adoption.

Thank you for your time.

Tom D. Nicolos
Cape Smythe Air Service

House JUDICIARY Minute



Apr 06, 2004

HB 549-UNSOLICITED COMMUNICATION:AIRCRAFT CRASH

DRAFT

Number 0077

CHAIR MCGUIRE announced that the first order of business would be HOUSE BILL NO. 549, "An Act relating to unsolicited communications following an aircraft accident; and amending Rule 503, Alaska Rules of Evidence."

Number 0120

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, presented HB 549 on behalf of the House Judiciary Standing Committee, sponsor. Calling it is a good, straightforward, "anti-ambulance chaser bill" that regulates the conduct of attorneys, Ms. Tondini said it mirrors what is currently done under the Alaska Rules of Professional Conduct and federal law. It basically says an attorney cannot solicit business or contact individuals for 45 days after an aviation accident.

Number 0201

REPRESENTATIVE HOLM moved to adopt the proposed committee substitute (CS), Version 23-LS1860\D, Bullock, 4/1/04, as a work draft. There being no objection, Version D was before the committee.

MS. TONDINI explained that the original bill included a reference to the attorney-client privilege. At such an early stage of communication, however, there is no attorney-client privilege implicated, so that was removed in Version D after review of the bill and discussions with other attorneys.

MS. TONDINI noted that while HB 549 is based on federal law, it applies only to intrastate flights that take place entirely within Alaska. It differs from the federal counterpart in that a reference to the air carrier's attorney has been added to make it clear that all attorneys are to refrain from unsolicited contact with injured passengers and their families during this difficult time when they are vulnerable to external pressures and may make premature decisions. The bill only prevents lawyers and their agents from initiating contact; a person may call an attorney at any time. Thus Ms. Tondini opined that this doesn't hinder a person's ability to get effective assistance or counsel. Noting that people on teleconference could provide greater detail, she offered to answer questions.

Number 0358

REPRESENTATIVE GARA remarked that the intent seems fine of not having an attorney seek these clients, but the bill as written seems to go beyond that. He explained two concerns. First, a person might want the attorney he/she hired to be able to contact a witness - who may be an individual injured in the

accident - for confirmation. Second, if a potential party may not contact an individual injured in the accident, that means someone may not speak about [a potential action] to the person who was sitting in the adjacent seat, for example, in order to decide how to proceed. He asked why that should be included.

CHAIR MCGUIRE suggested the first part could be narrowed as to the potential party to say something like "unless the attorney has been voluntarily contacted by a claimant" and that the party is a part of the [incident], for example.

REPRESENTATIVE GARA, in response to a request from Chair McGuire, reiterated his second concern.

REPRESENTATIVE SAMUELS agreed with respect to the second concern and allowing passengers to talk with each other. As for the first concern, he urged caution, since a lawyer who'd been contacted by one person would be the only lawyer who could then call everybody else.

REPRESENTATIVE GARA noted that it would still be criminal for that lawyer to ask, "By the way, can I represent you?"

REPRESENTATIVE SAMUELS mentioned connecting the dots, though.

MS. TONDINI explained that the language is based on the federal law, which includes both an attorney and a potential party.

Number 0645

CHAIR MCGUIRE asked whether this is identical to the federal language.

MS. TONDINI replied, "Except that it's expanded to cover the air carrier's attorney." She noted that the federal law and the language of the Alaska Rules of Professional Conduct are in the bill packet. Addressing Representative Gara's concern about the breadth, she suggested possibly including language from Rule 7.3(a) and narrowing it to situations of solicitation, rather than actual working relationships. Ms. Tondini surmised that one reason for saying someone shouldn't be contacted by an attorney might be that once a person is represented by an attorney, it is illegal to go through that person and not his/her lawyer. Since there will be a time during which people won't be represented, she suggested this will "keep everyone away" until they it upon themselves to seek [legal counsel].

Number 0735

CHAIR MCGUIRE remarked that 45 days is a fairly insignificant amount of time to ask somebody to wait and have a cooling-off period when compared with the years such a case could take. She indicated her intention to look at narrowing it a little bit, but added that there still probably will "be a place where there's a rub" because of the concerns Representative Samuels had brought up.

REPRESENTATIVE SAMUELS suggested [a plaintiff] who wanted his/her attorney to talk to other passengers could ask the passengers to talk to the attorney. He said it wouldn't be fair to a reputable attorney who follows the 45-day rule, which is the federal standard, to "let somebody in the back door here."

REPRESENTATIVE GARA said there are two different issues. First, in any involved case it is necessary to start investigating

right away in order to gather facts, find people before they leave the state, avoid having stale evidence, and so forth. As for having an attorney contact a witness who then wants to be represented by the attorney, Representative Gara said that happens now. He clarified that he has no problem making it a crime for an attorney to solicit a client, especially in this timeframe, but emphasized the need to avoid getting in the way of someone to be represented and have fact finding done. Second, he said he doesn't understand the policy of not letting a potential party talk to another passenger for 45 days.

Number 0928

REPRESENTATIVE GRUENBERG remarked that he sees nothing in the federal law that has a criminal penalty anything like this. He asked Ms. Tondini about it.

MS. TONDINI replied that she believe the state criminal penalty was chosen "just for teeth" in enforcement. She conveyed her understanding that it's not enforced very much on the federal level and is a small civil fine.

REPRESENTATIVE GRUENBERG said it's \$1,000 a day.

MS. TONDINI responded, "They shouldn't be doing it anyway."

CHAIR McGUIRE highlighted the desire for a meaningful penalty and said the amount [attorneys] could get in contingency fees could be high enough that they'd pay a \$10,000 penalty with no problem, as part of doing business. She said the point of the criminal penalty is that it's recognized by the bar in terms of retaining a license. She expressed the desire for this to have teeth and not be a cost that's simply absorbed [by the offending attorney].

Number 1028

REPRESENTATIVE GRUENBERG asked whether there has been any constitutional challenge at the federal level.

MS. TONDINI said she wasn't sure, but suggested somebody on teleconference might be able to answer.

REPRESENTATIVE GRUENBERG remarked that he sees one or two minor problems with this.

Number 1052

REPRESENTATIVE GARA noted that he'd spoken to [Ms. Tondini]. He proposed having the bill read as follows beginning on line 6 [page 1]:

... an attorney may not initiate contact with an individual injured in the accident or a relative of an individual involved in the accident to offer or discuss representation based on the accident for personal injury or wrongful death within 45 days of the accident.

REPRESENTATIVE GARA explained that the foregoing would [exclude] "potential party" and replace "concerning a potential action" with "to offer or discuss representation based upon the accident".

CHAIR McGUIRE turned to public testimony.

Number 1127

MARCIA R. DAVIS, Vice President and General Counsel, Era Aviation, Inc. ("Era"), indicated the last proposal [by Representative Gara] is exactly what she'd suggest. She pointed out that under the federal law where it has the language "potential party", the reference was intended to capture the air carrier. However, the state bill goes further by including language that prohibits contact by an attorney for the air carrier. Thus she said "or potential party" is not needed.

MS. DAVIS referred to comments by Representative Gara that one wouldn't want to prohibit an attorney from contacting other witnesses or gathering facts. Saying this is a legitimate concern, she suggested that deleting "or potential parties" solves that problem and yet still bars the attorney for the air carrier from contacting individuals. She added that the language just proposed about "retention for employment" works extremely well also.

MS. DAVIS spoke to the overall bill, saying ERA's Bush operations out of Bethel have run very smoothly, with a good relationship with passengers, management by people who live in Bethel, and little difficulty; in the last year and a half, however, there has been evidence that people are creating "nuisance lawsuits" in situations that previously weren't litigable. She said it's almost a cottage industry in the Bush, with attorneys advising people in the immediate aftermath when they hear that a plane landed just short of the runway and there was a bump, for example: they plant ideas in the minds of people who otherwise wouldn't have thought about suing.

Number 1288

MS. DAVIS said these lawsuits are beginning to be a real problem for insurers; they take away attention from legitimate claims and affect the willingness to do business. Unfortunately, the teeth in the mechanisms to prevent this behavior aren't there. The ethics rules have a lot of "wiggle room," particularly in small communities where people can claim they're personal friends or connected to the families somehow. Likewise, she said, the federal law has been virtually useless, since it requires the NTSB [National Transportation Safety Board] or the U.S. Attorney General to issue a citation; it simply doesn't happen in Alaska's intrastate environment. Even if substantial resources were expended, she suggested the \$1,000 fine would be laughed at and considered the cost of doing business.

MS. DAVIS opined that this is an important statement to make - not only to the community at large and lawyers at large, but also to insurers, to let them know an effort is being made to keep costs rational but fair. Ms. Davis reported that she'd seen no cases on the federal side challenging this particular statute, which was passed as part of the aviation disaster and family assistance Act and is imbedded in an NTSB provision. She noted that there was a sting operation on lawyers done perhaps 15 years ago in the aftermath of these accidents, which culminated in passage of the federal law.

Number 1411

REPRESENTATIVE SAMUELS declared a conflict, saying he is employed by a small air carrier.

CHAIR MCGUIRE objected, specifying that Representative Samuels is required to participate and vote.

Number 1422

REPRESENTATIVE GARA asked Ms. Davis if attorneys are calling people and asking whether they want to sue.

MS. DAVIS answered that they're actually going to the hospital. Whenever there is a bump, for example, Era [encourages] the passengers to go to the health center as a prophylactic measure.

[Chair McGuire handed the gavel to Vice Chair Anderson.]

REPRESENTATIVE GARA remarked that assuming the language is adopted that he and she discussed, he'll support the bill. He suggested perhaps Ms. Davis should file a bar complaint [against those attorneys].

MS. DAVIS reiterated that she'd looked at the ethics rules but found wiggle room. She said Rule 7.3 basically prohibits a lawyer from soliciting in person or via telephone contact; the exception is if the prospective client is related.

REPRESENTATIVE GARA asked Ms. Davis to call him if she sees a case that comes close to that line again, saying he might sign a bar complaint with her.

MS. DAVIS explained that she is cautious because there are lots of various relationships within small communities and it wouldn't be good to take a broad swath that makes an enemy out of a sector of a community. She acknowledged that these are extreme cases.

Number 1548

TOM NICOLOS, General Manager, Cape Smythe Air Service; Vice President, Board of Directors, Alaska Air Carriers Association, voiced strong support for HB 549 on behalf of both the air service and the association in order to correct an oversight in the federal aviation disaster and family assistance Act of 1996, which failed to put into effect any substantial deterrent. Saying the air service has seen attorneys firsthand who operate with disregard to the federal Act, he cited an example. Agreeing with providing for passengers who are involved in occurrences, he emphasized the need to stop the sense of entitlement that has been fostered by attorneys who know the system and know that they can "muscle settlements" out of air carrier insurers, and who take advantage of families when they are most vulnerable.

Number 1652

ART WARBELOW, President, Warbelow's Air Ventures, Inc., began by saying his business has operated about 35 years and has about 100 employees in Fairbanks. He expressed support for HB 549 because of the high cost of liability insurance, the fourth-largest expense behind labor, fuel, and parts.

[Vice Chair Anderson returned the gavel to Chair McGuire.]

MR. WARBELOW continued, saying most air carriers in Alaska are underinsured; there is a legal limit of \$300,000, and most [have insurance limits] in the range of \$300,000 to \$500,000. When there's an accident, a company realizes the carrier is

underinsured and is willing to settle quickly for policy limits. In that scenario, an attorney who can get to the victim can extract a significant contingent fee, knowing it will be an easy case to settle; the victim ends up shortchanged. Mr. Warbelow suggested that allowing time for the operator and the insurance companies to settle will get more money to those who deserve it, rather than the attorneys.

Number 1745

REPRESENTATIVE GARA asked whether there is a significant difference in premiums for a \$300,000 policy and something Mr. Warbelow considers more adequate.

MR. WARBELOW replied that part of the problem is that the underwriters won't provide higher limits, period. He cited an example and said people can barely afford to buy [the minimum]. Saying this is driven by a number of factors, he mentioned getting the cost of insurance to the point that people can afford to buy reasonable coverage.

Number 1824

ED GREGOR (ph), AIG Aviation Insurance (ph), echoed the statements of Mr. Nicolos and Mr. Warbelow; expressed concern about capacity in the insurance market; and said although brokers make heroic efforts to make limits as high as possible on behalf of their clients, insurers sometimes suffer in their ability to effect good, strong defenses because of the low limits. "It's a concern for us," he added. "We would prefer to see higher limits." Applauding the discussion within the committee about keeping the language "broad yet specific," he said it needs to be broad enough to prevent creative solutions.

MR. GREGOR noted that in 25 years he has seen interesting extremes relating to the solicitation of claims. He cited examples from Louisiana and Mississippi when events involving chemical plants led to attorneys' signing people up for huge class action lawsuits. Acknowledging it isn't to that extent in Alaska, he said there is concern by insurers nonetheless when solicitation is uninhibited for minor accidents. Offering his perspective as a claims handler, Mr. Gregor said it upsets him that he often doesn't have the opportunity to exhibit the good will that is available and to help carriers assist injured passengers as quickly as possible, including all-important immediate financial assistance when breadwinners have been injured.

Number 1968

REPRESENTATIVE GARA opined that just as an attorney shouldn't be able to solicit a client within the first 45 days, a defendant shouldn't be able to get a client to waive the right to pursue legal action.

MR. GREGOR agreed.

REPRESENTATIVE GARA asked whether the early financial assistance has no strings attached.

MR. GREGOR answered that the federal law requires carriers to provide that immediate financial assistance; it is the practice and part of the coverage of the air carriers to provide that sort of assistance up front as well. He specified that there are no strings attached. Recognizing that these claims for

people who are genuinely injured can be large, he said an immediate payment of \$10,000, \$20,000, or \$25,000 won't significantly change the fact that the claim will have to be settled for payment of additional monies down the road.

Number 2024

PAUL LANDIS, Member, Board of Directors, Alaska Air Carriers Association, noted that he is senior vice president of Era Aviation, Inc., but was speaking on behalf of the Alaska Air Carriers Association, whose executive director and president were unable to testify. Mr. Landis said the association certainly understands the sense of entitlement that exists, particularly now in rural Alaska, where lawyers are making promises that can't be kept to passengers who listen in a weak moment.

MR. LANDIS mentioned the air carriers' practice of bringing passengers to hospitals for an examination following any sort of incident, and that lawyers are waiting to sign them up on the spot. He reported that also being heard from the air carriers is that following turbulence or a hard landing, passengers may experience soreness that will disappear in 48 hours, but these people are hooked in with promises of easy cash. He cited the example of a fear-of-flying lawsuit and out-of-court settlement following the collapse of nose gear when a plane landed in Bethel. The effort with HB 549 is to prevent the unsolicited strong-arming of passengers by lawyers, he said, which drives up the cost of insurance and, in the long run, hurts the traveling public. He urged support for HB 549 as written.

Number 2131

MELISSA FOUSE specified that she was speaking on her own behalf as a survivor and family member of someone who was killed in an airplane crash, although she is executive director of the Alaska Academy of Trial Lawyers. She said:

Frankly, I'm a little offended by the testimony of the airplane people who say, ... "Oh, it's just a bump on the end of the runway and these lawyers are like piranhas." My brother was actually killed, and we didn't have a single lawyer contact us until after the federal law date - not one single lawyer. I will say that at the end of that, we did get solicitations, and that was fine because we wanted to know what to do next.

MS. FOUSE related her opinion that making this a felony is absurd, and that it isn't the attorneys who start the cycle; rather, it is the accident. She asked the committee, when considering this legislation, to please consider the people who were hurt or killed.

Number 2206

CHAIR MCGUIRE apologized if any comments from the committee were offensive; she said the intent certainly isn't to minimize the loss or injury suffered in accidents, and many times recovery is deserved. She explained that there is a rule of professional conduct in this same spirit and that this is to get at [attorneys] who are soliciting passengers inappropriately. Referring to earlier discussion, she stated the intention of narrowing this from the federal law on which it is based, to clarify that it wouldn't exclude legitimate cases where

information is needed.

Number 2321

ROBERT JACOBSEN, President, Wings of Alaska, noted that Wings of Alaska and Wings Airways are sister companies and indicated they emplane about 75,000 passengers annually. Speaking in support of the bill, Mr. Jacobsen said he has been in the business about 25 years and has seen accidents over the years, both "bumps and bruises" and catastrophic ones. He said:

Honestly, we care deeply about the industry, and this is an attempt to start to help this hemorrhaging industry that we've been experiencing for a number of years. But also, most of my professional colleagues in this business have a lot of integrity, and we care deeply about our customers too. Our customers are our neighbors, and we care about them.

MR. JACOBSEN recalled four instances when there were mishaps but no serious injuries; he said plaintiff attorneys got hold of his customers, who weren't cared for in the long run because they weren't well represented and their attorneys took that "one-third plus expenses" away from the settlement. He remarked, "That doesn't make us feel good. ... We'd just as soon more of it get into the hands of the families or the victims that ... were part of the incident." He encouraged passage of HB 549 and consideration of more tort-reform issues.

Number 2395

CHAIR MCGUIRE asked whether anyone else wished to testify. She then closed public testimony.

TAPE 04-59, SIDE B

Number 2392

REPRESENTATIVE GARA moved to adopt Amendment 1, a handwritten amendment that read [original punctuation provided]:

Page 1, Line 6
After "attorney"
Delete "or potential party"

Page 1, Line 8
After "accident"
Delete "concerning a potential action"
Insert "for the purpose of offering or discussing
potential representation in an action"

Number 2379

REPRESENTATIVE HOLM objected.

REPRESENTATIVE GARA explained that Amendment 1 does what he and Ms. Davis had discussed earlier: it limits criminal conduct to those attorneys who contact a client in the first 45 days seeking to be hired, and it deletes the language that addresses "sort of the situations that I think we don't want to address with this bill."

REPRESENTATIVE HOLM removed his objection.

Number 2350

CHAIR MCGUIRE asked whether there was any further objection to Amendment 1. [No objection was stated, and Amendment 1 was treated as adopted.]

CHAIR MCGUIRE remarked that it's a good amendment and suggested, "You should contact the federal folks, too, because throughout their statute it says 'potential action' and 'potential party', and it is broad."

REPRESENTATIVE GARA replied that he thinks it's trying to prevent insurance companies from getting people to settle quickly before they can contact an attorney. He added that it's beyond the scope of what [HB 549] is intended to address.

REPRESENTATIVE OGG referred to line 6 and asked why "intrastate" is used, rather than having this also apply to interstate or international [flights].

CHAIR MCGUIRE said it's because of federal superintendence. It can only be within the state because there's already a federal law.

REPRESENTATIVE OGG suggested Alaska could have a similar law and punish that crime also in the state. He said he doesn't know whether the air carriers fly to Canada, for example, and then wouldn't be covered.

Number 2260

MS. DAVIS, noting that Chair McGuire had answered the question, said when the federal government chooses to regulate the interstate aspects of aviation, the state cannot "step over the top of that" but can legislate relative to purely intrastate [flights]. She offered her belief that there'd be a significant "federal preemption problem" if the bill went beyond intrastate activity. She added that other than the obvious ones, few flights go directly out of state; if they do, Alaska's state law would be trumped by federal law as well as international law.

REPRESENTATIVE OGG asked whether Alaska's law could be stricter than the federal law.

MS. DAVIS answered that because the federal law resides within NTSB's body of law, in the aviation and family disaster Act, she guessed the question would be whether [Alaska's law] could be more solicitous and helpful to families. She said it's not quite like commerce, where there are "overlying layers of commerce," since NTSB is "sort of an all-or-none kind of entity." She went on to say it's possible that [Alaska's law] could be more restrictive regarding intrastate aspects, and she offered to look into whether it would doom the bill if it were expanded to cover interstate [flights].

REPRESENTATIVE OGG said he'd appreciate that.

Number 2149

REPRESENTATIVE ANDERSON moved to report CSHB 549, Version 23-LS1860\D, Bullock, 4/1/04, as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 549(JUD) was reported from the House Judiciary Standing Committee.

DRAFT

HB

559

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB559AM-DOLWD-CO-05-03-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: STEP Program Continuance RDU: Office of the Commissioner
 Component: Commissioner's Office
 Sponsor: House FIN
 Requester: Senate L&C Component Number: 340

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						
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						
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 (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)

See Attached Analysis.

Prepared by: Guy Bell, Director Phone 465-2720
 Division: Division of Administrative Services Date/Time 5/3/04 1:55 PM
 Approved by: Greg O'Claray, Commissioner Date 5/3/2004
 Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: HB559AM-DOLWD-CO-05-03-04

ANALYSIS: (continued)

This legislation extends the termination date for the State Training and Employment Program (STEP) until June 30, 2008. STEP collects a small part of each employee's wages to fund training for Alaskan workers. The Alaska Department of Labor and Workforce Development collects STEP revenues and administers the program with partner agencies. The Alaska Workforce Investment Board is responsible for oversight and direction. This program enables Alaskans to acquire the skills that assist them in moving from unemployment to work by annually making \$4.5 million available for training in high demand occupations and industries.

This is a consolidated Fiscal Note as STEP is budgeted in several department budget components. The Fiscal Note indicates no fiscal impact as all expenditure authorization for the program is included in the FY 2005 Governor's budget request.

Alaska State Legislature
House Finance Committee

REPRESENTATIVE
BILL WILLIAMS

Co-Chair

(907) 465-3424

Fax: (907) 465-3793

INTERIM ADDRESS

50 Front Street, Suite 203

Ketchikan, Alaska 99901

(907) 247-4627

Fax: (907) 225-7157



State Capitol, Juneau, Alaska 99801-1182

REPRESENTATIVE
JOHN HARRIS

Co-Chair

(907) 465-4859

Fax: (907) 465-3799

INTERIM ADDRESS

State Capitol, Room 507

Juneau, AK 99801-1182

SPONSOR STATEMENT

HOUSE BILL 559 am: *An Act extending the termination of the state training and employment program; and providing for an effective date.*

House Bill 559 reauthorizes the State Training and Employment Program (STEP), which was established by the Legislature in 1989, through June 30, 2008. In 2002, the legislature reauthorized the program for an additional two years. STEP will sunset on June 30, 2004, without further action. STEP uses a small part of the employee Unemployment Insurance tax to fund training for Alaskan workers. The Alaska Department of Labor and Workforce Development collects STEP revenues and administers the program with partner agencies and vendors. The Alaska Workforce Investment Board is responsible for oversight and direction.

The STEP program assists Alaskans in moving from unemployment to work by annually making \$4.5 million available to trainees and training providers in Alaska. Since its inception, 16,000 Alaskan residents have trained under the STEP program.

In FY 2003, STEP paid for the training of 1,832 Alaskans. The rate of participants that enter employment after training is the highest of all State administered training programs at 83.5%.

In 1996, the legislature made several changes to increase accountability, cap administrative costs and re-emphasize Alaska hire.

THE
FOLLOWING
DOCUMENT(S)
ARE
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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB559-DOLWD-CO-04-22-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: STEP Program Continuance RDU: Office of the Commissioner
Component: Commissioner's Office
Sponsor: House FIN
Requester: House FIN Component Number: 340

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached Analysis.

Prepared by: Guy Bell, Director Phone 465-2720
Division: Division of Administrative Services Date/Time 4/22/04 4:19 PM
Approved by: Greg O'Claray, Commissioner Date 4/22/2004
Agency: Department of Labor and Workforce Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: HB559-DOLWD-CO-04-22-04

ANALYSIS: (continued)

This legislation repeals the termination date for the State Training and Employment Program (STEP) and makes it permanent. STEP collects a small part of each employee's wages to fund training for Alaskan workers. The Alaska Department of Labor and Workforce Development collects STEP revenues and administers the program with partner agencies and vendors. The Alaska Workforce Investment Board is responsible for oversight and direction. This program enables Alaskans to acquire the skills that assist them in moving from unemployment to work by annually making \$4.5 million available for training in high demand occupations and industries.

This is a consolidated Fiscal Note as STEP is budgeted in several department budget components. The Fiscal Note indicates no fiscal impact as all expenditure authorization for the program is included in the FY 2005 Governor's budget request.

Chapter 086

Chapter: CH086

Source: HCS CSSB 252(FIN)

Action Date: June 20, 2002

Effective Date: See chapter

02

AN ACT

Renaming the Alaska Human Resource Investment Council as the Alaska Workforce Investment Board and relating to its membership; relating to repayment on promissory notes for work-related items paid for by grant programs; extending the termination date of the state training and employment program; relating to employment and training activities; and providing for an effective date.

* Section 1. AS 14.35.020(b) is amended to read:

(b) When required by any of the Acts described in AS 14.35.010, the board shall

(1) prepare, submit, and supervise the administration of the plans for vocational education;

(2) select a state director of vocational education;

(3) establish the minimum qualifications for teachers, supervisors, or directors;

(4) determine the prorated basis on which money shall be available for the salary and necessary travel expenses of the state director of vocational education;

(5) consider the advice of the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] established by AS 23.15.550 regarding employment training needs and advise that board [COUNCIL] in the development of vocational education programs.

* Sec. 2. AS 14.42.015(a) is amended to read:

(a) There is in the Department of Education and Early Development the Alaska Commission on Postsecondary Education consisting of

(1) two members of the Board of Regents of the University of Alaska designated by the members of that body;

(2) one person representing private higher education in the state selected jointly by the Boards of Trustees of Alaska Pacific University and Sheldon Jackson College from among their membership;

(3) one person representing the Department of Education and Early Development selected by the state Board of Education and Early Development;

(4) four persons broadly and equitably representative of the general public appointed by the governor;

(5) one member of the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] established by AS 23.15.550 designated by the members of that body;

(6) one person from the members of the local community college advisory councils appointed by the governor;

(7) two members from the legislature, one of whom shall be appointed by the president of the senate and one by the speaker of the house of representatives;

(8) one person appointed in accordance with (e) of this section who is a full-time student as defined in AS 14.43.160;

(9) one administrator appointed by the governor from a proprietary institution of postsecondary education that has an authorization to operate in the state issued under AS 14.48.

* Sec. 3. AS 23.15.550 is amended to read:

Sec. 23.15.550. Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL]. (a) The Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] is established in the department. The board [COUNCIL] consists of the following voting members, not to exceed 26:

(1) the lieutenant governor or the lieutenant governor's designee;

(2) the commissioners of community and economic development, education and early development, health and social services, and labor and workforce

development, or each respective commissioner's designee;

(3) one representative from the University of Alaska;

(4) four additional representatives of education, with one from local public education, one from secondary vocational education, one from a postsecondary vocational education institution, and one from adult basic education;

(5) four representatives of business and industry, with at least one representative from the local workforce investment boards [PRIVATE INDUSTRY COUNCILS] appointed under 29 U.S.C. 2832 [29 U.S.C. 1512 AND SUBJECT TO RECONSTITUTION UNDER 29 U.S.C. 1515];

(6) four representatives of organized labor that the governor shall appoint from lists of nominees submitted by recognized state labor organizations; the governor may reject a list submitted under this paragraph and request that another list be submitted;

(7) at least one representative from an organization representing employment and training needs of Alaska Natives;

(8) at least one representative of a community-based [COMMUNITY BASED] service organization;

(9) at least one representative who has personal or professional experience with developmental disabilities; and

(10) at least one and up to five additional members of the private sector to ensure a private sector majority and regional and local representation on the board [COUNCIL].

(b) Additional nonvoting members may be appointed to the board [COUNCIL] from government or nongovernment entities.

(c) A member of the board [COUNCIL] under (a) of this section may appoint a designee to serve in place of the member [NAMED IN (a) OF THIS SECTION]. The member shall appoint the designee in writing.

* Sec. 4. AS 23.15.555 is amended to read:

Sec. 23.15.555. Appointment and term of members. (a) Members of the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] other than those listed in AS 23.15.550(a)(1) and (2) are appointed by the governor and serve at the

pleasure of the governor. The governor may appoint one person to fill two or more of the places listed in AS 23.15.550(a) if the person is qualified in all of the areas the person represents. A member appointed to fill more than one place under this subsection is entitled to only one vote and may appoint only one designee to replace the member in the event the member is unable to attend a meeting.

(b) The voting members of the board [COUNCIL] other than those listed in AS 23.15.550(a)(1) and (2) serve for staggered four-year terms and may serve until a successor is appointed. An appointment to fill a vacancy shall be made in the same manner as the original appointment and for the balance of the unexpired term.

(c) The governor shall ensure that individuals appointed to the board [COUNCIL] have sufficient expertise to effectively carry out the duties of the board [COUNCIL]. Expertise of the board [COUNCIL] includes, where appropriate, knowledge of the long-term needs of individuals preparing to enter the work force; the needs of local, state, and regional labor markets; and the methods for evaluating the effectiveness of vocational training programs in serving varying populations.

* Sec. 5. AS 23.15.560 is amended to read:

Sec. 23.15.560. Compensation. Members of the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] listed in or appointed under AS 23.15.550(a), including a designee of a member attending in place of the member, serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions under AS 39.20.180. Nonvoting members of the board [COUNCIL] appointed under AS 23.15.550(b) serve without compensation and are not entitled to per diem and travel expenses. A commissioner appointed under AS 23.15.550(a)(2) or the commissioner's designee is entitled to per diem and travel expenses as a state employee.

* Sec. 6. AS 23.15.565 is amended to read:

Sec. 23.15.565. Officers. The Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] shall elect a chair and a vice-chair from among the members listed in or appointed under AS 23.15.550(a)(5). The chair and vice-chair serve in their positions at the pleasure of the board [COUNCIL].

* Sec. 7. AS 23.15.570 is amended to read:

Sec. 23.15.570. Meetings, quorum, and committees. (a) The Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] shall meet not more than three times in a calendar year at the call of the chair to conduct its business. A majority of the members listed in or appointed to the board [COUNCIL] under AS 23.15.550(a) constitutes a quorum.

(b) The board [COUNCIL] shall establish an executive committee and four permanent standing committees as described in (c) - (g) of this section. The chair of a permanent standing committee must be from the private sector. The board [COUNCIL] may establish additional standing committees and special committees or subcommittees, not necessarily consisting of board [COUNCIL] members, to advise and assist the board [COUNCIL] in carrying out its functions assigned by federal or state statute. The permanent standing committees are

- (1) the assessment and evaluation committee;
- (2) the policy and planning committee;
- (3) the employment and placement committee; and
- (4) the workforce readiness committee.

(c) The executive committee consists of the chair and vice-chair of the board [COUNCIL], the immediate past chair of the board [COUNCIL], and the chairs of the four standing committees described in (d) - (g) of this section. The executive committee has the duties and may exercise the powers of the council between meetings of the board [COUNCIL]. The executive committee shall

- (1) report to the board [COUNCIL] in a timely fashion on actions taken on behalf of the board [COUNCIL]; and
- (2) supervise the affairs of the board [COUNCIL] between regular meetings of the board [COUNCIL].

(d) The assessment and evaluation committee shall

- (1) assess and evaluate programs, initiatives, and the delivery of services to help to ensure equitable distribution of quality education, training, and employment services statewide, especially to rural areas and to programs serving economically disadvantaged citizens;
- (2) call for and monitor the workforce development system for increased accountability in performance and continuous quality improvement along the

goals and strategies of the board's [COUNCIL'S] overall statewide strategic plan for workforce development;

(3) use evaluation and performance measures to gauge customer satisfaction within the workforce development system; and

(4) perform other duties assigned by the board [COUNCIL].

(e) The policy and planning committee shall

(1) build policies regarding day-to-day operations and long-term responsibilities of the board [COUNCIL];

(2) work to increase awareness of the board [COUNCIL] and its mission throughout the state;

(3) work with all other committees on a statewide strategic plan for workforce development; and

(4) perform other duties assigned by the board [COUNCIL].

(f) The employment and placement committee shall

(1) ensure the statewide strategic plan for workforce development addresses

(A) customer needs at the local level;

(B) moving welfare recipients into the workforce;

(C) promoting the hiring of state residents in jobs that have traditionally been filled by out-of-state workers;

(D) tailoring employment and training programs to suit state business, industry, and economic development needs;

(2) monitor the coordination of service delivery to promote efficiency and to prevent overlap of services among programs; and

(3) perform other duties assigned by the board [COUNCIL].

(g) The workforce readiness committee shall

(1) provide oversight for training, education, and employment programs to ensure the programs are delivering education and training that is relevant to local market needs and the career goals of state residents;

- (2) build partnerships between employers and quality workforce training programs;
- (3) work to connect the state public and private education systems with business, government, and labor to ensure that state residents are receiving workforce readiness skills throughout the education process; and
- (4) perform other duties assigned by the board [COUNCIL].

* Sec. 8. AS 23.15.575 is amended to read:

Sec. 23.15.575. Board [COUNCIL] as state planning entity. The Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] shall act as the lead state planning and coordinating entity for state human resource programs administered under

- (1) 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998) [29 U.S.C. 1501 - 1792B (JOB TRAINING PARTNERSHIP ACT)];
- (2) 20 U.S.C. 2301 - 2471 (Carl D. Perkins Vocational and Applied Technology Education Act);
- (3) [20 U.S.C. 1201 - 1213D (ADULT EDUCATION ACT)];
- (4)] 29 U.S.C. 49 - 49I-1 (Wagner - Peyser Act);
- (4) federal law for work programs [(5) 42 U.S.C. 681 - 687 (JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM)] for needy families with children under the Social Security Act;
- (5) [(6)] the employment program established under 7 U.S.C. 2015(d)(4) (Food Stamp Act of 1977);
- (6) [(7)] all federal programs designated as successors to the programs listed in (1) - (5) [(1) - (6)] of this section; and
- (7) [(8)] all state laws involving employment training, vocational education, and workforce development [, AND COMMUNITY SERVICE].

* Sec. 9. AS 23.15.580 is amended to read:

Sec. 23.15.580. Functions of the board [COUNCIL]. (a) As the lead state planning and coordinating entity, the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] has responsibility, to the extent authorized by federal and state law, for planning and coordinating federal, state, and local efforts in human resource programs in this state related to employment training, including the work

activities of the Alaska temporary assistance program under AS 47.27.

(b) The board [COUNCIL] shall

- (1) facilitate the development of statewide policy for a coordinated and effective employment training and education system in this state;
- (2) identify the human resource investment needs in the state and develop a plan to meet those needs;
- (3) review the provision of services and the use of money and resources by the human resource programs listed in AS 23.15.575;
- (4) assume the duties and functions of the state boards [COUNCILS] described under the laws relating to the federal human resource programs listed in AS 23.15.575;
- (5) advise the governor, state and local agencies, [AND] the University of Alaska, and other training entities on the development of state and local standards and measures relating to applicable human resource programs;
- (6) submit, to the governor and the legislature, a biennial strategic plan to accomplish the goals developed to meet human resource investment needs;
- (7) monitor for the implementation and evaluate the effectiveness of the strategic plan developed by the board [COUNCIL];
- (8) adopt regulations that set standards for the percentage of program expenses [A GRANT] that may be used for administrative costs; the regulations must clearly identify and distinguish between program expenses that may be included in administrative costs and those that may not be included in administrative costs; the percentage allowed for administrative costs may not exceed the lesser of 20 [15] percent of program expenses in the prior fiscal year or the amount permitted under the requirements of a federal program, if applicable;
- (9) report annually to the legislature, by the 30th day of the regular legislative session, on the performance and evaluation of training programs in the state subject to review under (f) of this section;
- (10) identify ways for agencies operating programs subject to oversight by the board [COUNCIL] to share resources, instructors, and curricula through collaboration with other public and private entities to increase training opportunities and reduce costs; and

(11) adopt regulations under AS 44.62 (Administrative Procedure Act) to carry out the purposes of AS 23.15.550 - 23.15.585.

(c) The board [COUNCIL] may receive money designated for human resource programs and may disburse money, including grants, to human resource projects in accordance with AS 37.07 (Executive Budget Act). The board [COUNCIL] may enter into partnership agreements through appropriate administrative agencies with private industry training entities within the state in order to facilitate the coordination of training opportunities.

(d) The board [COUNCIL] shall provide oversight for the planning and coordination of employment-related education training programs operated by the state or operated under contract with the state that are described in (f) of this section. The board [COUNCIL] shall require a training program listed in (f) of this section to meet the requirements of this subsection. The board [COUNCIL] shall, by regulation, establish appropriate penalties for programs that fail to meet the requirements of this subsection. The board [COUNCIL] may recommend to the legislature changes to enhance the effectiveness of the training programs it oversees under this section. A training program described in (f) of this section funded with money appropriated by the legislature must

(1) meet the standards adopted by the board [COUNCIL] concerning the percentage of a grant that may be spent on administrative costs;

(2) be operated by an institution that holds a valid authorization to operate issued under AS 14.48 by the Alaska Commission on Postsecondary Education if the program is a postsecondary educational program operated by a postsecondary educational institution subject to regulation under AS 14.48;

(3) provide to the Department of Labor and Workforce Development the information required by the department for the preparation of the statistical information necessary for the board [COUNCIL] to evaluate programs by the standards set out in (e) of this section.

(e) The board [COUNCIL] shall develop standards that encourage agencies to contract for training programs that meet local demands and maximize the use of resources [PROGRAM'S CLASS SIZE]. The board [COUNCIL] shall adopt standards for the evaluation of training programs listed in (f) of this section with regard to the following:

(1) the percentage [PERCENT] of former participants who have a job one year after leaving the training program;

(2) the median wage of former participants seven to 12 months after leaving the program;

(3) the percentage [PERCENT] of former participants who were employed after leaving the training program who received training under the program that was related to their jobs or somewhat related to their jobs seven to 12 months after leaving the training program;

(4) the percentage [PERCENT] of former participants of a training program who indicate that they were satisfied with or somewhat satisfied with the overall quality of the training program;

(5) the percentage [PERCENT] of employers who indicate that they were satisfied with the services received through the workforce development system [QUALITY OF THE WORK OF NEW EMPLOYEES WHO HAD RECENTLY COMPLETED THE TRAINING PROGRAM].

(f) The following training programs are subject to the provisions of (d) and (e) of this section:

(1) in the Department of Labor and Workforce Development or operated by the department:

(A) [ONE STOP CAREER CENTER;

(B) [JOB TRAINING PARTNERSHIP ACT] programs under 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998) [29 U.S.C. 1501 - 1792B], assisting communities in moving toward a self-sustainable economy and providing training;

(B) [(C)] state training and employment program (AS 23.15.620), providing training and employment services for people who are unemployed or likely to become unemployed, fostering new jobs, and increasing training opportunities for workers severely affected by fluctuations in the state economy or adversely affected by technology advances in the workplace;

(C) [(D)] employment-related adult basic education;

[(E) SCHOOL-TO-WORK;]

(D) [(F)] employment training services operated as part of the Alaska temporary assistance program [TEMPORARY ASSISTANCE PROGRAM] (ATAP);

(E) [(G)] unemployment insurance grants provided under the federal training relocation assistance program;

(F) [(H)] Alaska works programs, assisting with the welfare-to-work program;

[(I) STATE TRAINING AND EMPLOYMENT PROGRAM, COORDINATED WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT;]

(2) in the Department of Education and Early Development or operated by the department, the non-public-school portions of the following programs:

(A) [HIGH SCHOOL COMPLETION PROJECT;

(B)] Kotzebue Technical Center;

(B) [(C)] Alaska Vocational Technical Center;

(C) [(D)] vocational education and technical preparation [TECH PREP];

(D) [(E)] Alaska Career Information System.

(g) The board [COUNCIL] shall assess the programs listed in this subsection and make recommendations to the legislature in its report required under (b)(9) of this section about whether to include one or more of these programs under the requirements of (f) of this section:

(1) in the Department of Community and Economic Development or operated by the department:

(A) local government assistance training and development, including the rural utility business advisory program;

(B) energy operations, providing training in management and administration of electric utilities and bulk fuel storage systems;

(2) in the Department of Corrections:

(A) Correctional Academy, training individuals applying for a correctional officer position;

(B) inmate programs, providing vocational technical training and education courses for inmates preparing to be released from a correctional facility;

(C) correctional industries program, providing inmates with jobs while they are incarcerated;

(3) in the Department of Environmental Conservation:

(A) remote maintenance worker program, providing training and technical assistance to communities to keep drinking water and sewage disposal systems running, and providing on-the-job training to local operators;

(B) water and wastewater operator training and assistance;

(C) federal drinking water operator training and certification;

(4) in the Department of Military and Veterans' Affairs: educational benefits for members of the Alaska National Guard and the Alaska Naval Militia;

(5) in the Department of Public Safety:

(A) fire service training to maintain emergency training skills for existing fire fighter staff and volunteers and individuals interested in becoming fire fighters;

(B) Public Safety Training Academy, training trooper recruits;

(6) in the Department of Transportation and Public Facilities:

(A) engineer-in-training program, providing on-the-job training for apprentice engineers to enable them to gain the experience necessary to be certified;

(B) statewide transportation improvement program, offered by the United States National Highway Institute;

(C) local technical assistance program, transferring technical expertise to local governments;

(D) Native technical assistance program, transferring technical expertise to Native governments;

(E) border technology exchange program, to coordinate highway issues with the Yukon Territory;

(7) in the Department of Labor and Workforce Development: vocational rehabilitation client services and special work projects, employment services, including job development, assisting individuals in finding employment, and assisting employed individuals in finding other employment [;

(8) IN THE DEPARTMENT OF ADMINISTRATION: ALASKA PROFESSIONAL DEVELOPMENT INSTITUTE, PROVIDING CONTINUING EDUCATION AND TRAINING FOR EMPLOYED WORKERS].

(h) The University of Alaska shall evaluate the performance of its training programs using the standards set out in (e) of this section and shall provide a report on the results to the board [COUNCIL] for inclusion in the board's [COUNCIL'S] annual report to the legislature.

(i) The board [COUNCIL] shall review each program listed in (f) of this section to determine whether it is in compliance with the standards set out in (d) and (e) of this section. If the board [COUNCIL] finds that a program has failed to comply with the standards set out in (d) and (e) of this section, it shall notify the program director of the failure. If the program director fails to improve the performance of the program within a reasonable time, the board [COUNCIL] shall notify the governor and the Legislative Budget and Audit Committee [LEGISLATIVE BUDGET AND AUDIT COMMITTEE] that the program is out of compliance. A contract entered into by a state agency relating to a training program set out in (f) of this section must contain terms consistent with this section.

(j) A department that operates or contracts for a training program listed in (f) of this section shall pay to the board [COUNCIL] a management assessment fee not to exceed .75 percent of the program's annual operating budget. The total amount received as management assessment fees may not exceed the board's [COUNCIL'S] authorized budget for the fiscal year. The board [COUNCIL] shall, by regulation, establish a method to determine annually the amount of the management assessment fee. If the amount the board [COUNCIL] expects to collect under this subsection exceeds the authorized budget of the board [COUNCIL], the board [COUNCIL] shall reduce the percentages set out in this subsection so that the total amount of the fees collected approximately equals the authorized budget of the board [COUNCIL] for the fiscal year. The board [COUNCIL] shall adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to administer this subsection.

(k) Upon the enactment of a new federal or state program relating to work force development, the board [COUNCIL] shall

(1) advise the governor and the legislature on whether the board [COUNCIL] should provide oversight for the new program under this section; and

(2) make recommendations necessary to streamline and coordinate state efforts to meet the guidelines of the new program.

(l) For purposes of this section, "program"

(1) does not refer to the overall activities of an individual institution or individual fields of study or courses that are not associated with programs for which the board [COUNCIL] has oversight responsibility;

(2) may include a certificate or associate degree course or a course that is not for credit, whether it is offered by a public or private institute or contracted for by the private sector, so long as it is related to employment.

* Sec. 10. AS 23.15.585 is amended to read:

Sec. 23.15.585. Administration. (a) The governor shall appoint the executive director for the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL]. The department shall provide professional, technical, and administrative staff for the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL].

(b) Subject to legislative appropriations, and in accordance with AS 37.07 (Executive Budget Act), the board's [COUNCIL'S] budget is funded from programs for which the board [COUNCIL] is the lead state planning and coordinating entity under AS 23.15.575.

* Sec. 11. AS 23.15.640(c) is amended to read:

(c) The department shall [, TO THE EXTENT ECONOMICALLY FEASIBLE FOR THE INDIVIDUAL,] require an individual who participated in a program that was funded at least in part by a grant under AS 23.15.651 and that included as a program element the provision of necessary tools, work-related clothing, safety gear, or other necessities to obtain or retain employment under (a)(6) of this section to reimburse the department for the portion of the grant that was spent on an element listed in (a)(6) of this section. Repayment shall begin no later than six months after the individual completes or leaves the state training and employment program and may not be less than \$25 each calendar month. The department shall separately account for receipts under this subsection. The annual estimated receipts may be used by the legislature to make appropriations to the department to the employment assistance and training program account (AS 23.15.625) for grants under AS 23.15.651. The department shall institute collection procedures on outstanding promissory notes for amounts due under this subsection. Collection procedures must include obtaining a judgment for default on a promissory note. The department shall seek satisfaction of the judgment from an individual's permanent fund dividend to the extent possible under AS 43.23.065 until the judgment has been satisfied. The department shall implement this subsection by regulation.

* Sec. 12. AS 23.15.645(a) is amended to read:

(a) The department shall award a grant to the board [COUNCIL] to

- (1) administer a state training and employment program; and
- (2) award grants to qualified entities.

* Sec. 13. AS 23.15.645(b) is amended to read:

(b) When a grant is awarded to the board [COUNCIL], the department shall annually provide to the board [COUNCIL] a priority list of targeted projects or services, based on unemployment statistics, unemployment insurance claims, occupational and industrial projections, availability of other training and employment programs, and other relevant data. The department shall also provide annually to the board [COUNCIL] a priority list of criteria for eligibility to maximize services to those people most in need of training under AS 23.15.620 - 23.15.660. In developing the priority list for targeted projects and services, the department shall solicit comments from the Department of Education and Early Development, the Department of Community and Economic Development, the University of Alaska, organized labor, the board [COUNCIL], and the administrative entities of the local workforce investment [SUBSTATE SERVICE DELIVERY] areas established for the board [COUNCIL]. The department shall give preference to projects and services that train individuals in industries identified in the resident hire report required under AS 36.10.130 as employing a disproportionate percentage of nonresident individuals.

* Sec. 14. AS 23.15.645(d) is amended to read:

(d) The board, by regulation, [COUNCIL] shall establish grant administration requirements, including accounting procedures, that apply to qualified entities and their grantees.

* Sec. 15. AS 23.15.645(e) is amended to read:

(e) In making a grant under this section, the board [COUNCIL] shall require that the qualified entity and grantees of the qualified entity limit the amount of the grant proceeds spent on administration so that the total spent on administration from the proceeds of the employment assistance and training program account, including amounts spent by the board [COUNCIL] itself, does not exceed 20 percent of program expenses in the prior fiscal year [THE AMOUNT COLLECTED AND REMITTED IN ACCORDANCE WITH THE SHARED COST REQUIREMENTS OF THE FEDERAL OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-87 ENTITLED "COST PRINCIPLES FOR STATE AND LOCAL GOVERNMENTS" IS NOT CONSIDERED AN AMOUNT SPENT ON ADMINISTRATION UNDER THIS SUBSECTION].

* Sec. 16. AS 23.15.651 is amended to read:

Sec. 23.15.651. Duties of Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL]; grants; eligible entities. (a) In implementing this program under a grant received under AS 23.15.645, and subject to the limit of its grant, the board [COUNCIL] shall award grants, in accordance with the priority list established by the department under AS 23.15.645(b), to employment assistance and training entities. A training entity is eligible for a grant under this section if the entity meets program requirements and can demonstrate that

(1) its accounting systems include controls adequate to check the accuracy and reliability of accounting data, promote operating efficiency, and assure compliance with program requirements and generally accepted accounting principles; and

(2) its activities do not replace or compete in any way with a federally approved [, JOINTLY ADMINISTERED] apprenticeship program or any other existing training programs.

(b) The board [COUNCIL] may not award a grant if the grant would displace money available through existing public or private training programs.

(c) To provide administration of the program, the board [COUNCIL] may use the administrative entities of the local workforce investment [SUBSTATE SERVICE DELIVERY] areas.

(d) The board [COUNCIL] shall annually provide the department with financial and performance reporting on the activities of the program and recommendations concerning continuation of funding.

* Sec. 17. AS 23.15.660(1) is amended to read:

(1) "board" ["COUNCIL"] means the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] established in AS 23.15.550;

* Sec. 18. AS 23.15.660 is amended by adding a new paragraph to read:

(4) "local workforce investment areas" means the areas established under 29 U.S.C. 2831.

* Sec. 19. AS 23.15.700(a) is amended to read:

(a) There is established in the department the business incentive training program. The incentive program shall be administered as a supplement to 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998) [THE JOB TRAINING PARTNERSHIP ACT (P.L. NO. 97-300)].

* Sec. 20. AS 23.15.710 is amended to read:

Sec. 23.15.710. Administration. (a) The Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] shall oversee the incentive program. The local workforce investment [SERVICE DELIVERY] areas established under 29 U.S.C. 2831 [29 U.S.C. 1511 AND SUBJECT TO REDESIGNATION UNDER 29 U.S.C. 1515] shall be used in the administration of the incentive program. The local workforce investment boards [PRIVATE INDUSTRY COUNCILS] appointed under 29 U.S.C. 2832 [29 U.S.C. 1512 AND SUBJECT TO RECONSTITUTION UNDER 29 U.S.C. 1515] shall serve as the local workforce investment boards [PRIVATE INDUSTRY COUNCILS] for the incentive program.

(b) The board [COUNCIL] shall divide appropriations for the incentive program equally among the local workforce investment boards [PRIVATE INDUSTRY COUNCILS]. If a local workforce investment board [PRIVATE INDUSTRY COUNCIL] lacks sufficient money to fund a proposal, the local workforce investment board [PRIVATE INDUSTRY COUNCIL] may apply to the board [COUNCIL] for additional funding. The board [COUNCIL] may approve reallocation of money from one local workforce investment [SERVICE DELIVERY] area to another to fund a particular proposal if it finds that the reallocation will best serve the purposes of the program.

(c) The board [COUNCIL] shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement AS 23.15.700 - 23.15.810.

* Sec. 21. AS 23.15.720 is amended to read:

Sec. 23.15.720. Business incentive training plan. (a) A local workforce investment board [PRIVATE INDUSTRY COUNCIL] shall adopt a business incentive training plan for the local workforce investment [SERVICE DELIVERY] area. The plan must extend for two years to coincide with the term for 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998) [THE JOB TRAINING PARTNERSHIP ACT (P.L. 97-300)] and must contain

- (1) identification of the entity or entities that will administer the incentive program and be the grant recipient for grants from the state;
- (2) a description of the services to be provided, including the estimated duration of service and the estimated training cost for each [PER] participant;
- (3) procedures for identifying and selecting participants;

- (4) performance goals established in accordance with standards under AS 23.15.780;
- (5) procedures for awarding grants to businesses; and
- (6) the budget for two program years and any proposed expenditures for the succeeding two program years in as much detail as required by the grant administrator designated under AS 23.15.740.

(b) If changes in labor market conditions, funding, or other factors require substantial deviation from an approved business incentive training plan, the local workforce investment board [PRIVATE INDUSTRY COUNCIL] and the appropriate elected municipal official or officials shall submit a modification of the plan and the budget for review under AS 23.15.730.

* Sec. 22. AS 23.15.730 is amended to read:

Sec. 23.15.730. Review and approval of business incentive training plan. The business incentive training plan shall be published and made available for review and comment as an attachment to the job training plan as set out in 29 U.S.C. 2833 [29 U.S.C. 1515]. The business incentive training plan is subject to review and approval by the governor.

* Sec. 23. AS 23.15.740(a) is amended to read:

(a) Each local workforce investment board [PRIVATE INDUSTRY COUNCIL] shall designate an administrative entity to be the grant recipient and administrator for the region. An employer may apply to the grant administrator for a business incentive grant if the employer is a private for-profit or nonprofit corporation, partnership, or sole proprietor business. The grant administrator shall review applications and award grants.

* Sec. 24. AS 23.15.740(c) is amended to read:

(c) A business incentive training grant shall be used to recruit and train eligible employees for newly created permanent or permanent seasonal positions or to enable existing employees to acquire the skills necessary to qualify the employee to implement new technologies. A business incentive training grant may be used for occupations for which there is a demand in the area served or in another area to which the participant is willing to relocate and for emerging technologies in the state. In selecting recruiting and training programs, the local workforce investment boards [PRIVATE INDUSTRY COUNCILS] and the grant administrators may consider whether the occupation in which recruiting or training is sought is in a sector of the economy that has a high potential for sustained demand or growth.

* Sec. 25. AS 23.15.740(d) is amended to read:

(d) Only individuals eligible under the business incentive training plan and residing in the local workforce investment [SERVICE DELIVERY] area may be participants in employment and training activities funded under the business incentive training program. To be eligible for training or education services under AS 23.15.700 - 23.15.810, immediately before beginning training or education under the program, a person shall

(1) have been unemployed and

(A) receiving unemployment insurance benefits; or

(B) have exhausted the right to unemployment insurance benefits within the past three years;

(2) be liable to be displaced from work within the next six months because of

(A) reductions in overall employment within the business;

(B) elimination of the person's current job; or

(C) a change in the conditions of the employee's job requiring that, to remain employed, the employee must have substantially different skills that the employee does not now possess; or

(3) have worked in a position covered by AS 23.20 at any time during the last three years and be ineligible for unemployment insurance benefits because the person

(A) was working in a seasonal, temporary, part-time, or other marginal employment;

(B) has insufficient qualifying wages because of limited job opportunities; or

(C) is employed, but, because the person is underemployed, the person needs employment assistance and training to obtain full employment.

* Sec. 26. AS 23.15.740(e) is amended to read:

(e) Payments to employers for on-the-job training of participants who experience multiple barriers to employment or are eligible under 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998) [THE JOB TRAINING PARTNERSHIP ACT (P.L. 97-300)] may not average more than 80 percent of the wages paid by the employer to the participant. Payments to employers for on-the-job training of other participants may not average more than 50

percent of the wages paid by the employer to participants. The payments shall be considered to be in compensation for the extraordinary costs associated with training employees for new positions and the lower productivity of the participants.

* Sec. 27. AS 23.15.760(b) is amended to read:

(b) The board [COUNCIL] shall adopt regulations concerning retention of records.

* Sec. 28. AS 23.15.760(c) is amended to read:

(c) The board [COUNCIL] shall, not [NO] later than February 1 of each year, prepare a report concerning the incentive program and notify the legislature that the report is available.

* Sec. 29. AS 23.15.770(b) is amended to read:

(b) Personal liability insurance for members of the local workforce investment board [PRIVATE INDUSTRY COUNCIL] is an allowable cost.

* Sec. 30. AS 23.15.790 is amended to read:

Sec. 23.15.790. Limitation on certain costs. Not [NO] more than 15 percent of the money available to a local workforce investment [SERVICE DELIVERY] area for a fiscal year may be expended for the cost of administration. For purposes of this section, costs of program support, including counseling, that are directly related to the provision of education or training to participants may not be counted as part of the cost of administration.

* Sec. 31. AS 23.15.800 is amended to read:

Sec. 23.15.800. Selection of service providers. (a) The primary consideration in selecting agencies or organizations to deliver services within a local workforce investment [SERVICE DELIVERY] area is the effectiveness of the agency or organization in delivering comparable or related services based on demonstrated performance, in terms of the likelihood of meeting performance goals, cost, quality of training, and characteristics of participants. In complying with this subsection, proper consideration shall be given to community-based [COMMUNITY BASED] organizations as service providers.

(b) Appropriate education agencies in the local workforce investment [SERVICE DELIVERY] area shall be given the opportunity to provide educational services, unless the grant administrator determines that alternative agencies or organizations would be more effective or would have greater potential to enhance the participants' continued occupational and career growth.

(2) enter into partnership agreements through appropriate administrative agencies with private industry training entities within the state in order to facilitate the coordination of training opportunities; and

(3) recommend to the legislature changes to enhance the effectiveness of the training programs it oversees under this section.

* Sec. 34. AS 23.15.830 is amended to read:

Sec. 23.15.830. Alaska technical and vocational education program account. The Alaska technical and vocational education program account is established in the general fund. The commissioner of administration shall separately account for money collected under AS 23.15.835 that the department deposits in the general fund. The legislature may appropriate the annual estimated balance in the account to the board [COUNCIL] to implement AS 23.15.820 - 23.15.850. The legislature may appropriate the lapsing balance of the account to the unemployment compensation fund established in AS 23.20.130.

* Sec. 35. AS 23.15.840(a) is amended to read:

(a) The board [COUNCIL] shall award grants, in accordance with the priority list adopted under (f) of this section, to technical and vocational education entities. A technical and vocational education entity is eligible for a grant under this section if the entity meets program requirements, the grant program is physically located in Alaska, and the entity can demonstrate that

(1) the entity's accounting systems include controls adequate to check the accuracy and reliability of accounting data, promote operating efficiency, and assure compliance with program requirements and generally accepted accounting principles;

(2) the entity's activities do not replace or compete in any way with a federally approved [, JOINTLY ADMINISTERED] apprenticeship program or any other existing training programs; and

(3) the entity has secured matching funds for the program for which the grant is requested.

* Sec. 36. AS 23.15.840(b) is amended to read:

(b) The board [COUNCIL] may not award a grant if the grant would displace money available through existing public or private technical and vocational education programs.

* Sec. 37. AS 23.15.840(d) is amended to read:

(d) A technical or vocational educational institution that receives a grant from the board [COUNCIL] shall give appropriate state agencies full access to accounting records concerning the grant to assure compliance with program standards.

* Sec. 38. AS 23.15.840(e) is amended to read:

(e) In making a grant under this section, the board [COUNCIL] shall require that the qualified entity and grantees of the qualified entity limit the amount of the grant proceeds spent on administration so that the total spent on administration from the proceeds of the technical and vocational education program account, including amounts spent by the board [COUNCIL] itself, does not exceed five percent. A training program funded by the board [COUNCIL] must

(1) meet the standards adopted by the board [COUNCIL] concerning the percentage of a grant that may be spent on administrative costs;

(2) be operated by an institution that holds a valid authorization to operate issued under AS 14.48 if the program is a postsecondary educational program operated by a postsecondary educational institution subject to regulation under AS 14.48.

* Sec. 39. AS 23.15.840(f) is amended to read:

(f) To the extent that funding is available, grants shall be awarded to entities that apply for funding by the deadline established by the board [COUNCIL] by regulation. The board [COUNCIL] shall give priority to grant applications from qualified entities whose purpose is listed first on the list of priorities adopted under this subsection. If money remains after grants for the first priority have been awarded, the board [COUNCIL] may make grants to entities whose purpose is listed next on the list of priorities. The board [COUNCIL] shall proceed in this fashion until it has exhausted the money available for granting for the year. The board [COUNCIL] shall adopt a priority list each year based on economic, employment, and other relevant data in order to maximize employment opportunities for participants.

* Sec. 40. AS 23.15.850(1) is amended to read:

(1) "board" ["COUNCIL"] means the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL];

* Sec. 41. AS 23.20.110(a) is amended to read:

(a) Except as provided in (h) and (i) of this section, the department shall hold information obtained from an employing unit or individual in the course of

administering this chapter and determinations as to the benefit rights of an individual confidential and may not disclose them or open them to public inspection in a manner that reveals the identity of the individual or employing unit. A claimant or an employing unit, or the legal representative of the claimant or the employing unit, is entitled to information from the records of the department to the extent necessary to properly present or protest a claim or determination under this chapter. Subject to restrictions that the department prescribes by regulation, the information may be made available to an agency of this state or another state or federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or, for the purposes of the Federal Unemployment Tax Act, to the Internal Revenue Service of the United States, or, for tax purposes, to the Department of Revenue. Information obtained in the course of administering this chapter or in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or the administration of employment and training programs planned or coordinated by the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] under AS 23.15.550 - 23.15.585.

* Sec. 42. AS 24.60.080(h) is amended to read:

(h) A legislator, a legislative committee other than the Select Committee on Legislative Ethics, or a legislative agency may accept [(1)] a gift of (1) volunteer services for legislative purposes so long as the person making the gift of services is not receiving compensation from another source for the services, or (2) [A GIFT OF] the services of a trainee who is participating in an educational program approved by the committee if the services are used for legislative purposes. The committee shall approve training under a program of the University of Alaska and training under 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998) [29 U.S.C. 1501 - 1792B (JOB TRAINING PARTNERSHIP ACT)]. A legislative volunteer or educational trainee shall be considered to be a legislative employee for purposes of compliance with this section, AS 24.60.030 - 24.60.039, 24.60.060, 24.60.085, 24.60.158 - 24.60.170, 24.60.176, and 24.60.178. If a person believes that a legislative volunteer or educational trainee has violated the provisions of one of those sections, the person may file a complaint under AS 24.60.170. The provisions of AS 24.60.170 apply to the proceeding.

* Sec. 43. AS 39.50.200(a)(8) is amended to read:

(8) "public official" means

(A) a judicial officer;

- (B) the governor or the lieutenant governor;
- (C) a person hired or appointed in a department in the executive branch as
 - (i) the head or deputy head of the department;
 - (ii) the director or deputy director of a division;
 - (iii) a special assistant to the head of the department;
 - (iv) a person serving as the legislative liaison for the department;
- (D) an assistant to the governor or the lieutenant governor;
- (E) the chair or a member of a state commission or board other than physician members or alternates of the Alaska Teachers' Retirement Board appointed under AS 14.25.035(a)(2) or of the Public Employees' Retirement Board appointed under AS 39.35.030(d);
- (F) state investment officers and the state comptroller in the Department of Revenue;
- (G) the executive director of the Alaska Tourism Marketing Council;
- (H) the chief procurement officer appointed under AS 36.30.010;
- (I) the executive director of the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL]; and
- (J) each appointed or elected municipal officer;

* Sec. 44. AS 39.50.200(b)(55) is amended to read:

(55) Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] (AS 23.15.550);

* Sec. 45. AS 44.31.020 is amended to read:

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

- (1) enforce the laws, and adopt regulations under them concerning employer-employee relationships, including the safety, hours of work, wages, and conditions of workers, including children;
- (2) accumulate, analyze, and report labor statistics;

- (3) operate systems of workers' compensation and unemployment insurance;
- (4) gather data reflecting the cost of living in the various election districts of the state upon request of the director of personnel under AS 39.27.030; in this paragraph, "election district" has the meaning given in AS 39.27.020(b);
- (5) operate the federally funded employment and training programs under 29 U.S.C. 2801 - 2945 (Workforce Investment Act of 1998) [29 U.S.C. 1501 - 1792B (JOB TRAINING PARTNERSHIP ACT)]; and
- (6) administer the state's program of adult basic education.

* Sec. 46. AS 23.15.660(3) is repealed.

* Sec. 47. The uncodified law of the State of Alaska enacted in sec. 6, ch. 116, SLA 1996, as amended by sec. 9, ch. 85, SLA 1998, is amended to read:

Sec. 6. AS 23.15.620, 23.15.625, 23.15.630, 23.15.635, 23.15.640, 23.15.645, 23.15.651, and 23.15.660 are repealed June 30, 2004 [2002].

* Sec. 48. The uncodified law of the State of Alaska enacted in sec. 1, ch. 102, SLA 2001 is amended to read:

Section 1. ALLOCATION OF APPROPRIATIONS FOR FISCAL YEARS ENDING JUNE 30, 2002, AND JUNE, 2003. Notwithstanding AS 23.15.840(a), for the fiscal years ending June 30, 2002, through June 30, 2006 [AND JUNE 30, 2003], the money collected under AS 23.15.835 or otherwise appropriated to the Alaska Workforce Investment Board [ALASKA HUMAN RESOURCE INVESTMENT COUNCIL] shall be allocated directly in the following percentages to the following institutions for programs consistent with AS 23.15.820 - 23.15.850 and capital improvements:

University of Alaska 63 percent

Galena Project Education Vocational Training Center 4 percent

Kotzebue Technical Center 11 percent

Alaska Vocational Technical Center 22 percent.

* Sec. 49. The uncodified law of the State of Alaska is amended by adding a new section to read:

REPORT TO THE LEGISLATURE. The Department of Labor and Workforce Development shall present a written report to the legislature on the state training and resources program within 10 days of the beginning of the First Regular Session of the Twenty-Third Alaska State Legislature. The report must include

- (1) an outreach plan for the state training and resources program;
- (2) a certification verification plan;
- (3) the department's recommendations on allowable nonadministrative costs for program expenses;
- (4) a data collection and reporting plan;
- (5) the status of the governor's discretionary fund for statewide activities established as part of the 1999 Alaska Human Resource Investment Council action plan; and
- (6) the department's recommendations on including reimbursable employers in the state training and employment program, and excluding current and former employees of reimbursable employers from the program.

* Sec. 50. The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: MEMBERS AND TERMS OF THE ALASKA WORKFORCE INVESTMENT BOARD; EXECUTIVE DIRECTOR. (a) On the effective date of this section, the members of the Alaska Workforce Investment Board created in AS 23.15.550, as amended by sec. 3 of this Act, are the same persons who, on the day before the effective date of this section, served as members of the Alaska Human Resource Investment Council under AS 23.15.550 as that section appeared on the day before the effective date of this section. The members described in this section shall serve the remainder of their unexpired terms.

(b) The person serving as executive director of the Alaska Human Resource Investment Council on the day before the effective date of this section shall serve, under the same terms and conditions, as executive director of the Alaska Workforce Investment Board created in AS 23.15.550, as amended by sec. 3 of this Act.

* Sec. 51. The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: EXECUTIVE COMMITTEE OF ALASKA WORKFORCE INVESTMENT BOARD. Notwithstanding AS 23.15.570(c), as amended by sec. 7 of this Act, the executive committee of the Alaska Workforce Investment Board, created in AS 23.15.550, as amended by sec. 3 of this Act, shall include the immediate past chair of the Alaska Human Resource Investment Council, created by AS 23.15.550 as that section appeared on the day before the effective date of this section. The immediate past chair of the Alaska Human Resource Investment Council shall serve on the executive committee until an immediate past chair of the Alaska Workforce Investment Board exists.

* Sec. 52. The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. (a) Notwithstanding sec. 57 of this Act, the state agencies affected by this Act may proceed to adopt regulations necessary to implement the respective changes made by secs. 1 - 46 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory change.

(b) To the extent that the regulations are not inconsistent with the purposes of this Act, regulations implementing AS 23.15.550 - 23.15.850 that are in effect on the day before the effective date of this subsection remain as valid regulations implementing this Act. The affected state agencies may continue to administer and enforce the regulations described in this subsection.

(c) To the extent consistent with this Act, the regulations attorney is instructed to change terms in the Alaska Administrative Code relating to the Alaska Human Resource Investment Council, as follows:

(1) "Alaska Human Resource Investment Council" to "Alaska Workforce Investment Board";

(2) "council," in relation to the change described in (1) of this subsection, to "board."

* Sec. 53. The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR OF STATUTES INSTRUCTIONS. The revisor of statutes is instructed to change the heading of art. 4 of AS 23.15 from "Alaska Human Resource Investment Council" to "Alaska Workforce Investment Board."

* Sec. 54. The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY OF SEC. 47. If sec. 47 of this Act takes effect after June 29, 2002, sec. 47 of this Act is retroactive to June 29, 2002.

* Sec. 55. Section 47 of this Act takes effect June 29, 2002.

* Sec. 56. Section 52(a) of this Act takes effect immediately under AS 01.10.070(c).

* Sec. 57. Except as provided in secs. 55 and 56 of this Act, this Act takes effect July 1, 2002.

Chapter: CH085

Source: HCS CSSB 334(FIN) am H

Action Date: June 11, 1998

Effective Date: June 12, 1998

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AN ACT

Relating to guidelines and standards for state training programs; relating to the Alaska Human Resource Investment Council; extending the termination date of the state training and employment program; and providing for an effective date.

* Section 1. AS 44.19.620 is amended by adding a new subsection to read:

(c) A member of the council under (a) of this section may appoint a designee to serve in place of the member named in (a) of this section. The member shall appoint the designee in writing.

* Sec. 2. AS 44.19.621 (a) is amended to read:

(a) Members of the Alaska Human Resource Investment Council other than those listed in AS 44.19.620 (a)(1) and (2) are appointed by the governor and serve at the pleasure of the governor. The governor may appoint one person to fill two or more of the places listed in AS 44.19.620 (a) if the person is qualified in all of the areas the person represents. A member appointed to fill more than one place under this subsection is entitled to only one vote and may appoint only one designee to replace the member in the event the member is unable to attend a meeting.

* Sec. 3. AS 44.19.622 is amended to read:

Sec. 44.19.622. Compensation. Members of the Alaska Human Resource Investment Council listed in or appointed under AS 44.19.620 (a), including a designee of a member attending in place of the member, serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions under AS 39.20.180 . Nonvoting members of the council appointed under AS 44.19.620 (b) serve without compensation and are not entitled to per diem and travel expenses. A commissioner appointed under AS 44.19.620 (a)(2) or the

commissioner's designee is entitled to per diem and travel expenses as a state employee.

* Sec. 4. AS 44.19.623 is amended to read:

Sec. 44.19.623. Officers. The Alaska Human Resource Investment Council shall elect a chair and a vice-chair from among the members listed in or appointed under AS 44.19.620 (a)(5) [AS 44.19.620 (a) WHO ARE FROM THE PRIVATE SECTOR. THEY SHALL ALSO ELECT A VICE-CHAIR]. The chair and vice-chair serve in their positions at the pleasure of the council.

* Sec. 5. AS 44.19.624 is amended to read:

Sec. 44.19.624. Meetings, quorum, and committees. (a) The Alaska Human Resource Investment Council shall meet not more than three times in a calendar year at the call of the chair to conduct its business. A majority of the members listed in or appointed to the council under AS 44.19.620 (a) constitutes a quorum.

(b) The council shall establish an executive committee and four permanent standing committees as described in (c) - (g) of this section. The chair of a permanent standing committee must be from the private sector. The council may establish additional standing committees and special committees or subcommittees, not necessarily consisting of council members, to advise and assist the council in carrying out its functions assigned by federal or state statute. The permanent standing committees are

- (1) the assessment and evaluation committee;
- (2) the policy and planning committee;
- (3) the employment and placement committee; and
- (4) the workforce readiness committee.

* Sec. 6. AS 44.19.624 is amended by adding new subsections to read:

(c) The executive committee consists of the chair and vice-chair of the council, the immediate past chair of the council, and the chairs of the four standing committees described in (d) - (g) of this section. The executive committee has the duties and may exercise the powers of the council between meetings of the council. The executive committee shall

(1) report to the council in a timely fashion on actions taken on behalf of the council; and

(2) supervise the affairs of the council between regular meetings of the council.

(d) The assessment and evaluation committee shall

(1) assess and evaluate programs, initiatives, and the delivery of services to help to ensure equitable distribution of quality education, training, and employment services statewide, especially to rural areas and to programs serving economically disadvantaged citizens;

(2) call for and monitor the workforce development system for increased accountability in performance and continuous quality improvement along the goals and strategies of the council's overall statewide strategic plan for workforce development;

(3) use evaluation and performance measures to gauge customer satisfaction within the workforce development system; and

(4) perform other duties assigned by the council.

(e) The policy and planning committee shall

(1) build policies regarding day-to-day operations and long-term responsibilities of the council;

(2) work to increase awareness of the council and its mission throughout the state;

(3) work with all other committees on a statewide strategic plan for workforce development; and

(4) perform other duties assigned by the council.

(f) The employment and placement committee shall

(1) ensure the statewide strategic plan for workforce development addresses

(A) customer needs at the local level;

(B) moving welfare recipients into the workforce;

(C) promoting the hiring of state residents in jobs that have traditionally been filled by out-of-state workers;

(D) tailoring employment and training programs to suit state business, industry, and economic development needs;

(2) monitor the coordination of service delivery to promote efficiency and to prevent overlap of services among programs; and

(3) perform other duties assigned by the council.

(g) The workforce readiness committee shall

(1) provide oversight for training, education, and employment programs to ensure the programs are delivering education and training that is relevant to local market needs and the career goals of state residents;

(2) build partnerships between employers and quality workforce training programs;

(3) work to connect the state public and private education systems with business, government, and labor to ensure that state residents are receiving workforce readiness skills throughout the education process; and

(4) perform other duties assigned by the council.

* Sec. 7. AS 44.19.626 (b) is amended to read:

(b) The council shall

(1) facilitate the development of statewide policy for a coordinated and effective employment training and education system in this state;

(2) identify the human resource investment needs in the state and develop a plan to meet those needs;

(3) review the provision of services and the use of money and resources by the human resource programs listed in AS 44.19.625 ;

(4) assume the duties and functions of the state councils described under the laws relating to the federal human resource programs listed in AS 44.19.625 ;

(5) advise the governor, [AND] state and local agencies, and the University of Alaska on the development of state and local standards and measures relating to applicable human resource programs;

(6) submit, to the governor and the legislature, a biennial strategic plan to accomplish the goals developed to meet human resource investment needs;

(7) monitor for the implementation and evaluate the effectiveness of the strategic plan developed by the council;

(8) adopt regulations that set standards for the percentage of a grant that may be used for administrative costs; the regulations must clearly identify and distinguish between expenses that may be included in administrative costs and those that may not be included in administrative costs; the percentage allowed for administrative costs may not exceed the lesser of 15 percent or the amount permitted under the requirements of a federal program, if applicable;

(9) report annually to the legislature, by the 30th day of the regular legislative session, on the performance and evaluation of training programs in the state subject to review under (f) of this section;

(10) identify ways for agencies operating programs subject to oversight by the council to share resources, instructors, and curricula through collaboration with other public and private entities to increase training opportunities and reduce costs; and

(11) [(8)] adopt regulations under AS 44.62 (Administrative Procedure Act) to carry out the purposes of AS 44.19.620 - 44.19.627.

* Sec. 8. AS 44.19.626 is amended by adding new subsections to read:

(d) The council shall provide oversight for the planning and coordination of employment-related education training programs operated by the state or operated under contract with the state that are described in (f) of this section. The council shall require a training program listed in (f) of this section to meet the requirements of this subsection. The council shall, by regulation, establish appropriate penalties for programs that fail to meet the requirements of this subsection. The council may recommend to the legislature changes to enhance the effectiveness of the training programs it oversees under this section. A training program described in (f) of this section funded with money appropriated by the legislature must

(1) meet the standards adopted by the council concerning the percentage of a grant that may be spent on administrative costs;

(2) be operated by an institution that holds a valid authorization to operate issued under AS 14.48 by the Alaska Commission on Postsecondary Education if the program is a postsecondary educational program operated by a postsecondary educational institution subject to regulation under AS 14.48;

(3) provide to the Department of Labor the information required by the department for the preparation of the statistical information necessary for the council to evaluate programs by the standards set out in (e) of this section.

(e) The council shall develop standards that encourage agencies to contract for training programs that maximize the program's class size. The council shall adopt standards for the evaluation of training programs listed in (f) of this section with regard to the following:

(1) the percent of former participants who have a job one year after leaving the training program;

(2) the median wage of former participants seven to 12 months after leaving the program;

(3) the percent of former participants who were employed after leaving the training program who received training under the program that was related to their jobs or somewhat related to their jobs seven to 12 months after leaving the training program;

(4) the percent of former participants of a training program who indicate that they were satisfied with or somewhat satisfied with the overall quality of the training program;

(5) the percent of employers who indicate that they were satisfied with the quality of the work of new employees who had recently completed the training program.

(f) The following training programs are subject to the provisions of (d) and (e) of this section:

(1) in the Department of Community and Regional Affairs or operated by the department:

(A) One Stop Career Center;

(B) Job Training Partnership Act programs, assisting communities in moving toward a self-sustainable economy and providing training;

(C) state training and employment program (AS 23.15.620), providing training and employment services for people who are unemployed or likely to become unemployed, fostering new jobs, and increasing training opportunities for workers severely affected by fluctuations in the state economy or adversely affected by technology advances in the workplace;

(2) in the Department of Education or operated by the department, the non-public-school portions of the following programs:

(A) employment-related adult basic education;

(B) School-to-Work;

(C) vocational education and Tech Prep;

(D) Alaska Career Information System;

(E) high school completion project;

(F) Kotzebue Technical Center;

(G) Alaska Vocational Technical Center;

(3) in the Department of Health and Social Services: employment training services operated as part of the Alaska Temporary Assistance Program (ATAP);

(4) in the Department of Labor:

(A) unemployment insurance grants provided under the federal training relocation assistance program;

(B) Alaska works programs, assisting with the welfare-to-work program;

(C) state training employment program, coordinated with the Department of Community and Regional Affairs.

(g) The council shall assess the programs listed in this subsection and make recommendations to the legislature in its report required under (b)(9) of this section about whether to include one or more of these programs under the requirements of (f) of this section:

(1) in the Department of Community and Regional Affairs or operated by the department:

(A) local government assistance training and development, including the rural utility business advisory program;

(B) energy operations, providing training in management and administration of electric utilities and bulk fuel storage systems;

(2) in the Department of Corrections:

(A) Correctional Academy, training individuals applying for a correctional officer position;

(B) inmate programs, providing vocational technical training and education courses for inmates preparing to be released from a correctional facility;

(C) correctional industries program, providing inmates with jobs while they are incarcerated;

(3) in the Department of Environmental Conservation:

(A) remote maintenance worker program, providing training and technical assistance to communities to keep drinking water and sewage disposal systems running, and providing on-the-job training to local operators;

(B) water and wastewater operator training and assistance;

(C) federal drinking water operator training and certification;

(4) in the Department of Military and Veterans' Affairs: educational benefits for members of the Alaska National Guard and the Alaska Naval Militia;

(5) in the Department of Public Safety:

(A) fire service training to maintain emergency training skills for existing fire fighter staff and volunteers and individuals interested in becoming fire fighters;

(B) Public Safety Training Academy, training trooper recruits;

(6) in the Department of Transportation and Public Facilities:

(A) engineer-in-training program, providing on-the-job training for apprentice engineers to enable them to gain the experience necessary to be certified;

(B) statewide transportation improvement program, offered by the United States National Highway Institute;

(C) local technical assistance program, transferring technical expertise to local governments;

(D) Native technical assistance program, transferring technical expertise to Native governments;

(E) border technology exchange program, to coordinate highway issues with the Yukon Territory;

(7) in the Department of Education: vocational rehabilitation client services and special work projects;

(8) in the Department of Labor: employment services, including job development, assisting individuals in finding employment, and assisting employed individuals in finding other employment;

(9) in the Department of Administration: Alaska Professional Development Institute, providing continuing education and training for employed workers.

(h) The University of Alaska shall evaluate the performance of its training programs using the standards set out in (e) of this section and shall provide a report on the results to the council for inclusion in the council's annual report to the legislature.

(i) The council shall review each program listed in (f) of this section to determine whether it is in compliance with the standards set out in (d) and (e) of this section. If the council finds that a program has failed to comply with the standards set out in (d) and (e) of this section, it shall notify the program director of the failure. If the program director fails to improve the performance of the program within a reasonable time, the council shall notify the governor and the legislative budget and audit committee that the program is out of compliance. A contract entered into by a state agency relating to a training program set out in (f) of this section must contain terms consistent with this section.

(j) A department that operates or contracts for a training program listed in (f) of this section shall pay to the council a management assessment fee not to exceed .75 percent of the program's annual operating budget. The total amount received as management assessment fees may not exceed the council's authorized budget for the fiscal year. The council shall, by regulation, establish a method to determine annually the amount of the management assessment fee. If the amount the council expects to collect under this subsection exceeds the authorized budget of the council, the council shall reduce the percentages set out in this subsection so that the total amount of the fees collected approximately equals the authorized budget of the council for the fiscal year. The council shall adopt regulations under AS 44.62 (Administrative Procedure Act) necessary to administer this subsection.

(k) Upon the enactment of a new federal or state program relating to work force development, the council shall

(1) advise the governor and the legislature on whether the council should provide oversight for the new program under this section; and

(2) make recommendations necessary to streamline and coordinate state efforts to meet the guidelines of the new program.

(l) For purposes of this section, "program"

(1) does not refer to the overall activities of an individual institution or individual fields of study or courses that are not associated with programs for which the council has oversight responsibility;

(2) may include a certificate or associate degree course or a course that is not for credit, whether it is offered by a public or private institute or contracted for by the private sector, so long as it is related to employment.

* Sec. 9. Section 6, ch. 116, SLA 1996, is amended to read:

Sec. 6. AS 23.15.620 , 23.15.625, 23.15.630, 23.15.635, 23.15.640, 23.15.645, 23.15.651, and 23.15.660 are repealed June 30, 2002 [1998].

* Sec. 10. TRANSITION. Notwithstanding the requirement in AS 44.19.623 , as amended by sec. 4 of this Act, that the chair and the vice-chair of the council be members of the council appointed under AS 44.19.620 (a)(5), a member who is serving as chair or vice-chair of the council on the day before the effective date of this Act may continue to serve in that capacity until the expiration of the member's term of office. However, if the vice-chair is a commissioner of a department of state government, the office becomes vacant on the effective date of this Act and the council shall elect a vice-chair who meets the requirements of AS 44.19.623 , as amended by sec. 4 of this Act.

* Sec. 11. This Act takes effect immediately under AS 01.10.070 (c).

Chapter: CH116

Source: CSSB 229 (L&C)

Action Date: June 28, 1996

Effective Date: See Chapter

96

AN ACT

Relating to employment contributions, to the calculation of unemployment insurance benefits, and to the state training and employment program; and providing for an effective date.

* Section 1. FINDINGS. The legislature finds that

- (1) an inadequate number of jobs exist in this state to meet the needs of those seeking employment;
- (2) many Alaskans are having difficulty finding jobs, especially in trying to meet the changing technology needs in this state;
- (3) employer and employee contributions paid into the unemployment insurance system are used for payment of compensation to unemployed workers and allocation of a small portion of employment contributions paid by employees would provide money to develop a state training and employment program to meet the training needs of Alaskans;
- (4) a state training and employment program would
 - (A) help prevent future claims against unemployment benefits;
 - (B) foster new jobs by encouraging businesses to locate in the state due to availability of a skilled labor force and by minimizing employers' unemployment costs; and
 - (C) increase training opportunities to those workers severely affected by the fluctuations in the state economy or technological changes in the workplace in the state;
- (5) it would be beneficial to the state for state training and employment programs funded by the state training and employment program to

supplement, but not to displace, programs funded by money available to a training entity for public or private training, and not to replace, parallel, compete with, or duplicate existing federally approved, jointly administered apprenticeship and training programs;

(6) it would be beneficial to the state to make the state training and employment program a permanent state program to benefit Alaska workers, businesses, and industry.

* Sec. 2. AS 23.15 is amended by adding new sections to read:

ARTICLE 4A. STATE TRAINING AND EMPLOYMENT PROGRAM.

Sec. 23.15.620. STATE TRAINING AND EMPLOYMENT PROGRAM. There is created in the department a program to finance and award grants to employment assistance and training entities. Employment assistance and training entities shall give appropriate state agencies full access to accounting records concerning grants received to assure compliance with program standards.

Sec. 23.15.625. EMPLOYMENT ASSISTANCE AND TRAINING PROGRAM ACCOUNT. The employment assistance and training program account is established in the general fund. The commissioner of administration shall separately account for money collected under AS 23.15.630 that the department deposits in the general fund. The annual estimated balance in the account may be appropriated by the legislature to the department to implement AS 23.15.620 - 23.15.660. The legislature may appropriate the lapsing balance of the account to the unemployment compensation fund established in AS 23.20.130 .

Sec. 23.15.630. SPECIAL EMPLOYEE UNEMPLOYMENT CREDIT AND CONTRIBUTIONS FOR PROGRAM. (a) In the manner provided in AS 23.20, the department shall collect from each employee an amount equal to one-tenth of one percent of the wages, as set out in AS 23.20.175 , on which the employee is required to make contributions under AS 23.20.290 (d). The department shall remit to the Department of Revenue, in accordance with AS 37.10.050 , money collected under this subsection.

(b) Notwithstanding AS 23.20.290 (d), the department shall credit each employee with an amount equal to the amount collected from the employee under (a) of this section against unemployment contributions owed by the employee under AS 23.20.

(c) The department shall assess and collect, under AS 23.20.185 - 23.20.275, interest and penalties for delinquent reports and payments due

under this section. Interest and penalties collected shall be handled in accordance with AS 23.20.130 (d).

Sec. 23.15.635. PEOPLE TO BE SERVED. Within the limits of its grant, an employment assistance and training entity receiving a grant under AS 23.15.651 shall provide services set out in AS 23.15.640 to state residents who, immediately before beginning training or receiving benefits under a grant financed by this program,

(1) are unemployed and

(A) are receiving unemployment insurance benefits; or

(B) have exhausted the right to unemployment insurance benefits within the past three years;

(2) are employed, but liable to be displaced within the next six months because of

(A) reductions in overall employment within a business;

(B) elimination of the worker's current job; or

(C) a change in conditions of employment requiring that, to remain employed, the employee must learn substantially different skills that the employee does not now possess; or

(3) have worked in a position covered by AS 23.20 at any time during the last three years, and are not currently eligible for unemployment insurance benefits because

(A) their employment has been seasonal, temporary, part-time, or marginal;

(B) their qualifying wages are insufficient because of limited job opportunity; or

(C) they are employed but, because they are underemployed, they are in need of employment assistance and training to obtain full employment.

Sec. 23.15.640. SERVICES FOR ELIGIBLE PEOPLE. Subject to the limits of its grant, an entity receiving a grant under AS 23.15.651 shall provide one or more program elements. The program elements include

(1) industry-specific training;

(2) on-the-job training;

(3) institutional or classroom job-linked training;

(4) support services, including allowances;

(5) relocation assistance; or

(6) provisions of necessary tools, work-related clothing, safety gear, or other necessities to obtain or retain employment.

Sec. 23.15.645. DUTIES AND POWERS OF THE DEPARTMENT. (a) The department shall award a grant to the council to

(1) administer a state training and employment program; and

(2) award grants to qualified entities.

(b) When a grant is awarded to the council, the department shall annually provide to the council a priority list of targeted projects or services, based on unemployment statistics, unemployment insurance claims, occupational and industrial projections, availability of other training and employment programs, and other relevant data. The department shall also provide annually to the council a priority list of criteria for eligibility to maximize services to those people most in need of training under AS 23.15.620 - 23.15.660. In developing the priority list for targeted projects and services, the department shall solicit comments from the Department of Community and Regional Affairs, Department of Education, Department of Commerce and Economic Development, University of Alaska, organized labor, the council, and the administrative entities of the substate service delivery areas established for the council. The department shall give preference to projects and services that train individuals in industries identified in the resident hire report required under AS 36.10.130 as employing a disproportionate percentage of nonresident individuals.

(c) The department may adopt regulations necessary to implement this chapter.

(d) The council shall establish grant administration requirements including accounting procedures that apply to qualified entities and their grantees.

(e) In making a grant under this section, the council shall require that the qualified entity and grantees of the qualified entity limit the amount of the grant proceeds spent on administration so that the total spent on administration from the proceeds of the employment assistance and training program account, including amounts spent by the council itself, does not exceed 20 percent. The amount collected and remitted in accordance with the

shared cost requirements of the federal Office of Management and Budget Circular A-87 entitled "Cost Principles for State and Local Governments" is not considered an amount spent on administration under this subsection.

Sec. 23.15.651. DUTIES OF ALASKA HUMAN RESOURCE INVESTMENT COUNCIL; GRANTS; ELIGIBLE ENTITIES. (a) In implementing this program under a grant received under AS 23.15.645 , and subject to the limit of its grant the council shall award grants, in accordance with the priority list established by the department under AS 23.15.645 (b) to employment assistance and training entities. A training entity is eligible for a grant under this section if the entity meets program requirements and can demonstrate that

(1) its accounting systems include controls adequate to check the accuracy and reliability of accounting data, promote operating efficiency, and assure compliance with program requirements and generally accepted accounting principles; and

(2) its activities do not replace or compete in any way with a federally approved, jointly administered apprenticeship program or any other existing training programs.

(b) The council may not award a grant if the grant would displace money available through existing public or private training programs.

(c) To provide administration of the program, the council may use the administrative entities of the substate service delivery areas.

(d) The council shall annually provide the department with financial and performance reporting on the activities of the program and recommendations concerning continuation of funding.

Sec. 23.15.660. DEFINITIONS. In AS 23.15.620 - 23.15.660,

(1) "council" means the Alaska Human Resource Investment Council established in AS 44.19.620 ;

(2) "program" means the state training and employment program established in AS 23.15.620 - 23.15.660; and

(3) "substate service delivery areas" means those areas designated by the governor under 29 U.S.C. 1532.

* Sec. 3. AS 23.20.290 (c) is amended to read:

(c) Beginning January 1, 1997 [JANUARY 1, 1981], the rate of contributions for each employer is 80 [82] percent of the average benefit cost rate multiplied by the employer's experience factor set out in column C of the table in this subsection opposite the employer's applicable rate class set out in column A plus the fund solvency adjustment required under (f) of this section. However, the rate of contributions for an employer may not be less than one percent or more than six and one-half percent. The rate of contributions for an employer in rate class 21 may not be less than 5.4 percent. The rate of contributions for an employer must be rounded to the nearest 1/100th [ONE-HUNDREDTH] of one percent.

COLUMN A COLUMN B COLUMN C

Rate Class Cumulative Experience

Ratable Payroll Factor

at least but less than

(percent) (percent)

15.40

25 10.45

31 15.50

52 25.60

62 30.65

73 35.70

83 40.80

94 45.90

104 50.00

115 55.00

125 60.10

136 65.20

146 70.30