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BILL FILE LOG

BILL # SB 68

1/25 Original bill - Fiscal Note +
Letter of Transmittal

2/12 Letter from Milt Barker, Dept. of
Revenue



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 21, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that repeals certain accounts, funds, and dedications of state revenue, and makes amendments to delete language that might look too much like a dedication of certain revenue.

Sections 1 -- 4 of the bill make amendments to the motor fuel tax statutes (AS 43.40), which remove provisions that appear to segregate or dedicate for special purposes tax revenue earned from the sale of motor fuel. Certain statutes repealed in sec. 5 also relate to the amendments made by secs. 1 -- 4 of the bill. The repeal of AS 44.40.-010(f), (g), (i), and (j) in sec. 5 is consistent with the policy set out in art. IX, sec. 7 of the Alaska Constitution, which prohibits the earmarking of state tax revenue.

Section 5 of the bill repeals statutes that appear to create dedicated funds in a manner that is not consistent with the limitations imposed by the Alaska Constitution. Repealed in sec. 5 are: (1) the reserve for capital outlay account (AS 37.05.157); (2) the reserve for energy facilities development account (AS 37.05.158); and (3) a reference to AS 37.05.157 (reserve for capital outlay) in AS 37.07.062 dealing with the capital budget. The accounts and the funds are inactive because it has been determined that they violate the dedicated fund prohibition contained in art. IX, sec. 7 of the Alaska Constitution. On the advice of the attorney general, no deposits were ever made to these accounts, and none has an outstanding balance.

Also, in sec. 5 of the bill, the dedication of revenue to the Alaska Native fund (AS 37.20.040) is repealed because the fund is no longer needed to implement the Alaska

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Native Claims Settlement Act. AS 43.05.210 is repealed because the dedication, for specific uses, of a part of the revenue received under 36 U.S.C. sec. 191 (the Federal Mineral Leasing Act) is no longer required by federal law.

Under some circumstances, the dedication of state revenue might be appropriate. However, I believe that a dedication, if made at all, should be effected by amending the Alaska Constitution.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date _____

REQUEST

Bill/Resolution No: 68
 Title: Repealing certain accounts, funds, and dedications of revenue
 Sponsor: Governor
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<u>TOTAL</u>	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB
 Division: Treasury

Phone: 465-2350
 Date: October 22, 1984

Approved by Commissioner: _____
 Agency: Department of Revenue

Date: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA

DEPARTMENT OF REVENUE

TREASURY DIVISION

BILL SHEFFIELD, GOVERNOR

ELEVENTH FLOOR
STATE OFFICE BUILDING
POUCH SB
JUNEAU, ALASKA 99811
PHONE:

February 11, 1985

The Honorable Pat Rodey
Chairman
Senate Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Senator Rodey:

To assist in your consideration of SB 68, I would like to offer the following explanation of the bill's provisions.

1. Sections 1 - 4 and portions of section 5 of SB 68 amend the motor fuel tax statutes (AS 43.40) to remove provisions establishing the aviation, watercraft, and highway fuel tax accounts and the nonpublic highway use account in the General Fund and appearing to dedicate motor fuel tax receipts to the various accounts for certain purposes. These purposes are appropriations from the aforementioned accounts respectively for aviation facilities, water and harbor facilities, maintenance of highways and construction of highway projects and ferries, and trail staking and shelter construction and maintenance.

In recent years, appropriations for the above purposes have not been designated as being funded from these accounts.

Moreover, there seem to be implications in the statutes that monies in the account may be appropriated for other purposes since the monies are in accounts of the General Fund, rather than in special funds, and since the Legislature may, rather than shall, appropriate the monies to the above purposes.

In light of the dormant application of these statutes and their possible lack of substance, the Department of Revenue has suggested the repeal of the special accounts and seeming dedication of taxes thereto. The provisions for sharing of these taxes with municipalities are not affected by SB 68.

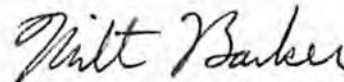
2. In section 5, the bill repeals the reserve for capital outlay account (AS 37.05.157), and a reference thereto

Hon. Pat Rodey
February 11, 1985
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(AS 37.07.062(c)(4), and the reserve for energy facilities development account (AS 37.05.158). These statutes require dedications of 25% and 5% of mineral revenues respectively to each account. The Attorney General in a November 30, 1982 opinion held that these statutes were unconstitutional dedications. No monies have ever been deposited in the accounts.

3. In section 5, the repeal of AS 37.20.040 (enclosed) would eliminate a requirement that the Commissioner of Revenue pay to the Alaska Native Fund amounts due to the Fund under section 9 of the Alaska Native Claims Settlement Act (enclosed). AS 37.20.040 became obsolete when the State had paid a total of \$500 million to the Fund. The State's payments were in the amount of two percent of the gross value of minerals produced and two percent of the mineral rentals and bonuses from State and Federal lands. An appropriation of \$292,585,100 was included in the FY81 General Appropriations Act, Ch. 120, SLA 1980, to extinguish the State's obligation.
4. Finally, in section 5, the repeal of AS 43.05.210 (enclosed) would eliminate a dedication in the Alaska Statutes of a portion of federal mineral leasing revenues. This dedication was enacted to conform to a requirement in Federal Statutes, 30 USC section 191. However, the Federal Statute has been amended to eliminate this required dedication. Both versions of 30 USC section 191 are enclosed. Inasmuch as the State has never identified this dedicated revenue stream as a fund source in its budgeting practices and since the requirement for dedication no longer exists, the Department of Revenue is suggesting the repeal of this dedication.

Sincerely yours,



Milt Barker
Deputy Commissioner

MB/gb

Enclosures

cc: Mary A. Nordale
85-22

Sec. 37.20.040. Alaska Native Fund. The amount required by federal law to be paid into the Alaska Native Fund established by P. L. 92-203 is not revenue of the state, except for the purpose of calculating the amount to be placed in the Alaska Permanent Fund, and shall be paid by the commissioner of revenue to the Alaska Native Fund directly on receipt. (§ 1 ch 107 SLA 1977)

Sec. 43.05.210. Funds received under the Federal Mineral Leasing Act. The initial 37½ per cent of federal mineral leasing revenues paid to the state under 30 U.S.C. 191 (Federal Mineral Leasing Act), as amended, shall be paid into the state general fund and appropriated by the legislature for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as required by the Act of Congress allocating the revenue to the state. The additional 52½ per cent of the revenues paid to the state under 30 U.S.C. 191, as amended, shall be paid into the state general fund for disposition by the legislature. (§ 1 ch 75 SLA 1951; am § 1 ch 45 SLA 1962)

REVENUE SHARING

SEC. 9. (a) The provisions of this section shall apply to all minerals that are subject to the disposition under the Mineral Leasing Act of 1920, as amended and supplemented.

(b) With respect to conditional leases and sales of minerals heretofore or hereafter made pursuant to section 6(g) of the Alaska Statehood Act, and with respect to mineral leases of the United States that are or may be subsumed by the State under section 6(h) of the Alaska Statehood Act, until such time as the provisions of subsection (c) become operative the State shall pay into the Alaska Native Fund from the royalties, rentals, and bonuses hereafter received by the State (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under such leases or sales) of such minerals produced or removed from such lands, and (2) 2 per centum of all rentals and bonuses under such leases or sales, excluding bonuses received by the State at the September 1969 sale of minerals from tentatively approved lands and excluding rentals received pursuant to such sale before the date of enactment of this Act. Such payment shall be made within sixty days from the date of revenues are received by the State.

(c) Each patent hereafter issued to the State under the Alaska Statehood Act, including a patent of lands heretofore selected and tentatively approved, shall reserve for the benefit of the Natives, and for payment into the Alaska Native Fund, (1) a royalty of 2 per centum upon the gross value (as such gross value is determined for royalty purposes under any disposition by the State) of the minerals thereafter produced or removed from such lands, and (2) 2 per centum of all revenues thereafter derived by the State from rentals and bonuses from the disposition of such minerals.

(d) All bonuses, rentals, and royalties received by the United States after the date of enactment of this Act from the disposition by it of such minerals in public lands in Alaska shall be distributed as provided in the Alaska Statehood Act, except that prior to calculating the shares of the State and the United States as set forth in such Act, (1) a royalty of 2 per centum upon the gross value of such minerals produced (as such gross value is determined for royalty purposes under the sale or lease), and (2) 2 per centum of all rentals and bonuses shall be deducted and paid into the Alaska Native Fund. The respective shares of the State and the United States shall be calculated on the remaining balance.

(e) The provisions of this section shall be enforceable by the United States for the benefit of the Natives, and in the event of default by the State in making the payments required, in addition to any other remedies provided by law, there shall be deducted annually by the Secretary of the Treasury from any grant-in-aid or from any other sums payable to the State under any provision of Federal law an amount equal to any such underpayment, which amount shall be deposited in the Fund.

(f) Revenues received by the United States or the State as compensation for estimated drainage of oil or gas shall, for the purposes of this section, be regarded as revenues from the disposition of oil and gas. In the event the United States or the State elects to take royalties in kind, there shall be paid into the Fund on account thereof an amount equal to the royalties that would have been paid into the Fund under the provisions of this section had the royalty been taken in cash.

(g) The payments required by this section shall continue only until a sum of \$500,000,000 has been paid into the Alaska Native Fund less the total of advance payments paid into the Alaska Native Fund pursuant to section 407 of the Trans-Alaska Pipeline Authorization Act. Thereafter, payments which would otherwise go into the Alaska Native Fund will be made to the United States Treasury as reimbursement for the advance payments authorized by section 407 of the Trans-Alaska Pipeline Authorization Act. The provisions of this section shall no longer apply, and the reservation required in patents under this section shall be of no further force and effect, after a total sum of \$500,000,000 has been paid to the Alaska Native Fund and to the United States Treasury pursuant to this subsection.

(h) When computing the final payment into the Fund the respective shares of the United States and the State with respect to payments to the Fund required by this section shall be determined pursuant to this subsection and in the following order:

(1) first, from sources identified under subsections (b) and (c) hereof; and

(2) then, from sources identified under subsection (d) hereof.

(i) The provisions of this section do not apply to mineral revenues received from the Outer Continental Shelf. (Amended November 16 1973, P.L. 93-153 Title IV § 407(b), 87 stat. 591)

Effect of amendments. — The 1973 amendment rewrote subsection (g).

NOTES TO DECISIONS

State's right to oil lease proceeds resolved. — By providing that tentative approvals of state land selections extinguished any aboriginal title thereto, Congress affirmed the Secretary of the Interior's authority to tentatively approve the state land selections pursuant to the Alaska Statehood Act and resolved all questions as to the validity of the state's right to the oil lease proceeds. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

State must pay certain mineral revenues to settlement fund. — The settlement act requires the state to contribute a portion of its oil and mineral

revenues to the settlement fund. Under this section, the natives have the right to receive \$500 million in revenues to be derived from mineral leases on public lands in Alaska, including lands tentatively approved to the state or selected by the state. Thus, Congress has already determined that the state must pay a certain amount of its mineral revenues towards settlement of native claims. *United States v. Atlantic Richfield Co.*, 435 F. Supp. 1009 (D. Alas. 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888, 101 S. Ct. 244, 66 L. Ed. 2d 113 (1980).

Cited in *Ukpeagvik Inupiat Corp. v. Arctic Slope Regional Corp.*, 517 F. Supp. 1255 (D. Alas. 1981).

§ 191. Disposition of moneys received

All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this chapter shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter not otherwise disposed of by this section shall be credited to miscellaneous receipts.

Feb. 25, 1920, c. 85, § 35, 41 Stat. 450; May 27, 1917, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub.L. 85-88, § 2, 71 Stat. 282; July 7, 1958, Pub.L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351.

Historical Note

References in Text. Reclamation Act, approved June 17, 1902, referred to in the text, is classified generally to Title 43, Public Lands. See Tables Volume for distribution.

Act June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252), referred to in the text, was classified to section 521 of former Title 31, Navy, was repealed by Act Aug. 10, 1950, c. 1011, § 53, 70A Stat. 611, and is now covered by section 7133(b) of Title 10, Armed Forces.

Codification. Provisions which authorized the payment of monies to the Territory of Alaska were omitted as superseded by the provisions authorizing the payment of monies to the State of Alaska.

1958 Amendment. Pub.L. 85-508, §§ 6(k), 28(b), eliminated provisions which related to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska and substituted "and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof" for "and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" preceding the proviso, respectively.

1957 Amendment. Pub.L. 85-88 inserted "and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" preceding the proviso.

1950 Amendment. Act Aug. 3, 1950, in providing that payments to States be made bi-annually instead of annually, substituted "as soon as practicable after December 31 and June 30 of each year" for "after the expiration of each fiscal year".

1917 Amendment. Act May 27, 1917, extended provisions by allocating 37½% of the money received from sales, bonuses, royalties, and rentals of public lands to the Territory of Alaska, for the construction and maintenance of public schools or other public educational institutions and added provisions relating to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska.

Admission of Alaska as State. Effectiveness of amendment of this section by Pub.L. 85-508 was dependent upon the admission of Alaska into the Union under sections 6(k) and 8(b) of Pub.L. 85-508. Admission was accomplished Jan. 3, 1959 upon issuance of Proc.No. 3269, Jan. 3, 1959, 21 P.R. 81, 73 Stat. 616, as required by sections 1 and 8(e) of Pub.L. 85-508. See notes preceding section 21 of Title 48, Territories and Insular Possessions.

Outer Continental Shelf; Revenues from Leases. Disposition of revenues from leases on submerged lands of outer Continental Shelf, see sections 1337(g) and 1368 of Title 43, Public Lands.

Legislative History and Congressional Comment. For legislative history and

§ 191. Disposition of moneys received

All money received from sales, bonuses, royalties, including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970 [30 USCS §§ 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 USCS § 1019], shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: Provided, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 [30 USCS §§ 1001 et seq.] from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 [30 USCS §§ 1001 et seq.] not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(As amended Jan. 12, 1981, P.L. 97-451, Title I, §§ 104(a), 111(g), 96 Stat. 2452, 2456.)