

COMMITTEE REPORT

HOUSE

(11)

FURTHER:

3/9/83

Date: 3-31-83

Mr. Speaker:

The Committee on FINANCE has had HB 161

An Act establishing a defeasance fund in the Department of Revenue for the purpose of retiring state general obligation debt; transferring a portion of the income of the Alaska permanent fund to the defeasance fund; and providing for an effective date.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- and recommends _____ new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without ^{individual} recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Jerry Ward
Kerry Martin

MEMBERS HAVING
OTHER RECOMMENDATIONS:

John ... Do Pass with ...

Sam Vestinger (No Rec)

CHAIRMAN

Introduced: 2/4/83
Referred: State Affairs and
Finance

1 IN THE HOUSE

BY WARD AND LISKA

2

HOUSE BILL NO. 161

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act establishing a defeasance fund in the Depart-
7 ment of Revenue for the purpose of retiring state
8 general obligation debt; transferring a portion of
9 the income of the Alaska permanent fund to the de-
10 feasance fund; and providing for an effective date."

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

12 * Section 1. The defeasance fund is established in the Department of
13 Revenue for the purpose of retiring state general obligation debt incurred
14 before May 2, 1978. The commissioner of revenue shall administer the
15 defeasance fund and shall use money in the fund to retire state general
16 obligation debt as that debt matures and becomes due. The commissioner of
17 revenue may invest money in the defeasance fund in investments authorized
18 for the Alaska permanent fund under AS 37.13.120.

19 * Sec. 2. Notwithstanding AS 37.13.145 and AS 43.23.045(b), on July 1,
20 1983, \$377,500,000 shall be transferred from the Alaska permanent fund net
21 income, as defined in AS 37.13.140, for the state fiscal year ending
22 June 30, 1983, to the defeasance fund established by sec. 1 of this Act.
23 If there is a balance of Alaska permanent fund net income remaining for the
24 state fiscal year ending June 30, 1983 after the transfer required by this
25 section, that balance shall be transferred to the principal of the Alaska
26 permanent fund for reinvestment. If there is insufficient net income of
27 the Alaska permanent fund to make the transfer required by this section in
28 full, the balance of the transfer shall be made on July 1, 1984.

29 * Sec. 3. The defeasance fund established by sec. 1 of this Act

1 terminates on July 1, 2001. Money or other assets remaining in the defea-
2 sance fund on July 1, 2001 shall lapse into the general fund.

3 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).

IV. Analysis for HB 161

The \$100,000 is for financial advising and legal fees related to establishment of the fund. The \$377,500,000 is a transfer of monies from the Permanent Fund earnings account to the Defeasance Fund. This transfer is made over two fiscal years. Once the Fund has been established, the G.O. bond debt of \$593,000,000 (as of 6/30/83) can be deducted from the State's books. The Defeasance Fund would reduce the appropriation to the State debt service by \$60,539,000 in FY 84, \$58,371,000 in FY 85, \$57,708,000 in FY 86, \$54,766,000 in FY 87, and \$53,044,000 in FY 88.

Creation of this Fund would eliminate the Permanent Fund dividend, inflation proofing, and undistributed accounts for FY 83.

The following individuals are expected to testify on HB 161:

Jerry Ward, prime sponsor

Commissioner Bob Heath, Department of Revenue

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 161
 Title: Establish a defeasance fund.
 Sponsor: Ward
 Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: Debt Service
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	100.0					
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
Debt Service		(60,539)	(58,371)	(57,708)	(54,766)	(53,044)
TOTAL OPERATING	100.0					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	100.0					
FEDERAL FUNDS						
OTHER (Specify Source) ^{From} PF Int.		-363,000	-14,500			
to Defeasance Fund		+363,000	+14,500			

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Cathy Poe
 Division: Treasury Division - Revenue

Phone: 465-2350
 Date: 3/29/83

Approved by Commissioner: Joseph Donoh
 Department: Revenue

Date: 3/30/83

Distribution:

Original to Legislative Finance
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3/8/83

IV. Analysis for HB 161

The \$100,000 is for financial advising and legal fees related to establishment of the fund. The \$377,500,000 is a transfer of monies from the Permanent Fund earnings account to the Defeasance Fund. This transfer is made over two fiscal years. Once the Fund has been established, the G.O. bond debt of \$593,000,000 (as of 6/30/83) can be deducted from the State's books. The Defeasance Fund would reduce the appropriation to the State debt service by \$60,539,000 in FY 84, \$58,371,000 in FY 85, \$57,708,000 in FY 86, \$54,766,000 in FY 87, and \$53,044,000 in FY 88.

Creation of this Fund would eliminate the Permanent Fund dividend, inflation proofing, and undistributed accounts for FY 83.

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

FEB 21 1983

Bill No: HB 161 Date on Bill: 2/4/83
 Title: "An act establishing a defeasance fund in the Dept. of Rev.
 Sponsor: Ward & Liska
 Requestor: House State Affairs Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating	\$100,000	-363.0 mill.	-14.5 mill.	
Total	\$100,000	To Def. Fund		
		+363.0 mill.	+14.5 mill.	

b. Revenues:

Revenue	FY 83	FY 84	FY 85	FY 86

2. Source of funds to offset fiscal impact of bill:

Permanent Fund Earnings

3. Assumptions:

The \$100,000 is for Financial Advising and legal fees related to establishment of the fund. The \$377,000,000 is a transfer of monies from the Permanent Fund earnings account to the Defeasance Fund. This transfer is made over two fiscal years. Once the Fund has been established, the G.O. bond debt of \$654,000,000 before May of 1978 can be deducted from the State's books. The Defeasance Fund would reduce the appropriation to the State debt service by \$60,539,000 in FY 84, \$58,371,000 in FY 85, and 57,708,000 in FY 86.

Creation of this Fund would eliminate the Permanent Fund dividend, inflation proofing, and undistributed accounts for FY 83.

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: _____ Phone: _____
 Division: _____ Date: _____

Approved by Commissioner: Joseph K. Donohue Robert Heath Date: 2/20/83
 Department: Revenues

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
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2/15/83

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
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November 30, 1982

Gerald L. Wilkerson, C.P.A.
Legislative Auditor
Legislative Audit Division
Legislative Affairs Agency
Pouch W
Juneau, Alaska 99811

Honorable Carole J. Burger
Commissioner
Department of Administration
Pouch C
Juneau, Alaska 99811

Re: The dedicated funds
prohibition applied to various
funds and accounts. Our Files
Nos. J66-785-81 and J66-649-80

Dear Mr. Wilkerson and Commissioner Burger:

You have both asked for a broad review of the application of the constitutional dedicated funds prohibition to various state funds and accounts. Alaska Const. art. IX, § 7. Because of the factual complexities presented by the various funds, accounts, and appropriations and because of the paucity of judicial precedent, we are not able to advise you with absolute certainty regarding the constitutionality of state practices. However, some of the issues raised by your request may be resolved in litigation which is now pending concerning the administration of

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certain appropriations and funds by the Alaska Power Authority. 1/

In response to your request, we have identified and analyzed several categories of funds, accounts, and transactions which raise dedication questions. Our approach in dealing with these questions will be to first discuss the purpose and meaning of the dedication prohibition. We will then focus on the implications of a recent Alaska Supreme Court case that deals specifically with the dedicated funds prohibition. Next we will consider the probable legal status of several general categories of funds, accounts, and appropriations which raise dedication questions. Lastly, we will consider the dedication prohibition in reference to specific funds and appropriations.

We should point out that the advice given in this opinion could have a significant effect upon the state budget. This results from the recent adoption of Article IX, section 16 of the Alaska Constitution (the spending limit). Under the reasoning of this opinion, it may be that income earned by a loan fund or public enterprise must be appropriated to that fund or

1/ The legal issues in this litigation are the validity of the deposit of interest and principal payments on loans in a revolving loan fund and of the appropriation to the Power Development Fund of interest to be received on specific amounts appropriated to that fund (§ 1 ch. 90, SLA 1981 as reenacted by § 69 ch. 69 SLA, 1981 and amended by § 236 ch. 141, SLA 1982.). Trustees for Alaska, et al. v. State of Alaska and Alaska Power Authority, No. 3AN-492-82 Civ. (Alaska Super., Jan. 21, 1982)

enterprise if that income is to be retained by it. If the Alaska Supreme Court adopts that reasoning, the necessity for these appropriations would have to be considered by the administration and the legislature in developing a state budget which conformed to the spending limit. This concern would also become important if independent authorities for operation of entities like the State Ferry System or the Alaska Railroad were to be considered.

I. THE PURPOSE OF THE PROHIBITION

- Article IX, Section 7 provides:

DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [establishing the Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

There are essentially two views of the meaning of this provision. Under the first interpretation the dedicated funds prohibition would require that every dollar received by the state be deposited and remain unrestricted in the general fund until it is withdrawn pursuant to an appropriation authorizing the expenditure of a specific dollar amount for a specific pur-

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pose (absent a contrary federal requirement or a statutory dedication which existed prior to ratification of the Constitution). This is known as the strict interpretation view.

Under the strict view, the phrase "proceeds of any state tax or license" would encompass every dollar paid to the state (or to a public corporation or authority established by the state) for whatever purpose. State loan repayments (both principal and interest), enterprise receipts (e.g., airport lease revenues, parking garage receipts, etc.), program receipts (e.g., Ferry System ticket sales, University of Alaska tuition receipts, etc.), as well as all other revenues (e.g., taxes, natural resource revenues such as royalties, etc.), would be required to be deposited in the state treasury and retained there until the expenditure is authorized by appropriation of a specific dollar amount.

An argument can certainly be made that this is the proper interpretation of the dedicated funds prohibition. As set out in 1975 Op. Atty. Gen. No. 9 at 2 (Alaska May 2, 1974), "Section 7 of Article IX had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes [i.e., 'earmarking'] and (2) to prevent the creation of new special funds separate from the general fund." The rationale underlying each of these two purposes is "that the widespread existence of dedicated revenues lodged in special funds deprives

both the governor and the legislature of 'any real control over the finances of the state.'" Id. at 3 (citation omitted). Requiring all monies received by the state to be deposited into the general fund clearly would satisfy both interrelated purposes of the prohibition. The strict interpretation view of the dedication prohibition would preclude the use of public monies to establish a standing or revolving loan fund or any other program which would be self-sustaining. 2/

However, a second approach in interpreting the meaning of Article IX, section 7 is also very plausible. Under this view, the dedication prohibition is not to be construed to require a blanket prohibition of self-sustaining programs set up by the legislature. As noted in 1975 Op. Atty. Gen. No. 9 at 6-8 (Alaska, May 2, 1975), the constitutional framers substituted the phrase "[t]he proceeds of any state tax or license" for the phrase "[a]ll public revenues" to avoid having to state a number of intended exceptions to the prohibition on dedicated funds. Examples of these exceptions were pointed out in a January 4, 1956, 3/ memorandum by the Public Administration Service (PAS) to

2/ Of course, even under the strict view, there would be some kinds of monies received by the state which it could not, for independent legal reasons, deposit into the general fund. These monies would include trust funds, restricted gifts, and funds subject to restrictions by contract.

3/ The actual date shown on the memorandum is "January 4, 1955". However, considering the timing of the constitutional convention, this was certainly a typographical error.

the Constitutional Convention: "pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units." 4/

Some of those examples were specifically mentioned by the court in State v. Alex, 646 P.2d 203 (Alaska 1982), which held that the phrase "proceeds of any state tax or license" was to be broadly construed to include all sources of public revenues. The court noted that the drafters intended to permit the establishment of certain special funds, (e.g., sinking funds for the repayment of bonds), but to prohibit the earmarking of any special tax to such a fund. Alex, supra at 210. The court did not elaborate on the application of the dedicated funds prohibition in these situations.

4/ The Public Administration Service prepared a publication entitled "Alaska Statehood Commission, Constitutional Studies (1955)" at the request of the Alaska Territorial Legislature for use at the constitutional convention. Ch 108 SLA 1949. This publication collected research papers on other state constitutions. Copies were mailed to all delegates, and it was often referred to in the convention proceedings. Alaska Statehood Committee, "Handbook for Delegates to the Alaska Constitutional Convention" 4 (1955). Referred to in State v. Alex, 646 P.2d 203, 209 n. 5 (Alaska 1982). The memorandum of January 4, 1956 contained comments by the PAS on the proposed draft of the Finance and Taxation article. Constitutional Convention Finance Committee minutes, Jan. 13, 1956.

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II. MEANING OF THE PHRASE "PROCEEDS OF ANY STATE TAX OR LICENSE"

There has been continuing controversy over the proper construction of the phrase "proceeds of any state tax or license." In a number of earlier opinions, this office concluded that the dedicated fund prohibition did not reach all public revenues but, under its plain language, only the actual "proceeds of any state tax or license." See 1969 Op. Atty. Gen. Nos. 3 (Alaska, April 4, 1969) and 5 (Alaska, April 15, 1969); and 1959 Op. Atty. Gen. No. 7 (Alaska, March 11, 1959). This conclusion also was reached by the Division of Legal Services in the Legislative Affairs Agency. See September 1, 1977 memorandum from Bill G. Berrier, Director, to Subcommittee on Alaska Renewable Resources Development Fund of Alaska Permanent Fund (House).

Those opinions all concluded that the prohibition did not reach revenues derived from the disposal of state-owned natural resources. Given this conclusion, it followed that the legislature was free to dedicate all or a certain portion of such revenues to specific purposes. An example of this is found in AS 37.11.020, which requires that not less than five percent of state mineral lease receipts be deposited in the Alaska Renewable Resources Development Fund. (This statutory dedication was the subject of Mr. Berrier's September 1, 1977, memorandum).

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On the other hand, 1975 Op. Atty. Gen. No. 9 at 24
(Alaska, May 2, 1975) reached the opposite conclusion:

Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.

Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

(Emphasis added.)

In State v. Alex, 646 P.2d at 210, the Alaska Supreme Court adopted the position set out in 1975 Op. Atty. Gen. No. 9 (Alaska, May 2, 1975). 5/ It now is clear that the term "proceeds of any state tax or license" is to be construed broadly to reach all public revenues, including public revenues from the development of state-owned natural resources, and not just the proceeds of taxes and license fees.

5/ Alex involved a challenge by commercial fishermen to the collection by a private aquaculture association of a special assessment authorized by statute and imposed on the sale of salmon. The court held that the statute improperly delegated the legislature's taxing authority, and that the assessment constituted "proceeds of a state tax or license" within the meaning of Article IX, section 7. State v. Alex, 646 P.2d at 210, 213.

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After the decision in Alex we can now reach some definite conclusions regarding some of the funds and accounts you have asked us to review. The answers to other questions, however, are not as clear.

III. IMPLICATIONS OF THE ALEX DECISION

There is no question that the dedicated funds prohibition in Article IX, section 7 flatly prohibits the legislature from dedicating future unrestricted general revenues to any particular purpose unless the dedication is required for participation in a federal program or the dedication existed before ratification of the Constitution. Alex, supra at 208-210. This confirms the view expressed in our April 1, 1981 memorandum opinion to the legislative auditor that the requirement in AS 37.11.020 that not less than five percent of state mineral revenues be placed in the Alaska renewable resources development fund is unconstitutional. This would be true of any statutory requirement that a specified percentage of revenues derived from the development of state-owned resources be deposited in a fund or earmarked for a particular purpose.

The Alex decision, however, does not provide answers to a number of additional questions. For example, does the dedicated funds prohibition apply (1) to money received through the sale of bonds (either general obligation bonds of the state or

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revenue bonds of a public corporation); (2) to receipts from operation of facilities constructed with bond proceeds; or (3) to interest or investment income earned on money appropriated for a specific purpose? In short, are there any exceptions to the prohibition beyond those expressly set out in the Constitution? The section immediately following discusses this question.

IV. POSSIBLE EXCEPTIONS TO THE DEDICATED FUND PROHIBITION

A. Implied Exceptions.

An early draft of what is now Article IX, section 7 (but which was at that time numbered section 8) read as follows: "All public revenues shall be deposited in the state treasury . . ." Subsequent to this early draft, the Committee on Finance and Taxation of the Constitutional Convention requested comments from the Public Administration Service on this wording. The PAS responded with the January 4, 1956 memorandum in which it warned that a strict interpretation of section 7 (then section 8) would prohibit the segregation of state money without regard to the source. The PAS then suggested that certain exceptions be identified in section 7. These exceptions included pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts

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which the state might collect on behalf of local government units.

After considering the PAS memorandum, the committee deleted the phrase "all public revenues shall be deposited ..." and substituted the phrase "The proceeds of any state tax or license ...". 3 Alaska Const. Conv. Proceed. at 2361. The record of the committee debate makes it clear that the purpose of this change was to meet the problems raised by the PAS in its January 4 memorandum. See 1975 Op. Atty. Gen. No. 9 at 8 (Alaska, May 2, 1975).

Given this drafting history, a very good case can be made that the present language of Article IX, section 7 must be read to include certain implied exceptions, such as those that are set out in the January 4 PAS memorandum, i.e., pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units. We believe this implied exception approach is the better interpretation of the dedicated fund prohibition and would be adopted by the Alaska Supreme Court if the question is presented to it.

B. Dedication of Money to Specific Purposes on a Continuing Basis When Appropriated

A question of the proper application of the dedicated funds prohibition arises when money is appropriated to a revolving loan fund or other special reserve fund or account. Revolving loan funds provide for the return to the fund of repayments by borrowers of the principal (and frequently the interest on that principal) 6/ which was loaned to them from the fund so that new loans can be made on a continuing basis. Special reserve funds involve essentially the setting aside of money for certain specified future needs or conditions which may or may not occur. 7/ When this is done, it might be argued that the legislature has made an impermissible dedication with respect to the future use of the money placed in those funds and accounts.

We believe the better view is that the dedication prohibition does not apply to money once appropriated by the legislature, regardless of whether the appropriation contemplates that the money will be expended. Usually appropriations authorize money to be spent. In other cases, however, the legis-

6/ We discuss the dedication of interest earned by revolving loan funds and other separate funds and accounts in the next portion of this opinion which begins below at p. 14.

7/ The "Rainy Day Account," AS 37.05.179, is an example of such an account.

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lature may prefer to establish by general law a continuing loan program and finance it through a one-time appropriation or to reserve money in a special fund or account for future use for limited purposes. A strong argument can be made that money once appropriated, regardless of the mechanism utilized, loses its character as revenue for the purpose of the dedicated funds prohibition because the purpose of the prohibition, i.e., that the legislature retain control over state revenues, has been satisfied.

Under this reasoning there would be no unlawful dedication involved in the return to a revolving loan fund of principal payments on loans. The initial appropriation would suffice to authorize the use of that money for other loans until the legislature reappropriates the unobligated assets of the fund or abolishes the fund.

Support for this position is found in the Alaska Supreme Court's analysis in the Alex case. In Alex, the court took note of the drafting change of Article IX, section 7 referred to earlier. This change, said the court, "did not seek to exempt some sources of revenue from the prohibition, but was intended instead to allow necessary dedication of funds once they were received and placed in the general fund." State v. Alex, supra at 210.

The Alaska Supreme Court has thus recognized that the dedication prohibition of Article IX, section 7 does not operate to prohibit all dedications whatever their nature. Rather, the court seems to be saying that Article IX, section 7 must be read to allow certain necessary dedications of money by the legislature after that money is received and placed in the state treasury (i.e., general fund). This analysis by the Supreme Court gives support to the argument that the dedication prohibition does not apply to money once it has been lawfully appropriated from the general fund and that the legislature can, without violating Article IX, section 7, create "necessary dedications" out of that money.

C. Income Generated by Specific Funds or Accounts

A question separate from that just discussed arises concerning the application of the dedicated fund prohibition to the interest or other income earned by money appropriated to revolving funds and other funds and accounts. Is that derivative income revenue which, under the prohibition, must be deposited in the general fund, or may it accrue directly to the fund or account which "earned" it, increasing the amount of money in that fund or account which may be spent without further appropriation?

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We are advised by the Department of Administration that the National Committee on Governmental Accounting has defined a fund to be:

A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

Municipal Finance Officers Association of the United States and Canada, "Governmental Accounting, Auditing, and Financial Reporting," 1980, Appendix B.

From the point of view of generally accepted accounting principles, then, income generated by a fund accrues to that fund unless a transfer is authorized. Economic theory also leads to that result, arguing that the interest or investment income on a particular fund is simply an increase in the value of the fund which offsets inflation and reflects the gradual growth of our economy. Under either approach, such derivative income ought not to be considered revenue subject to the dedicated funds prohibition.

Derivative income such as interest and investment income is not a traditional source of public revenue. It is generated by public revenue which has been received and appropriated and would not be generated if the legislature had

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simply spent the money rather than appropriated it to a separate fund. Thus, a statutory dedication of the interest or investment income of a separate fund would not impair the ability of future legislatures to control the spending of general revenues. Rather, it would create a new pool of resources to be used under the statutory guidelines applicable to a particular fund until a future legislature amended or repealed those guidelines. There is no indication in the minutes of the Constitutional Convention that the drafters considered the treatment of separate funds which are endowed in this manner.

A difficulty that arises from the view that the dedicated funds prohibition is not applicable to interest or investment income on separate funds is that it permits steadily increasing amounts of money to be received and used by state departments and agencies without legislative control through the annual budget process. This is precisely the problem posed by the dedication of revenue sources which the drafters sought to avoid. For this reason, while we are not certain about the likely outcome, we doubt that a blanket exception for derivative income would be approved by the courts.

After all, the Alaska Constitution was not written for accountants and economic theorists. Although not expressly addressed by them, the framers were very much aware of the boom-bust cycle of Alaska's economy. In fact, a driving force

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behind statehood was the desire of Alaskans themselves to be able to manage the income derived from those brief periods -- as Prudhoe Bay bears witness -- when the state may receive enormous sums of money which are then immediately available for expenditure or placement, by appropriation, into a variety of funds and accounts for various permissible purposes. Depending on the number and size of those funds and accounts, the interest earned on the money placed in them could itself be substantial and would almost certainly be of a magnitude which is far greater than that likely envisioned by the National Committee on Government Accounting in the above-quoted standard. Moreover, the significance of that interest income in properly managing the state's budget leads us to the conclusion that our framers would have considered it to be within the dedicated fund prohibition. As we have indicated, however, the answer to this question is not free from doubt. Consequently, until the question is ruled on by the courts, we will defend legislative action dedicating, by general law, derivative income to the funds which "earned" them.

In the absence of valid general law dedications of derivative income, we believe there would still be a way to maintain legislative control over revenues through the budgetary process while achieving the efficient accounting organization provided by separate funds. This would be if the legislature appropriated to the separate fund for a fixed period the amount

of interest or investment income received by that fund. Since each legislature has implicit budgetary authority for a maximum period of only two years, this practice would not impair the ability of future legislatures to dispose of those derivative revenues. Under this line of reasoning, the interest on a loan fund or other separate fund is public revenue which must be transferred to the treasury, unless the fund is authorized by appropriation to retain it for a specific period. Although it may be possible to argue in favor of a longer period, our recommendation is that these appropriations of derivative income to the fund which "earns" them be made annually, for each fiscal year.

D. Appropriations Stated in General Terms, Rather than Specific Amounts.

The annual budget has traditionally included certain appropriations not stated in specific dollar amounts but rather in terms of money to be received from certain sources during the fiscal year. Such an appropriation, for example, would authorize the risk management division of the Department of Administration to spend the anticipated proceeds from any insurance settlement

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or judgment arising from the damage or loss of state property. 8/
This practice ensures effective legislative control over state finances while, at the same time, it provides for budgeting flexibility which is especially useful for programs like risk management, the needs of which are necessarily unpredictable.

We have consistently advised that an appropriation is valid if it states a public purpose, has a source, states or implies a time period, and states an amount which is ascertainable by reference to specified information. Under this view a "revolving" loan fund could be established and operated, even if both principal and interest payments on loans are considered to be revenues which may not be dedicated, as long as there is an annual appropriation to the fund of all principal and interest payments received by the fund during the fiscal year. The fund would continue to revolve as long as it was included in the budget.

8/ See, for example, Sec. 7 ch. 113, SLA 1978 which provides:

Amounts equivalent to the amounts to be received in settlement of insurance claims for property losses are appropriated from the general fund to the affected agency for the purpose of replacing the facility or service lost as a result of the incident giving rise to the insurance claim.

Under this language, the state could undertake immediate repair or reconstruction of a school, maintenance facility, or other property damaged by fire or other cause covered by insurance without having to wait for actual settlement and payment by the insurer.

The practice of appropriating to a separate fund an amount to be ascertained by reference to receipts from a specified source during a definite period accommodates the need and desire of each legislature for budgetary flexibility without impairing the ability of future legislatures to control and dispose of public revenues. In fact, since the legislature maintains control of the appropriation by means of the budget, it could be argued that this practice does not even create a dedication in the first place since a true dedication must function to take control away from the legislature. If legislative control is present, then a dedication does not exist.

We do not think that this practice violates the dedication prohibition.

V. APPLICATION OF DEDICATION PROHIBITION TO SPECIFIC FUNDS,
ACCOUNTS AND APPROPRIATIONS

We have identified the following categories of funds, accounts, and appropriations which raise dedicated funds questions.

- A. Allocation of a revenue source by statute to a fund or account from which it may be withdrawn only for limited purposes by appropriation.

1. Tobacco Tax (School) Fund (AS 43.50.140). This fund existed before ratification of the Alaska

Constitution and is therefore authorized to continue under Article IX, section 7. This tax and dedication have not been changed, but the legislature has imposed an additional tax on cigarettes which is deposited in the general fund. Although we have issued several opinions on the subject, there has been no judicial review, and it remains unclear to what extent the legislature may change the dedication or the underlying revenue source within the limit of "continuing" the dedication. 9/

2. Fish and Game Fund (AS 16.05.100 et seq.). The dedication of proceeds of fishing and hunting licenses to the operation of a Department of Fish and Game is required by federal law for participation in federal programs and is therefore authorized by Article IX, section 7. See 16 U.S.C. § 669. However, as discussed earlier, it is not clear whether a dedication of interest

9/ See Atty. Gen. Op. Nos. 7, 9, and 14; inf. memo (Alaska, March 10, 1966); Atty. Gen. Op. No. 22 (Alaska, June 2, 1978); inf. memo (June 30, 1981).

earned on investments in a fund such as that made by AS 16.05.110(5) is constitutional.

3. Reserves for Capital Outlay (AS 37.05.157) and Energy Facilities Development (AS 37.05.158).

By statute there is allocated to each of these accounts a fixed percentage of annual receipts from minerals on state land. Both of these funds appear to be unconstitutional dedications to the extent that they restrict the purpose for which money may be spent. We are informed that the Department of Administration has recorded the amounts to be allocated to each account but has not retained that money for expenditures related to capital outlay or energy facilities development. We also understand that the legislature has not made any appropriations from these two accounts. We suggest that AS 37.05.157 and AS 37.05.158 be repealed.

4. Renewable Resources Fund (AS 37.11.010-090). As we advised in our 1975 Attorney General Opinion No. 9, this statutory dedication is unconstitutional. We understand that the Department of Administration has followed our advice and has disregarded AS 37.11.010-090. We suggest that these statutes be repealed.

B. Allocation by Statute of Revenue to a Fund or Account
From Which it may be Spent or Used Without Further Ap-
propriation

1. Public Employees Retirement System Fund (AS 39.35)

This fund receives money from employees and employers who participate in the system. State employer contributions are paid to the fund monthly. AS 39.35.280. State employee contributions are statutorily required to be withheld from wages and transferred to the funds. AS 39.39.170. Participating political subdivisions make similar contributions on behalf of their employees. Benefits are paid to members of the retirement systems according to statute AS 39.35.370 et seq. Expenses of administering the system are also paid from the fund but are specifically required by statute to be included in the annual operating budget. AS 39.35.100(b)(4). The Teacher's Retirement System is accounted for in the same manner.

Although this is clearly a dedication of money received by the state, we believe that it is permissible under the implied exception theory

discussed earlier. It is our opinion that there is an implied exception to the dedicated funds prohibition for pension fund contributions. 10/

2. International Airport Funds (AS 37.15.420, 430, 440)

The fund established under AS 37.15.420 contains money received from the sale of general obligation bonds for airport improvements and other grants or money provided for the same purpose for which the bonds were authorized. The fund established under AS 37.15.430 contains revenues received by the state from ownership and operation of its airports. The fund established under AS 37.15.440 contains interest earned on money in the section 420 fund and revenues transferred from the section 430 fund for the purpose of redeeming airport revenue bonds.

Although each fund provides for a dedication of state revenue, we believe that they are permissible under the implied exception theory discussed earlier at pp. 5 and 6. It is our opinion that there is an implied exception to the

10/ The constitutional provision for state employee retirement systems supports such an implied exception. Alaska Constitution, Article XII, section 7.

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 25

dedicated funds prohibition for revenue derived from bond issues and for revenue derived from facilities constructed with bond proceeds, at least to the extent that it is necessary to satisfy the debt obligation or maintain the facility so that it continues to generate revenues for that purpose. To the extent that revenues are dedicated for purposes which are not related to satisfying the debt or maintaining the facility 11/, we believe that dedication would

11/ AS 37.15.430(a) authorizes use of funds dedicated to the International Airport Revenue Fund for six purposes providing, in pertinent part, as follows:

The money in the revenue fund shall only be used for the purpose of paying or securing the payment of the principal of and interest on the bonds and of and on any other revenue bonds issued by authorization of the legislature to provide funds to acquire, equip, construct and install additions and improvements to, and extensions of and facilities for, the airports and to be payable out of the revenue fund, the purpose of paying the normal and necessary costs of maintaining and operating the airports and all of the improvements and facilities of them, the purpose of paying the costs of renewals, replacements and extraordinary repairs to the airports and all of the improvements and facilities of them, the purpose of redeeming before their fixed maturities any and all revenue bonds issued for the purposes of the airports, the purpose of providing funds to acquire, construct and install necessary additions and improvements to and extensions of and facilities for the airports and all of their facilities, and the purpose of providing funds to pay any and all other costs relating to the ownership, use and operation of the airports.

violate Article IX, section 7 unless it either existed prior to ratification of our Constitution or is required by federal law. 12/

3. Continuing Debt Service Appropriation (AS 37.15-.012)

This statute purports to create a continuing annual appropriation from the general fund of the amount necessary to pay debt service on all outstanding general obligation bonds. This may be a dedication of revenues for a specific purpose. 13/ Even if it is, it is our opinion that there would be an implied exception to the dedicated fund prohibition for bond obligations.

4. Rural Electrification Revolving Loan Fund (AS 44-.83.361)

This fund received an initial appropriation from which the Alaska Power Authority is authorized to make loans. Principal and interest

12/ A dedication of airport revenues did exist prior to ratification. § 32-3A-15 ACLA 1949. However, it was repealed in 1968 by § 2 ch. 14, SLA 1968. On the other hand, it may be that 49 U.S.C. § 1718, adopted in 1970 and amended in 1982 by Section 511 of the Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-760, would be interpreted to require dedication of all airport revenues to construction, maintenance and operation of airports.

13/ Our uncertainty on this point arises from the fact that the statute does not purport to dedicate a particular revenue source.

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 27

payments on loans made from the fund are required by law to return to the fund. As we pointed out above, at n. 1, the questions of whether the principal and/or interest payments are revenues which may not be dedicated in this manner is now a matter in litigation in a suit filed by the Trustees for Alaska.

We will be defending the Legislature's action in making both those dedications. In doing so, we will present in more detail a number of the arguments discussed above in support of the legislature's action. In addition, we will discuss the presumption of constitutionality of statutes and the deference due to the administrative and legislative interpretation of the dedicated funds prohibition. As indicated above, we believe that the return of principal payments to a loan fund does not offend the Constitution and that the return of interest payments to the loan fund may be permissible. However, we cannot predict with certainty the position that the court will adopt.

C. Appropriation of an amount from a specific revenue source (e.g., program receipts).

From time to time the legislature, by means of an annual operating budget appropriation, authorizes an agency to spend money that is generated out of one of the agency's programs. The appropriation also sets an upper limit on the amount that can be spent. Although program receipts are clearly state revenues which may not be dedicated, the practice of identifying program receipts as an appropriation source does not in any way limit legislative control over the expenditure of revenues because the legislature maintains control of the appropriation by means of the budget. Therefore, we believe that this practice is not affected by the dedicated funds prohibition.

D. Appropriation of an amount which is ascertainable only by reference to specified information.

Appropriations are regularly made to the risk management division, Department of Administration, of all proceeds during a fiscal year from claims, settlements or judgments arising from damage to or loss of state property. As pointed out above, at 18, this permits the state to repair or replace damaged property without specific appropriations, which would probably be either more or less than the actual property damage in any fiscal year. ...

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
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The only difference between this and a typical appropriation is in the determination of the amount appropriated. When a fixed amount is appropriated, obligations incurred against it may be honored as long as there is cash available in the treasury. When an appropriation is made for an amount to be received from a certain source during a specific period, obligations may be honored only if a sufficient amount of money has been received from that source and there is cash available in the treasury. However, the amount of the appropriation remains determinable. Consequently, it is our opinion that these kinds of appropriations do not violate the dedicated fund prohibition. 14/

14/ The pending litigation discussed earlier (Trustees for Alaska v. State, supra) also includes a claim that an appropriation to the Alaska Power Authority of the interest to be received on money separately appropriated to the Power Development Fund violates the dedicated funds prohibition. § 1 ch. 90, SLA 1980, as reenacted by § 69 ch. 92, SLA 1981 and amended by § 236 ch. 141, SLA 1982. The questioned appropriation does not state a specific time period during which the interest is to be accrued. Consideration by the court of this particular question might not occur since, by informal memo dated April 19, 1982, we advised the Treasury Division of the Department of Revenue that the interest must be returned to the general fund because of a specific statutory requirement, AS 44.83.388(b). We are informed that no interest has accrued to the Power Development Fund.

E. Other Miscellaneous Dedications

1. Appropriations to the Permanent Fund. Since the constitution (Article IX, section 15) specifically authorizes dedications to the Permanent Fund of "at least" 25 percent of certain revenues, we believe any additional dedication to the fund by statute 15/ or by appropriation is also permissible.
2. Rainy day account. AS 37.05 179 creates a reserve fund to which money is appropriated and authorizes it to be spent for certain necessary emergency operating expenses at some future time. It is our opinion that this practice is permissible under the theory discussed above beginning at p. 12 that money once it is appropriated loses its character as revenue for purposes of the dedicated funds prohibition. A contrary view would severely restrict flexibility in state budgeting and accounting, and we doubt that such a view would be adopted by the courts.

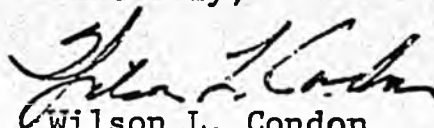
15/ In 1980, the legislature increased the percentage dedication applicable to most new mineral leases to 50 percent. AS 37.13.010(a)(2).

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
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November 30, 1982
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We hope you find this analysis helpful in determining the nature of the problems presented by the dedicated fund prohibition and the various statutory programs which may or may not run afoul of it. We expect to be able to advise you with greater certainty on some of these questions at the conclusion of the pending litigation described above.

Sincerely,


Wilson L. Condon
Attorney General

WLC:jf

cc: Ron Lehr, Director
Division of Budget and Management

Jay Hogan, Director
Division of Legislative Finance
Legislative Affairs Agency

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MAR 11 1983

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

March 11, 1983

SUBJECT: Department of Revenue position on HB 161
TO: Representative Jerry Ward
FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked our comments on the following question raised by the Department of Revenue concerning HB 161:

"In regard to the bill itself, the Department of Revenue sees possible legal problems. HB 161 is a temporary bill in that it attempts to take the earnings of the Permanent Fund for one year to create the defeasance fund. No attempt is made to repeal the current law governing the use of Permanent Fund income.

"The question must be addressed by law as to whether a temporary bill can override substantive law."

and on the rest of the paper.

The department appears to be confused. There can be no serious question that an amendment to law may have a less than indefinite duration. The duration of a law has no effect on its status as law for the period in which it is effective. It is possible that semantic confusion over the terms "temporary" and "permanent" has led to an unconscious hierarchal ranking which has no basis in law. Considering the terminology used it is more likely the confusion arises from the inability to amend substantive law in an appropriation bill. That arises from the constitutional requirement that appropriation bills must be confined to appropriations not from a distinction between temporary and permanent law.

The question is not whether temporary law can override permanent law, it is whether laws may be amended for a specific

Representative Jerry Ward
Page 2
March 11, 1983

period. The answer is clearly that they may and frequently are.

Therefore, of course, no attempt is made to repeal the current law governing the use of the permanent fund income. There is no intent to repeal these statutes, the intent is to amend them in a particular manner for a defined period. That is what the bill expressly does.

The department also questions whether the bill creates a constitutionally prohibited dedicated fund.

The question of dedicated funds arises only if the constitutional prohibition against dedicated funds is considered absolute. An argument can be made that the prohibition is absolute. This argument is set out well in a November 30, 1982, Opinion of the Attorney General commencing on page 3 (a copy of the opinion is enclosed). You will note however, that the Attorney General rejects that argument based on the reasoning set out in the opinion. I agree with that conclusion and in my opinion our Supreme Court has accepted that there are implied exceptions. In State v. Alex, 646 P.2d 203, our Court discussed dedicated funds and stated:

Under the original, all-inclusive prohibition of the dedication of "all revenues," there is no doubt that it was intended to prohibit any and all dedications. The committee intended it to prohibit not only the dedication of taxes, but also such revenue as the proceeds from the sale of state lands. See 3 Alaska Const. Conv. Proceed. 2317-19. The committee's spokesman stated that the purpose of the proposed amendment was to allow for the setting up of certain special funds, such as sinking funds for the repayment of bonds, but to prohibit the earmarking of any special tax to that sinking fund. 4 Alaska Const. Conv. Proceed. 2363. Thus, the change did not seek to exempt some sources of revenue from the prohibition, but was intended instead to allow necessary dedication of funds once they were received and placed in the general fund. 1975 Alaska Op. Atty. Gen. No. 9 at 10 (May 12). (Emphasis added)

This appears to be the only legal question raised in the position paper. The position that creation of a defeasance fund will restrict the amount of money available for appropriation by future legislatures, while clearly correct, seems not to be a legal point but merely a factual

Representative Jerry Ward
Page 3
March 11, 1983

observation that once money is spent it is no longer available for spending.

BGB:ljb
1/035

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

March 30, 1983

The Honorable Mitchell E. Abood
Chairman, House State Affairs Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HB 161

Dear Mr. Chairman:

Enclosed you will find the Department of Revenue's response to questions asked at the February 28, 1983 meeting of the House State Affairs Committee pertaining to HB 161. I hope this information is what you seek. If you would like any further information, please let me know.

Sincerely,



Robert D. Heath
Commissioner of Revenue

RDH:m11
Enclosure

POSITION PAPER ON HOUSE BILL 161

"An act establishing a defeasance fund in the Department of Revenue for the purpose of retiring State general obligation debt; transferring a portion of the income of the Alaska Permanent Fund to the defeasance fund and providing for an effective date."

This paper will explain certain aspects of a defeasance fund, highlight the issues surrounding its creation and present the position of the Department of Revenue.

A defeasance fund is a trust account which would be set up with an independent third party trustee such as a national bank. This account would be used to purchase a portfolio of securities whose maturities and cash flow income would correspond to the principal and interest payments of the G.O. bonds which are being defeased. Once the fund is established, the debt service on these bonds would not need to be appropriated from the General Fund.¹ A schedule of the yearly debt service on the pre-1978 bonds is attached. The reason the total appropriation is lower than the balance due on the G.O. bonds is because of the difference in interest rates which can presently be earned and the coupon rates of the bonds.

The bill refers to G.O. debt issued before May 2, 1978. The reason is that in 1978 the Internal Revenue Service issued a ruling limiting the amount of interest which can be earned on defeasance funds to the rate paid on the bonds. Thus, defeasance on bonds issued after 1978 offer little financial benefit.

In regard to the bill itself, the Department of Revenue sees possible legal problems. HB 161 is a temporary bill in that it attempts to take the earnings of the Permanent Fund for one year to create the defeasance fund. No attempt is made to repeal the current law governing the use of Permanent Fund income.

¹ Debt service is now an automatic appropriation (AS 37.15.012 by § 1 Ch. 100, SLA 1981).

The question must be addressed by law as to whether a temporary bill can override substantive law.

Another legal question deals with interest earned on the defeasance fund. The interest would go back into the fund by nature of the defeasance which could be viewed as a dedication of funds. Alaska's constitution prohibits dedication of funds. (Alaska Constitution Article IX, Section 7)

In analyzing the financial feasibility of the bill, the rate of interest paid on the G.O. bonds (see schedule attached) and the current rate of interest on investments must be compared. A majority of the bonds are below 6% interest and today's market will pay 8 1/2% to 10% interest depending on the type of security. Thus, there is little financial reason to pay off this low interest debt sooner than the current schedule specifies.

Also, to create this defeasance fund will restrict future legislative sessions' funding because once the fund is established, these monies are no longer available for appropriation.

Another problem connected with showing a surplus of funds is our national image. We are concerned that people in the "lower 48" may feel Alaska is not sharing its wealth with the nation. (Per letter dated February 3, 1983 to Representative Abood on this subject.)

8.4
Estimate
quadrant
The last point we wish to make concerns the status of future bonding issues. If the State of Alaska has the surplus funds to set up a defeasance fund, the IRS may view any future bond issues (at least for 18 months) as arbitrage bonds and declare them taxable. This would increase the interest rate considerably and could cost the State more money in interest payments.

For the reasons stated herein and in view of the Governor's policy concerning the use of Permanent Fund income, the Department of Revenue opposes HB 161. Our recommendation would be to continue paying the bonds on their established schedule.

Attachment

OUTSTANDING BALANCE ON PRE-MAY, 1978 G.O. BONDS
JUNE 30, 1983

<u>Bond Title</u>	<u>Rate of Interest</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
Univ. of Ak. Housing Bonds, 1958, Series A	3.00%	\$ 310,000	\$ 28,350	\$ 338,350
Ferries & Roads Bonds, 1961, Series A	3.82	6,130,000	1,115,870	7,245,870
"Composite 1/8/64 Sale", Series L	3.56	565,000	20,340	585,340
1964, Series B (1967 Issue)	3.75	7,277,000	1,741,932	9,018,932
1964, Series C (1967 Issue)	3.75	1,156,000	630,152	1,786,152
1967, First Series	4.50	9,190,000	2,316,125	11,506,125
1967, Second Series	4.90	8,550,000	2,222,270	10,772,270
1968, Series A	5.19	5,375,000	861,475	6,236,475
1968, Series B	5.24	4,250,000	672,657	4,922,657
1969, Series A	5.74	3,575,000	748,175	4,323,175
1969, Series D (1966 Univ. of Ak.)	3.00	1,380,000	380,100	1,760,100
1970, Series C	5.88	3,100,000	280,535	3,380,535
1971, Series A	5.07	10,285,000	2,924,680	13,209,680
1971, Series B	6.04	14,520,000	7,478,400	21,998,400
1971, Series C	6.04	2,950,000	1,509,000	4,459,000
1971, Series D	6.00	850,000	411,000	1,261,000
1972, Series A	5.24	15,800,000	5,958,000	21,758,000
1972, Series B	5.16	19,600,000	7,979,525	27,579,525
1973, Series A	5.12	15,000,000	5,890,500	20,890,500
1973, Series B	5.11	18,500,000	7,696,500	26,196,500
1973, Series C	5.80	26,500,000	13,319,375	39,819,375
1974, Series A	6.86	26,100,000	15,078,000	41,178,000
1975, Series A	5.99	33,200,000	16,552,100	49,752,100
1975, Series B	6.53	37,000,000	20,191,750	57,191,750
1975, Series C	6.86	32,250,000	16,298,075	48,548,075
1976, Series A	5.87	25,000,000	7,733,750	32,733,750
1976, Series B	5.80	25,000,000	7,672,500	32,672,500
1977, Series A	5.08	27,500,000	8,406,250	35,906,250
1977, Series B	4.51	24,000,000	3,283,000	27,283,000
1978, Series A (4/1/78)	4.87%	25,000,000	3,650,000	28,650,000
		<u>\$429,913,000</u>	<u>\$163,050,386</u>	<u>\$592,963,386</u>

DEBT SERVICE ON OUTSTANDING G.O. BONDS BY YEAR

<u>Years Ended June 30</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>	<u>Debt Service on pre 5/78 Bonds</u>
1984	\$100,175,000	\$63,240,329	\$163,415,329	\$60,539,165
1985	100,060,000	56,149,274	156,209,274	58,370,860
1986	101,465,000	49,119,762	150,584,762	57,707,763
1987	100,580,000	42,229,846	142,809,846	54,769,221
1988	100,885,000	35,449,255	136,334,255	53,044,505
1989	95,927,000	28,547,971	124,474,971	46,006,721
1990	87,760,000	22,063,090	109,823,090	40,131,590
1991	69,699,000	15,870,180	85,569,180	38,947,430
1992	48,349,000	10,523,425	58,872,425	38,152,425
1993	43,563,000	7,396,987	50,959,987	31,719,987
1994	20,598,000	5,219,975	25,817,975	25,817,975
1995	19,096,000	3,987,625	23,083,625	23,083,625
1996	18,610,000	3,864,412	21,474,412	21,474,412
1997	14,865,000	1,800,418	16,665,418	16,665,419
1998	13,380,000	1,008,193	14,388,193	14,388,194
1999	8,640,000	368,931	9,008,931	9,008,931
2000	2,531,000	69,081	2,600,081	2,600,081
June 30, 1983	<u>\$946,183,000</u>	<u>\$345,908,754</u>	<u>\$1,292,091,754</u>	<u>\$592,428,304</u>

How Am
3-17-83
AW



Alaska State Legislature House of Representatives

P.O. BOX 2716
ANCHORAGE, ALASKA 99510
(907) 276-4506

March 14, 1983

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4939

REPRESENTATIVE JERRY WARD
DISTRICT 13

MEMBER FINANCE COMMITTEE
CHAIRMAN OF SUBCOMMITTEE ON
COMMERCE & ECONOMIC DEVELOPMENT
CHAIRMAN OF SUBCOMMITTEE ON LABOR
MEMBER OF SUBCOMMITTEE ON STATE LOANS

The Honorable Al Adams
Chairman, House Finance Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: House Bill 161

Dear Mr. Chairman:

I would like to take this opportunity to respond to points raised by the Department of Revenue in their position paper regarding HB 161.

In reply to questions raised concerning the temporary nature of this bill and concerning the issue of dedicated funds, I enclose a copy of comments of Billy G. Berrier, Director, Division of Legal Services, Legislative Affairs Agency. I feel that his comments and the copy of the opinion from the Attorney General adequately address the legal questions raised.

The Department finds a problem in the fact that once the fund is established these monies are no longer available for appropriation. Since this bill affects only this years Permanent Fund income and that income will not be available to future legislatures no matter where it is appropriated this year, I fail to see the problem.

The Department also chooses to view this bill as showing a surplus of funds which will add to the "lower 48" misconception of Alaska. I view this bill as having the opposite effect of showing that the State is willing to adopt a conservative financial policy by arranging for payment of debts.

I appreciate this opportunity to support passage of this bill.

Yours very truly,
Jerry Ward
Jerry Ward
State Representative

Introduced: 2/4/83
Referred: State Affairs and
Finance

1 IN THE HOUSE

BY WARD AND LISKA

2

HOUSE BILL NO. 161

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act establishing a defeasance fund in the Department of Revenue for the purpose of retiring state general obligation debt; transferring a portion of the income of the Alaska permanent fund to the defeasance fund; and providing for an effective date."

7

8

9

10

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

12

* Section 1. The defeasance fund is established in the Department of Revenue for the purpose of retiring state general obligation debt incurred before May 2, 1978. The commissioner of revenue shall administer the defeasance fund and shall use money in the fund to retire state general obligation debt as that debt matures and becomes due. The commissioner of revenue may invest money in the defeasance fund in investments authorized for the Alaska permanent fund under AS 37.13.120.

19

* Sec. 2. Notwithstanding AS 37.13.145 and AS 43.23.045(b), on July 1, 1983, \$377,500,000 shall be transferred from the Alaska permanent fund net income, as defined in AS 37.13.140, for the state fiscal year ending June 30, 1983, to the defeasance fund established by sec. 1 of this Act. If there is a balance of Alaska permanent fund net income remaining for the state fiscal year ending June 30, 1983 after the transfer required by this section, that balance shall be transferred to the principal of the Alaska permanent fund for reinvestment. If there is insufficient net income of the Alaska permanent fund to make the transfer required by this section in full, the balance of the transfer shall be made on July 1, 1984.

29

* Sec. 3. The defeasance fund established by sec. 1 of this Act

1 terminates on July 1, 2001. Money or other assets remaining in the defea-
2 sance fund on July 1, 2001 shall lapse into the general fund.

3 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).