

S B

236

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of _____ 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED _____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

4/7/87

DATE TURNED INTO OFFICE _____

Mr. President:

RESOURCES _____ Committee considered _____ SB 236

establishing a special fund within the power project fund for power projects connected to the Fairbanks-Kenai Peninsula Intertie.

and recommended:

[] replace with CS _____ [] same title
[] attached amendment(s) and [] new title

[] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted and attached

** Committee [] attached or [] adopted fiscal note(s)
[] zero [] fiscal impact

MEMBERS SIGNING DO PASS

[Signature]

[Signature]

OTHER RECOMMENDATIONS

[Signature] - No Rec

[Signature]

Chairman signature and recommendation
pass

[] Committee Backup Attached

Alaska State Legislature

Senate Resources Committee



Box V

Juneau, Alaska 99811
(907) 465-4907

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Artiss Stankulewski
Sen. Jim Duncan
Sen. Fred Zhatoff
Sen. Dick Eliason

April 10, 1987

MEMORANDUM

TO: Members of the Senate Resources Committee

FROM: Senator Coghill

RE: SB 236, Railbelt Energy Revolving Loan Fund

In its report of January 24, 1987 to the Legislature, the Railbelt Energy Council recommended establishment of an energy project revolving loan fund utilizing monies remaining in the Railbelt Energy Fund after completion of the Bradley Lake Hydroelectric Project and the Kenai Peninsula-Anchorage-Fairbanks Interties. SB 236 sets up such a fund within the existing APA Power Project Fund.

The loans would be made to the interconnected Railbelt utilities in accordance with the existing criteria in AS 44.83.170. The only exception would be that the principal and interest payments and other earnings of the revolving loan fund would be retained by it.

On this latter point, while there has been substantial legal speculation and opinion as to whether retaining of the principal, interest and other earnings in a revolving loan fund violates the dedication of funds principle of the Alaska Constitution, to date there has not been a court case that has definitively resolved the issue. The best that can be said is that retaining the principal only is more defensible than principal and interest, and that retaining of principal, interest, and other earnings appears to be the least defensible case. According to an AG memorandum of July 19, 1985 (copy attached), the AG will continue to defend the practice despite having some reservations about the practice.

MEMORANDUM

State of Alaska

TO: Hon. Mary A. Nordale, Commissioner PATE July 19, 1983
 Milton Barker, Deputy Commissioner
 Department of Revenue FILE NO: 366-171-85
 TELEPHONE NO 465-3600

FROM: Norman C. Gorsuch SUBJECT: Dedication of interest income to fish & game fund and power development revolving loan fund
 Attorney General
 By: *Susan D. Cox*
 Susan D. Cox
 Assistant Attorney General
 Governmental Affairs-Juneau

You have asked whether the dedications of interest income to the fish and game fund in AS 16.05.110(5) and to the power development revolving loan fund in AS 44.33.600(b)(3) are constitutional. We have previously considered the question with respect to the fish and game fund in a 1982 formal opinion to the legislative auditor Gerald Wilkerson and then-Commissioner of Administration Carole Burger. 1982 Op. Att'y Gen. No. 13 (Nov. 30), a copy of which is attached. As indicated earlier, we would defend the constitutionality of the dedication of interest to the fish and game fund. Although the power development revolving loan fund was created just last year and we have not before specifically considered your question with respect to that fund, we believe the same advice applies.

The relevant constitutional provision 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 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.

Alaska Const. art. IX, § 7.

The fish and game fund is a revolving fund which is composed of, among other things, the proceeds of fishing and hunting licenses. AS 16.05.110. Your opinion request states that the "principal of the Fund has not, in general, been appropriated to the Fund but is the result of a statutory dedication necessary to receive certain Federal funds." This was noted by our November 30, 1982 opinion, which concluded that because "the dedication of proceeds of fishing and hunting licenses to the operation of a Department of Fish and Game is required by

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federal law for participation in federal programs," it "is therefore authorized by Article IX, section 7," 1982 Op. Att'y Gen. No. 13, at 21 (Nov. 30).

Your request for advice mentions that the pertinent federal statutes do not require dedications of the interest earned on the dedicated funds in order to participate in any federal programs. The Alaska legislature, however, has statutorily included "interest earned upon money in the fund" within the fish and game fund itself. AS 16.05.110(5). You ask whether this interest dedication is permissible in light of article IX, section 7 of our constitution. With respect to this question, our earlier opinion concluded that there was no easy answer to this question. 1982 Op. Att'y Gen. No. 13, at 21-22 (Nov. 30). However, I refer you to the discussion of this issue at pages 14-16, specifically our conclusion on page 17 that "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." */

The power development revolving loan fund was established in the Department of Commerce and Economic Development in 1984. AS 44.33.600(a). This fund consists of appropriations to the fund by the legislature, repayments of principal to the fund, and "income from investment of money in the fund and from loans made from the fund." AS 44.33.600(b). Your inquiry regarding dedication concerns only the dedication of investment income in AS 44.33.600(b)(3), not income from loans made from the fund.

The advice given in our earlier formal opinion is applicable to your question regarding the power development revolving loan fund. We see no reason to draw a distinction between the handling of "interest earned upon money in the [fish and game] fund" and "income from investment money in the [power development revolving loan] fund." AS 16.05.110(5) and AS 44.33.600(b)(3). In fact, the advice given in the November 1982 formal opinion is directed generally at "interest or other income earned by money appropriated to revolving funds...." 1982 Op. Att'y

*/ Our 1982 opinion mentioned that pending litigation was expected to resolve issues raised by your request: Trustees for Alaska v. State of Alaska and Alaska Power Authority, No. 3AN-492-82 CIV (Alaska Super., Jan 21, 1982), referenced in n.1 on page 2 of the November 30, 1982 opinion. However, our file for that litigation was closed this year, without any definitive opinions being rendered by the court.

Hon. Mary A. Mordale, Commissioner
Milton Barker, Deputy Commissioner
Department of Revenue

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Gen. No. 13, at 14 (Nov. 30). Although we cannot say with certainty how a court would treat the dedication of investment income, we will continue to defend this practice.

We hope this memorandum is helpful to you, and apologize for the delay in responding.

SDC/pjg

Enc.

cc: Gerald Wilkerson, Legislative Auditor
Division of Legislative Audit

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

FISCAL DETAIL

Bill/Resolution No.: Senate Bill 236
 Title: An Act establishing a special fund
within the Power Project Fund for power
projects connected to the Fairbanks-Kenai Peninsula
 Sponsor: Coghill
 Requestor: (S) Resources
 Date of Request: 4/10/87

Agency Affected: Alaska Power Authority
 BRU: Dept. of Commerce & Economic
Development
 Intertie.
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND		(1,500)*	(1,500)	(1,500)	(1,500)	(1,500)
FEDERAL FUNDS						
OTHER						
TOTAL		(1,500)	(1,500)	(1,500)	(1,500)	(1,500)

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

*Impact should be offset by reduced need of General Fund assistance for future Railbelt energy and conservation projects. Analysis based on a \$25 million fund and a reinvestment rate of 6 percent per year (the approximate rate of a high quality one-year CD).

Prepared by: Robert E. LeResche, Executive Director Phone: (907) 465-3575
 Division: Alaska Power Authority Date: 4/10/87

Approved by Commissioner: J. Anthony Smith Date: 4/10/87
 Agency: Dept. of Commerce & Economic Development

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
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