# COMMITTEE REPORT

# HOUSE

(11) FURTHER:

3/19/84 Date: 4-24-84

The Committee on FINANCE has had HBR 56

Relating to appropriations for program receipts.

under consideration and recommends:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ____ [ ] same title [ ] new title

and recommends ____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [X] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the ____ Committee

MEMBERS SIGNING
DO PASS

[signature]
[signature]
[signature]
[signature]
[signature]
MILO H FRITZ

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[signature] - No Rec
[signature] - No Rec
[signature] (No Rec)

[signature]
CHAIRMAN

Introduced: 3/19/84
Referred: Finance

IN THE HOUSE BY THE FINANCE COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 56

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

Relating to appropriations for program receipts.

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

WHEREAS Article IX, sec. 13, of the state constitution provides that no money shall be withdrawn from the treasury except in accordance with appropriations made by law; and

WHEREAS Article IX, sec. 7, of the state constitution provides that the proceeds of any state tax or license shall not be dedicated to any special purpose except as required by the constitution for the Alaska permanent fund or when required to participate in federal programs; and

WHEREAS an opinion of the Alaska Attorney General of January 12, 1984, questions the practice of labeling certain funds in the state budget "program receipts" to indicate that the funds are being appropriated from a funding source other than the general fund; and

WHEREAS there has been an extraordinary increase in the last several years in funds in the state budget that are shown as being appropriated from funding sources other than the general fund; and

WHEREAS the legislature finds no statutory basis for appropriating many of these funds as anything other than appropriations from the general fund;

BE IT RESOLVED by the Alaska State Legislature that the Governor is respectfully requested to instruct the Office of Management and Budget, division of budget review, to prepare the fiscal year 1986 state operating and capital budgets to indicate as appropriations from the general fund those funds which, in the opinion of the Attorney General, have no legal basis under the state constitution or statutes to be called "program receipts."

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HCR 56
Title: Relating to appropriations for program receipts
Sponsor: House Finance
Requestor: Adams
Date of Request:

FISCAL DETAIL
Agency Affected: Governor's Office
Program Category Affected: OMB
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 |
|---|---|---|---|---|---|---|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | | | | |
| CAPITAL | | | | | | |
| REVENUE | | -0- | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | -0- | | | | |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Al Adams

Prepared By: Rep. Al Adams
Division: House Finance Committee
Phone: 3706
Date: 4/22/84

Approved by Commissioner:
Date:
Agency:

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HCR 56
Title: Relating to appropriations for program receipts
Sponsor: House Finance
Requestor: Adams
Date of Request:

FISCAL DETAIL
Agency Affected: Governor's Office
Program Category Affected: OMB
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 |
|---|---|---|---|---|---|---|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | | | | |
| CAPITAL | | | | | | |
| REVENUE | | -0- | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | -0- | | | | |

POSITIONS:

| | | | | | | |
|---|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Rep. Al Adams Phone: 3706
Division: House Finance Committee Date: 4/22/84

Approved by Commissioner: Date:
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12/1/83

# Alaska State Legislature

*House of Representatives*

Al Adams

*Chairman*

*Committee on Finance*

Official Business

WHILE IN SESSION
Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3706

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3320

1024 W. 6th
Anchorage, Alaska 99501
(907) 274-0615


January 13, 1984

Mr. Jay Hogan, Associate Director
Division of Budget Review
Office of Management & Budget
Office of the Governor

Dear Mr. Hogan:

Yesterday I received a copy of Assistant Attorney General James Baldwin's opinion of January 12, 1984 regarding interest income from investments made by the University of Alaska. It appears to me that in addition to calling into question current practices of the University, the opinion also raises serious questions regarding the treatment of program receipts in the state budget. Specifically, it appears that in the opinion of the Department of Law, many program receipts are, in fact, general funds.

I would like you and your staff to reevaluate the Governor's FY 85 budget in light of this opinion for the purpose of segregating those program receipts which are truly general funds from those program receipts which meet the criteria for program receipts set out by the Department of Law. In so doing, I would imagine that it will be necessary to refine the definition of program receipts contained in Mr. Baldwin's opinion. Please attach your definition of program receipts to your breakdown of funds when you reply to this request.

Your attention to this matter will be appreciated.

Sincerely,

Al Adams
Chairman
House Finance Committee

APA/el
cc: Senator John Sackett
Mr. Mike Greany

# MEMORANDUM State of Alaska

TO: Jay Hogan, Associate Director
Division of Budget Review
Office of Management & Budget
Office of the Governor

DATE: January 12, 1984

FILE NO: 366-588-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

James L. Baldwin

By: James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

SUBJECT: University of Alaska investment power re interest income

This memorandum responds to a request for opinion made by your predecessor dated April 19, 1983. Our advice was requested concerning the status of receipts earned by the University of Alaska, and the treatment of interest income earned by the University of Alaska through the deposit of those receipts in an interest bearing account. We believe that certain funds held by the university may be invested and the legislature may appropriate interest as a source of funding separate from the state general fund. However, the investment power of the university does not extend to money which represents unrestricted state revenue appropriated to the university.

Specifically, you have asked "what authority is there to treat interest income as a program receipt?" The term "program receipts" is not defined by law. That term has been used to describe a source for certain appropriations included in the executive budget. Generally, the money is paid to a state agency by a third party in trust, for a specific purpose, or as a custodian, or as a consequence of authorized activities of the agency. For most executive branch agencies, receipts are paid monthly into a program receipts account within the state treasury (also referred to as the "general fund"). Each fiscal year the legislature appropriates money based on estimates contained in the governor's budget. If program receipts exceed the estimates, the agency may expend the money only after it submits a revised program for approval by the office of management and budget. AS 37.07.080(h). These appropriations are considered made from a funding source other than the general fund. However, the designation of program receipts as a separate source of funding in the executive budget is not appropriate for all of that revenue. Rather, some of the revenue can properly be considered separate because it is held in trust or as a custodian. The remainder must be considered unrestricted revenue: that is, the money is not held by the state as custodian nor held in trust for a specific purpose but is available for appropriation for any purpose.

Generally, program receipts are accounted for as a separate funding source for either of the following two reasons:

(1) by doing so the amount of general fund expenditures appears to be reduced without reducing spending; and (2) an agency can be encouraged to capture program receipts which it might otherwise lose for lack of a proper incentive. Unrestricted revenue in the form of program receipts should not be considered to be a separate funding source from other unrestricted revenue because to do so creates the same conditions for which the dedicated fund prohibition (Alaska Const. art. IX, § 7) was adopted to prevent.

You next ask whether certain sources of cash payments to the university are "property of the university or under state control." The university apparently retains all receipts from tuition, dormitory fees, rental income earned on university land, and private endowments given to the university. The university deposits these receipts without segregation in an investment account established by the university. The university considers all receipts generated by the operation of its programs to be property which may be segregated from the state treasury.

Generally, the dedication of state revenue is prohibited by article IX, section 7 of the Alaska Constitution. In State v. Alex, 646 P.2d 203 (Alaska 1982), the Alaska Supreme Court interpreted article IX, section 7 so that the dedication of any source of public revenue is prohibited. Certain exceptions to this prohibition are recognized, including pledges of revenue made to secure revenue bond financing. This type of dedication is enforceable because it is made by bond covenants which create a contractual relationship between the parties. For similar reasons, certain receipts from property held in trust may be segregated and expended only in accordance with terms of the trust. All other receipts of the university raised by operation of some general law become state public funds. Navajo Tribe v. Arizona Dept of Administration, 528 P.2d 623 (Ariz. 1974). Unless provided otherwise, these public funds should be promptly remitted to the state treasury where they are in the custody and under the control of the commissioner of revenue. AS 37.10.050; see also Opinion of the Justices, 134 N.E.2d 892 (Mass. 1956)(interpreting a state constitutional provision identical to the provisions of AS 37.10.050(a)).

Interest income earned from investment of university trust property may be appropriated as program receipts from a separate fund. Clearly, the university has the power to "invest ... money ... received from sources other than the state legislature or federal appropriations for the purpose of the University of Alaska, its adornment, or the aid or advantage of students or faculty ...." AS 14.40.250 (emphasis added). While the wording of the statute is ambiguous, we believe that the words "for the purpose of the University of Alaska, its adornment, or the aid or advantage of students or faculty" defines and limits the investment authority of the board of regents as to trust property. The exclusion of money received from the state legislature or federal appropriations probably applies to unrestricted revenue sources and is consistent with the provisions of AS 37.07 and AS 37.10. Investment of program receipts which are the source of appropriations made by the legislature is the responsibility of the Department of Revenue. AS 37.10.070.

The university may not deposit program receipts, which represent unrestricted revenues of the state, in interest bearing, federally insured accounts for safekeeping unless a statute is enacted which specifically provides for that power. The power of the university to manage its finances and property is subject to control by the legislature through the enactment of statutes. Alaska Const. art. VII, § 2; see also University of Utah v. Board of Examiners, 295 P.2d 348 (Utah 1956). The public finance laws of the state contemplate centralization of the investment of surplus state money in the Department of Revenue. AS 37.10.070(a). The legislature has specified by law certain institutions or instruments in which state money may be invested. In its defense, the university maintains that it is conservatively investing the cash "float" from various funding sources. However, nothing in law prevents this investment strategy from changing. A further expansion of the power to invest surplus state money without adequate provisions to govern this activity will increase the opportunity for diversion or mismanagement.

Unless AS 14.40.250 is amended to allow the university to retain and invest unrestricted revenues appropriated as program receipts, it must pay all cash earned by operation of general law directly to the Department of Revenue. The university must draw on appropriations of program receipts from the Department of Revenue in the same manner as other executive branch agencies. The request to expend interest income derived from receipts which are attributed to income earned from the investment of appropriated money should be denied. These receipts must be paid into the state treasury.

Finally, you have asked if provisions which set the rules for the lapse of appropriations apply to the university. We believe that AS 37.25.010 and 37.25.020 apply to the university in the same manner as other state agencies with one exception. Appropriations from segregated trust or custodial property of the university expire as provided by law but lapse into the separate funds of the university rather than the state treasury.

JLB/pjg

Introduced: 3/19/84
Referred: Finance

IN THE HOUSE BY THE FINANCE COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 56

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THIRTEENTH LEGISLATURE - SECOND SESSION

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