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FILE 1

MAR 31 1989

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1989

SUBJECT: Suggested amendment to CSSJR 20
(Transportation)

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Jack Chenoweth
Legislative Counsel

I've recently had reason to review the file of this joint resolution and want to suggest a change:

Page 1, line 28: Delete "shall" insert "may"

Page 1, line 28: After "legislature" insert "only"

The change would have the last clause of the sentence read:

. . . the principal and income of which may be appropriated by the legislature only for facilities and operations related to transportation and for enforcing laws applicable to transportation facilities and services.

I don't want to hand anyone an argument--and I think that may be what I've done in using "shall"--that a legislature must expend all money that constitutes the balance in the transportation fund. Rather, the change would make clearer that the legislature is free to make appropriations from the fund or to leave some money as a balance in that fund, but that appropriations from the fund made must be expended within the limitations identified in the balance of that sentence.

JBC:kb
wkr3/051

cc: Senator Lloyd Jones, Chair
Senate Transportation Committee

Original sponsor: Transportation Committee

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE
2 CS FOR SENATE JOINT RESOLUTION NO. 20 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 Proposing amendments to the Constitution
6 of the State of Alaska creating a dedi-
7 cated fund for projects, facilities, and
8 services related to transportation.

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

10 * Section 1. Article IX, sec. 7, Constitution of the State of Alaska,
11 is repealed and readopted to read:

12 SECTION 7. DEDICATED FUNDS PROHIBITED. The proceeds of any
13 State tax or license shall not be dedicated to any special purpose.
14 This provision shall not prohibit the continuance of any dedication
15 for special purposes existing on April 24, 1956, and shall not pro-
16 hibit the dedication of revenue under Sections 15 and 17 of this
17 article or when required by the federal government for State par-
18 ticipation in federal programs.

19 * Sec. 2. Article IX, Constitution of the State of Alaska, is amended
20 by adding a new section to read:

21 SECTION 17. TRANSPORTATION FUND. Effective July 1, 1991, money
22 derived from State taxes, licenses, and fees related to registration,
23 operation, or use of vehicles, aircraft, watercraft, the Alaska marine
24 highway system, and the use of other State transportation facilities,
25 and from taxes on fuel used for the propulsion of vehicles, aircraft,
26 and watercraft, less refunds and credits as provided by law, shall be
27 placed in a transportation fund, the principal and income of which
28 shall be appropriated by the legislature for facilities and operations
29 related to transportation and for enforcing laws applicable to

1 transportation facilities and services. The provisions of this sec-
2 tion do not apply to a tax, license, or fee levied and collected by
3 the State on behalf of a local government, or to revenue derived from
4 the use or operation of a facility constructed with bond proceeds to
5 the extent that it is necessary to satisfy the debt obligation or to
6 maintain the facility so that the facility continues to generate
7 revenues for that purpose. The legislature shall implement this
8 section.

9 * Sec. 3. The amendments proposed by this resolution shall be placed
10 before the voters of the state at the next general election in conformity
11 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
12 tion laws of the state.

STATE OF ALASKA
THE LEGISLATURE

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

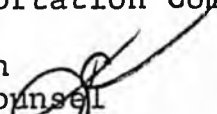
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 6, 1989

SUBJECT: Transportation fund (CSSJR 20) and related
legislation to implement (work order 6-0948A)

TO: Senator Lloyd Jones, Chair
Senate Transportation Committee

FROM: Jack Chenoweth
Legislative Counsel 

Accompanying this memo are copies of CSSJR 20, a constitutional amendment establishing a transportation fund, a dedicated fund, and companion legislation to implement that amendment.

*

To be responsive to the committee's instructions, the proposed in this version amendment is shorter and more general than the last. Specific instructions as to how the revenues would be accounted for, segregated into specific accounts, and expended are omitted.

I set the effective date of the proposed amendment to July 1, 1991, the start of the state fiscal year following the amendment's adoption. If adopted at the general election of November, 1990, and certified in the following month, the delayed effective date--permitted by art. XIII, sec. 1 of the state constitution--would mean no interference with appropriations made in 1990 for FY 1991, and the opportunity for the First Session of the Seventeenth Legislature to make any necessary legislative adjustments attributable to the amendment's adoption before the amendment actually took effect.

*

The companion bill picks up where the amendment leaves off.

Senator Lloyd Jones
Page 2
March 6, 1989

First, it was my understanding from the committee that the legislation should not separately account for and limit expenditures by source and objective, that instead there should be one central transportation fund, and I have drafted accordingly. If the committee wants to revert to the earlier model and provide for as many as four separate funds, or four separate accounts within one fund, and limit expenditures by project or facility objective, the bill can accommodate that change.

In a fairly quick review of existing laws establishing tax, license, and fee sources that would support the fund, I found very few. Those that I did locate are identified in this legislation.

In the accompanying bill, section 3 establishes the special fund and identifies the probable sources of revenues for deposit to the fund [subsection (a)]; addresses how fund balances are to be invested [subsection (b)] and how interest earnings may be treated [subsection (c)]; and the range of permissible expenditures [subsection (d)]. Bill section 6 repeals existing provisions governing disposition of motor fuel tax proceeds, and bill section 5 amends existing AS 43.40.010(e), a section relating to disposition of aviation-related motor fuel tax proceeds, to retain current provisions of sharing revenues with municipalities that operate state airports. (I initially thought that this is the provision that addresses Senator Pourchot's concerns about fuel revenue flow to the Anchorage International Airport but, by its terms, this section does not apply to state-operated aviation facilities.) Bill section 8 ties the effective date of the bill to the related constitutional amendment (i.e. July 1, 1991).

I direct your attention to bill section 4, relating to disposition of proceeds from activities at the Anchorage and Fairbanks International Airports. The amendments made to the section are minimal, but a distinction that is made seems critical. Recall that the constitutional amendment requires deposit into the general fund of "state taxes, licenses, and fees" applicable to the means of transportation. The current arrangement under AS 37.15.430(a) is to direct "fees" from international airport operations into that international airport fund. This redirection of revenue, it seems to me, is pertinent to Senator Pourchot's concerns regarding the income stream to the Anchorage

Senator Lloyd Jones
Page 3
March 6, 1989

International Airport. In this bill, I don't propose to interfere with the current arrangement, nor do I think that a change is required. The constitutional amendment reaches only to "fees related to registration, operation, and use of aircraft," while the current arrangement under the management of the international airport fund is based on "fees . . . derived from [state] ownership, lease, use, and operation of the [international] airports." There is, then, the distinction between the incidence of payment on the means of transportation (covered by the proposed dedicated fund) versus the management and operation of the related transportation facility (omitted from the proposed dedicated fund). Logic further suggests that landing fees and similar charges for state-operated airports would not come within the reach of the proposed constitutional amendment, and by extension fees paid by the public for use of state-operated ports and harbors and other state facilities would also be omitted.

This may not be the conclusion the committee wants to reach. The committee must come to a conclusion as to whether it is a distinction with a substantive difference.

JC:gc
WKG7/101

Enclosure

STATE OF ALASKA
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 22, 1989

SUBJECT: CSSJR 20 (Transportation) and companion
draft bill

TO: Senator Lloyd Jones, Chair
Senate Transportation Commission

FROM: Jack Chenoweth
Legislative Counsel 

This memo accompanies the redraft of two versions of CSSJR 20 (Transportation) and a companion bill, all of which were reviewed by the committee yesterday. Please note the following changes, based on the testimony of Commissioner Hickey:

To CSSJR 20 (Transportation), versions "E" and "H": In the fourth line of Section 17 of both versions, I have added the change requested "and the use of other state transportation facilities," so that fees levied for the use of state facilities may be captured by the respective fund(s).

To the companion draft bill, 6-0948A: In bill section 3, page 2, following line 18, I have added paragraphs (5) and (6) to address "concession fees" and "fees for the use of state transportation facilities" as additional sources of money for the transportation fund.

While I remain concerned about the relationship between fees for the use of state transportation facilities, especially state toll facilities, the next-to-last sentence of bill section 17 of each version of CSSJR 20 (Transportation) ("or to revenue derived from the use or operation of a facility constructed with bond proceeds to the extent that it is necessary to satisfy the debt obligation") should give priority protection to debt claims based on bond covenants, while providing sufficient latitude for the fund(s) to

Senator Lloyd Jones
Page 2
March 22, 1989

recover any excess or additional revenue generated by the use or operation of the specific facility.

Where necessary, I have made additions to the bill or resolution titles.

JC:gc
WKG8/062

Enclosure

STATE OF ALASKA
THE LEGISLATURE

STATE CAPITOL
U. ALASKA 99811
465-3800

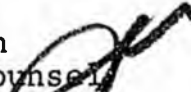
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 29, 1989

SUBJECT: CSSJR 20 (Transportation), establishing a dedicated transportation fund -- sectional analysis

TO: Senator Lloyd Jones

FROM: Jack Chenoweth
Legislative Counsel 

The joint resolution proposes a constitutional amendment to establish a transportation fund, a dedicated fund, for projects, facilities, and services related to transportation.

Section 1 revises art. IX, sec. 7 of the state constitution, and makes technical amendments to that section by substituting the date "April 24, 1956" for the phrase "date of ratification of this section" and by adding a reference to "section 17" as a second explicit exception (with existing section 15, establishing the permanent fund) to the prohibition against dedicated funds.

Section 2 establishes the transportation fund as a dedicated fund. If adopted, revenue obtained from the following sources after June 30, 1991 (that is, at the start of state fiscal year 1992) is to be placed in the transportation fund:

-- revenue derived from state taxes, licenses, and fees related to registration, operation, and use of (1) vehicles, (2) aircraft, (3) watercraft, (4) the Alaska Marine Highway System, and (5) the use of other state transportation facilities;

-- revenue derived from taxes on motor fuel used for vehicles, aircraft, and watercraft (less refunds and credits against those taxes provided by law).

The principal of and income earned by the transportation fund may be appropriated by the legislature for

Senator Lloyd Jones
Page 2
March 29, 1989

transportation facilities and services and for laws enforcing transportation facilities and services.

There are several specified exceptions applicable to the dedicated handling of revenue relating to the transportation fund. These include:

- proceeds of a tax, license, or fee levied and collected by the state for the benefit of a local government;

- revenue relating to use and operation of a facility whose construction or development is attributable to bonds, to the extent necessary to satisfy the debt obligation and to maintain the facility so that it continues to generate revenues to meet the costs of the bonds.

The legislature is directed to implement the section establishing the dedicated transportation fund.

Section 3 is a standard provision directing submission of the amendments to the voters at the November, 1990, election.

JC:gc
WKG8/091

Original sponsor: Transportation Committee

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE
2 CS FOR SENATE JOINT RESOLUTION NO. 20 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

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13 State tax or license shall not be dedicated to any special purpose.
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15 for special purposes existing on April 24, 1956, and shall not pro-
16 hibit the dedication of revenue under Sections 15 and 17 of this
17 article or when required by the federal government for State par-
18 ticipation in federal programs.

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26 and watercraft, less refunds and credits as provided by law, shall be
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29 related to transportation and for enforcing laws applicable to

1 transportation facilities and services. The provisions of this sec-
2 tion do not apply to a tax, license, or fee levied and collected by
3 the State on behalf of a local government, or to revenue derived from
4 the use or operation of a facility constructed with bond proceeds to
5 the extent that it is necessary to satisfy the debt obligation or to
6 maintain the facility so that the facility continues to generate
7 revenues for that purpose. The legislature shall implement this
8 section.

9 * Sec. 3. The amendments proposed by this resolution shall be placed
10 before the voters of the state at the next general election in conformity
11 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
12 tion laws of the state.

STATE OF ALASKA
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 18, 1989

SUBJECT: Authorizing dedication of funds for certain
transportation-related projects
(Work Order No. 6-0463A)

TO: Senator Lloyd Jones, Chair
Senate Transportation Committee
ATTN: Terry Otness

FROM: Jack Chenoweth
Legislative Counsel 

Per request, I've added a reference to "fees" (not "user fees" for reasons I shall note) into section 2 of the draft. For our purposes, I accept that a "fee" is any charge imposed by law, including regulation, for the provision of services by an agency or its employees' services or for the use of a privilege or facility operated by the government. It is in that context that I offer the word.

The suggested change is warranted. Fees are a form of the broader category of "program receipts," that is, of revenue that is generated by program activity. Without belaboring the point, suffice to say that the attorney general has concluded that "program receipts" are subject to the dedicated funds clause of article IX, section 7. If you want to exclude fees from the reach of the clause, there should be a reference to them in the exclusion.

"'User' fee" is, in my judgment, a redundancy. Under the assumption that I make in the first paragraph, only a person who seeks to take advantage of a program, service, or facility--in other words, a prospective user--would in fact pay an applicable fee.

A revised draft, incorporating changes, is enclosed.

JC:gc
WKG5/107

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

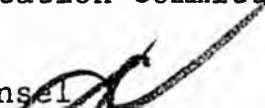
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 25, 1989

SUBJECT: Proposed Senate Joint Resolution to establish certain transportation-related funds and to dedicate the revenues and earnings from specified sources to those funds (Work Order 6-0463A)

TO: Senator Lloyd Jones, Chair
Senate Transportation Committee

FROM: Jack Chenoweth
Legislative Counsel 

The Transportation Committee's draft joint resolution would establish certain transportation-related funds, dedicate tax and other revenues imposed on or collected from means of transport to the funds established, and direct use of the revenues in the respective funds for projects and improvements that relate to the means of transport.

In the draft previously provided:

Section 1 revises the existing "dedicated funds prohibition" section of the constitution, substitutes "April 24, 1956" for the phrase "upon the date of ratification of this Section by the people of the State of Alaska," and adds the exceptions that allows the transportation-related dedicated funds in article IX, sections 17 and 18.

Proposed article IX, section 17 of section 2 establishes three separate dedicated funds--an airport fund for proceeds from taxes, licenses, and fees on aircraft-related activities; a ports and harbors fund for proceeds from taxes, licenses, and fees on watercraft-related activities; and a highway fund for proceeds from taxes, licenses, and fees on motor vehicles. The section then limits use of the balances in those respective funds to appropriations for (1) administration of the related revenue law; (2) public facility construction, reconstruction, repair, maintenance, and operation (including the payment of debt service) "applicable to the means of transportation to which that fund relates"; and

(3) law enforcement activities relating to the respective means of transportation. The section also specifically allows the highway fund balance to be used to support the Alaska Marine Highway System.

Proposed article IX, section 18 of section 2 establishes a separate Alaska Marine Highway System fund to receive the revenues generated by the systems operations, and to limit use of the balance--based on the revenues earned--for support of the system, as the section specifies.

Section 3 is standard language directing submission of the proposed amendments to the public for ratification.

*

One of the new sections added to the constitution uses the phrase "public facility . . . applicable to the means of transportation to which that fund relates." A determination that use of money in the fund for completion of a "public facility"--indeed, the identification of the object of expenditure as a "public facility"--is a matter for the legislature. That has not been a particularly troublesome point in recent legislation but, for the record, this legislation contemplates a definition of the term "public facility" that is not unlike the term "capital improvement" or "capital project" as defined in AS 37.07.120, the state's Executive Budget Act. To be internally consistent with other references in the state constitution, the committee may want to substitute "capital improvement" or "capital project" for "public facility" in this proposed resolution so that the courts, construing the phrase, will not think that two different meanings were intended. For examples of use, see art. IX, sec. 8; art. IX, sec. 9; art. IX, sec. 16, state constitution. [I do, in fact, encourage the committee to make the change.]

One of the new sections added to the constitution uses the word "proceeds" with reference to taxes, licenses, and fees. This is a deliberate choice, based on the state's experience with collection of taxes and fees. Had the term "revenue" been used, one might have been tempted to read the dedicated fund section, article IX, section 7, to require that all revenue that is received be deposited into the proper fund, without allowance for adjustments or refunds. That would be too harsh a conclusion, and probably unworkable as an administrative matter. "Proceeds" implies a "net revenue"

Senator Lloyd Jones
Page 3
January 25, 1989

concept, allowing the fund administrators some latitude to provide adjustments and refunds, as necessary, within the context of administration of the laws imposing and collecting the taxes, licenses, and fees before making the requisite deposit.

JC:gc
WKG6/042

STATE OF ALASKA
THE LEGISLATURE

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907 465 3800

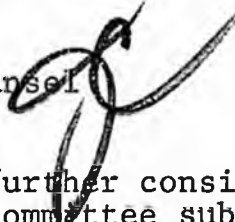
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 10, 1989

SUBJECT: SJR 20: testimony of Department of Revenue

TO: Senator Lloyd Jones, Chair
Senate Transportation Committee
ATTN: Terry Otness

FROM: Jack Chenoweth
Legislative Counsel 

The committee will doubtless further consider SJR 20, so I will not now prepare a draft committee substitute. I'd like to share a couple thoughts concerning testimony received yesterday.

Royce Weller, representing the Department of Revenue, noted the probable concerns of municipalities that the resolution as drafted would not allow a sharing of motor fuel tax receipts as currently exists under AS 43.40.010(e). May I suggest the following additional language to address that concern:

Page 2, line 5, amend to read:

. . . The legislature may appropriate from a fund established by this section only to pay the cost of administering the law imposing the tax, license, or fee from which the revenue is derived, to pay costs, and to make appropriations to local governments to pay costs, of construction, reconstruction, repair, maintenance, and operation of a capital improvement, including debt service, applicable to the means of transportation to which that fund relates, and to pay expenses of State enforcement of laws applicable to the means of transportation to which that fund relates. . . .

By linking the two provisions in this way, without making an already long sentence too much longer, it should be clear that the state may appropriate to municipalities to do the

Senator Lloyd Jones
Page 2
February 10, 1989

things that the state itself may do with the money, within the same limitations.

Mr. Weller also directed the committee's attention to the interrelationship of this provision to vehicles and aircraft covered under the pipeline property tax (AS 43.56) and the relationship to the vehicles and aircraft that are covered under the corporate income tax. These are, I sense, peripheral concerns. I am reminded that there is a comparable problem with reference to deposits to the Alaska Permanent Fund. Under the applicable constitutional section, there would arise questions as to whether a particular state receipt is or is not a "royalty," for instance, or a "royalty sale proceed." To the extent these permanent fund questions have been answered, they have been answered by law. The same approach may be used to address Mr. Weller's concerns: the legislature may act, by law, to determine what is a vehicle, or aircraft, or watercraft, and to say whether--for instance, with reference to the pipeline property tax imposed on vehicles and aircraft--the income should or should not be deposited into the applicable fund. I think the legislature may do this whether or not it has explicit authority in this section. However, if you want to avoid any doubt on the point, then you might incorporate into proposed article IX, section 17, a final sentence stating that "The legislature shall implement this section." See, in this regard, article I, section 3 (prohibition against denial of civil and political rights); article I, section 22 (definition of the right to privacy).

JC:lmb
L6/012

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1989

SUBJECT: CSSJR 20 (Transportation)

TO: Senator Lloyd Jones, Chair
Senate Transportation Committee
ATTN: Terry Otness

FROM: Jack Chenoweth
Legislative Counsel

The letter from Gary Lewis expressing concern about the relationship between the proposed amendment and the existing state collected motor vehicle registration fee suggests the need for clarification of the draft. I would suggest these changes:

Page 1, line 27: After "from", insert "state"

Page 2, line 12: After "system." insert --

"The provisions of this section do not apply to a tax, license, or fee levied and collected by the state on behalf of a local government."

*

The objection from the Department of Transportation and Public Facilities as to the "narrowness" of the separate accounting provision suggests that, at page 2, line 7, "harbor facilities" should be replaced by "harbors" (or, alternatively, "ports and harbors"), and "airport facilities" should be replaced by "airports".

*

The department also expressed concern as to the scope of permissible expenditures for law enforcement. I would suggest that page 2, lines 1 - 3, be revised to read:

"of administering the law under which the money is derived and enforcing laws applicable to the means of transportation to which the fund relates, . . ."

Senator Lloyd Jones, Chair
Page 2
February 27, 1989

*

Finally, I discussed with you the need for clarity as to whether or not sharing of money with local governments to provide transportation-related costs incurred by the local governments would be authorized. This is a subject which, in my view, should be squarely addressed in the proposed resolution, and could be handled by making the following change:

Page 2, line 4: After "craft," delete "and the cost"
Insert:

"and paying costs, and making appropriations to local governments to pay costs, of construction, reconstruction, . . ."

*

Shall I prepare a draft incorporating these changes?

JC:gc
WKG7/063



ALASKA STATE CHAMBER OF COMMERCE

310 Second Street
Juneau, Alaska 99801
(907) 586-2323

FEB 28 1989

February 24, 1989

Senator Lloyd Jones
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Jones:

The Board of Directors of the Alaska State Chamber of Commerce considered SJR 20 dealing with the dedication of funds from fuel taxes and have asked me to express the following concern to you and the other members on the Transportation Committee.

The Board is concerned about the maintenance of the transportation system in Alaska and are appreciative of the efforts you have expended in attempting to deal with this matter. Our objection to the adoption of SJR 20 is largely centered on a grave concern over the precedent that would be set with a constitutional amendment creating a dedicated fund.

Please call if you have any questions about our position or if we can be of assistance to you and the other members of your Committee.

Cordially,

A handwritten signature in dark ink, appearing to be 'G. Krusz', is written above the typed name.

George Krusz, President

GK:ly/jonesSJR20



Matanuska-Susitna Borough

P.O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-9642

ASSESSMENT DEPARTMENT

February 15, 1989

FEB 20 1989

Senate Transportation Committee
Lloyd Jones, Chairman
P. O. Box V (Mail Stop: 3100)
Juneau, AK. 99811

Dear Mr. Jones:

RE: SJR 20

This is a proposed constitutional amendment dedicating funds from fuel taxes on the surface, however, it also includes dedication of "The proceeds of state taxes, licenses and fees on motor vehicles....." (Page 2, line 2).

The dedication of state taxes on motor vehicles is of concern to municipalities which collect tax on motor vehicle property through the Department of Motor Vehicles. In the case of the Matanuska-Susitna Borough, this amounts to revenues of over \$800,000 per year. Anchorage, Kenai, Ketchikan, Kodiak, Nome, Petersburg and Whittier are similarly affected.

It is necessary to distinguish in this resolution the difference between State tax on motor vehicles and tax collected by the State for municipalities contained in AS28.10.431.

If this resolution is to affect revenues to local municipalities it should be strongly opposed or amended.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gary A. Lewis".

Gary A. Lewis
AML Taxation & Finance
Co-Chairman

ys

cc: Rep. Ronald Larson
Senator Jay Kerttula
Rep. Curt Menard
Senator Mike Szymanski

#2

No monies derived from fees, excises, or license taxes related to registration, operation, or use of vehicles, including the Alaska Marine Highway System, or to fuels used for the propulsion of such vehicles, shall be expended for other than the cost of administering the laws under which such monies are derived, statutory refunds and adjustments provided therein, payment of facility obligations, the cost of construction, reconstruction, maintenance, and repair of transportation facilities or enforcement of laws.. The legislature shall adopt statutes requiring the separate ~~accounting~~ accounting and expenditure of monies derived from highways, harbors, aviation and the Marine Highway System. The expenditure of monies shall be restricted to activities authorized herein for each ^{means of transportation to which the} separate account. ^{statute.} The legislature shall implement this section.



Official Business

Alaska State Legislature

Senate

P.O. BOX V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Senate Transportation Committee Members

FROM: Senator Lloyd Jones, Chairman
Senate Transportation Committee

A handwritten signature in cursive script, appearing to read "LJ", is written over the printed name of Senator Lloyd Jones.

DATE: January 26, 1989

SUBJECT: Proposed constitutional amendment dedicating transportation funds

Attached is a draft transportation committee resolution I would like the committee to consider sponsoring. It proposes a constitutional amendment creating dedicated funds from fuel taxes on aircraft, watercraft, and motor vehicle, as well as from, user fees and licenses, and creating a dedicated fund from revenue earned by the Alaska marine highway system.

The resolution is in part a result of the Governor's Task Force on Transportation Facilities recommendations. It is also based upon the experience of 27 other states that have passed anti-diversion amendments.

The purpose of the amendment is to put a direct correlation between the expenses associated with the state's transportation system and the taxes and the fees collected through its use. Should the state in the future decide to change fees or taxes, there would be a direct and immediate impact upon the particular transportation mode affected.

A constitutionally dedicated source of revenue can help prevent further deterioration of the state's existing roads, highways and airports. This would help instill in the general public a measure of confidence that funds received by the state through user taxes and fees would be allocated to those purposes.

I would appreciate your comments and suggestions regarding this proposal.

ALASKA STATE LEGISLATURE

Sen. Lloyd Jones, Chairman
Sen. Bettye Fahrenkamp, Vice Chairman
Sen. John B. "Jack" Coghill
Sen. Paul Fischer
Sen. Pat Pourchot



P.O. Box V
Juneau, AK 99811

907-465-4921

Senate Transportation Committee

MEMORANDUM

TO: Senate Transportation Committee Members

FROM: Senator Lloyd Jones, Chairman
Senate Transportation Committee 

DATE: February 9, 1989

SUBJECT: Proposed constitutional amendment dedicating transportation funds

Senate Joint Resolution 20 proposes a constitutional amendment creating dedicated funds from fuel taxes on aircraft, watercraft, and motor vehicle, as well as from, user fees and licenses, and creating a dedicated fund from revenue earned by the Alaska marine highway system.

The resolution is in part a result of the Governor's Task Force on Transportation Facilities recommendations. It is also based upon the experience of 27 other states that have passed anti-diversion amendments.

The purpose of the amendment is to put a direct correlation between the expenses associated with the state's transportation system and the taxes and the fees collected through its use. Should the state in the future decide to change and/or implement new fees or taxes, there would be a direct and immediate impact upon the particular transportation mode affected.

A constitutionally dedicated source of revenue can help prevent further deterioration of the state's existing roads, highways and airports. This would help instill in the general public a measure of confidence that funds received by the state through user taxes and fees would be allocated to those purposes.

ALASKA STATE LEGISLATURE

Sen. Lloyd Jones, Chairman
Sen. Bettye Fahrenkamp, Vice Chairman
Sen. John B. "Jack" Coghill
Sen. Paul Fischer
Sen. Pat Pourchot



P.O. Box V
Juneau, AK 99811

907-465-4921

Senate Transportation Committee

MEMORANDUM

TO: Jack Chenoweth
Legislative Counsel

FROM: Terry Otness ^{TO} Committee Assistant
Senate Transportation Committee

DATE: February 15, 1989

SUBJECT: Proposed CS for SJR20

Senator Jones is concerned that the language we have used in SJR 20 is too complex. Since it is a constitutional amendment, it is thought that it should be as simple and straight forward as possible. With this in mind, please review this language which was modeled from other state constitutions and try to incorporate it as a committee substitute.

If possible, please also make a version similar in form, which would allow dedication of highway motor fuel taxes to the Alaska Marine Highway System.

No monies derived from fees, excises, or license taxes related to registration, operation, or use of vehicles, including the Alaska marine highway system, or to fuels used for the propulsion of such vehicles, shall be expended for other than the cost of administering the laws of under which such monies are derived, statutory refunds and adjustments provided therein, payment of facility obligations, the cost of construction, reconstruction, maintenance, and repair of transportation facilities or enforcement of laws. The legislature shall adopt statutes requiring the separate accounting and expenditure of monies derived from highways, harbors, aviation and the Alaska marine highway system. The expenditure of monies shall be restricted to activities authorized herein for each means of transportation to which the separate account relates. The legislature shall implement this section.

Please call me at 465-4921 if you have any questions.

ALASKA STATE LEGISLATURE

While in Ketchikan
352 Front Street
Ketchikan, AK 99901
907-225-9675



While in Juneau
P.O. Box V
Juneau, AK 99811
907-465-3743

Senator Lloyd Jones

MEMORANDUM

TO: Transportation Committee Members

FROM: Senator Lloyd Jones, Chairman

DATE: February 27, 1989

SUBJECT: SJR 20, Dedicated fund for transportation

After the committee's first hearing on SJR 20 I instructed the committee assistant to prepare a draft committee substitute which would address the concerns raised by the various witnesses at the first hearing.

My first concern was to see if the language of the resolution could be simplified. I hope you'll agree that the new version is more concise. This is essentially model language suggested by the Federal Highway Users Federation. It has been modified to fit Alaska's particular needs.

The second concern was that fuel taxes which are collected by the international airports would be captured and diverted from international airport fund. In this new draft the present revolving airport fund could be continued.

Another concern expressed was that under A.S. 43.40 aviation fuel taxes are refunded at the rate of 60 percent to communities which own and operate or lease and operate aviation facilities. It was thought that under the previous language the communities would not be entitled to the refund. The new version insures that this arrangement will continue.

The Matanuska-Susitna Borough had written to express its opposition to the resolution in its present form out of a belief that the proposed constitutional amendment would capture the local funds which are collected by motor vehicles on behalf of the municipality. To ameliorate the concerns of those communities the term "state" has been inserted preceding taxes on page 1, line 26. On page 2, line 14, after "system." the following language has been added:

"The provisions of this section do not apply to a tax, license, or fee levied and collected by the state on behalf of a local government."

ALASKA STATE LEGISLATURE

Sen. Lloyd Jones, Chairman
Sen. Bettye Fahrenkamp, Vice Chairman
Sen. John B. "Jack" Coghill
Sen. Paul Fiscier
Sen. Pat Pourchot



P.O. Box V
Juneau, AK 99811

907-465-4921

Senate Transportation Committee

MEMORANDUM

TO: Transportation Committee Members

FROM: Terry Otness, Committee Assistant ^{TO.}

DATE: March 21, 1989

SUBJECT: SJR 20 revisions

There are two drafts in this packet. The resolution and the accompanying draft bill are the response to the committee's direction to simplify the resolution.

The second draft encompasses all previous changes to a "resolution only" concept.

Both versions incorporate many of the suggested changes the committee and other testifiers have offered.

The changes which have been incorporated into both draft resolutions are:

1. Language to ensure that the international airport revenues are kept separate.
2. Language to protect refunds of fees to municipal airports from the state.
3. Language to ensure protection for refunds of taxes collected by the state on behalf of municipalities.

Overview of Highway User Fee Protection

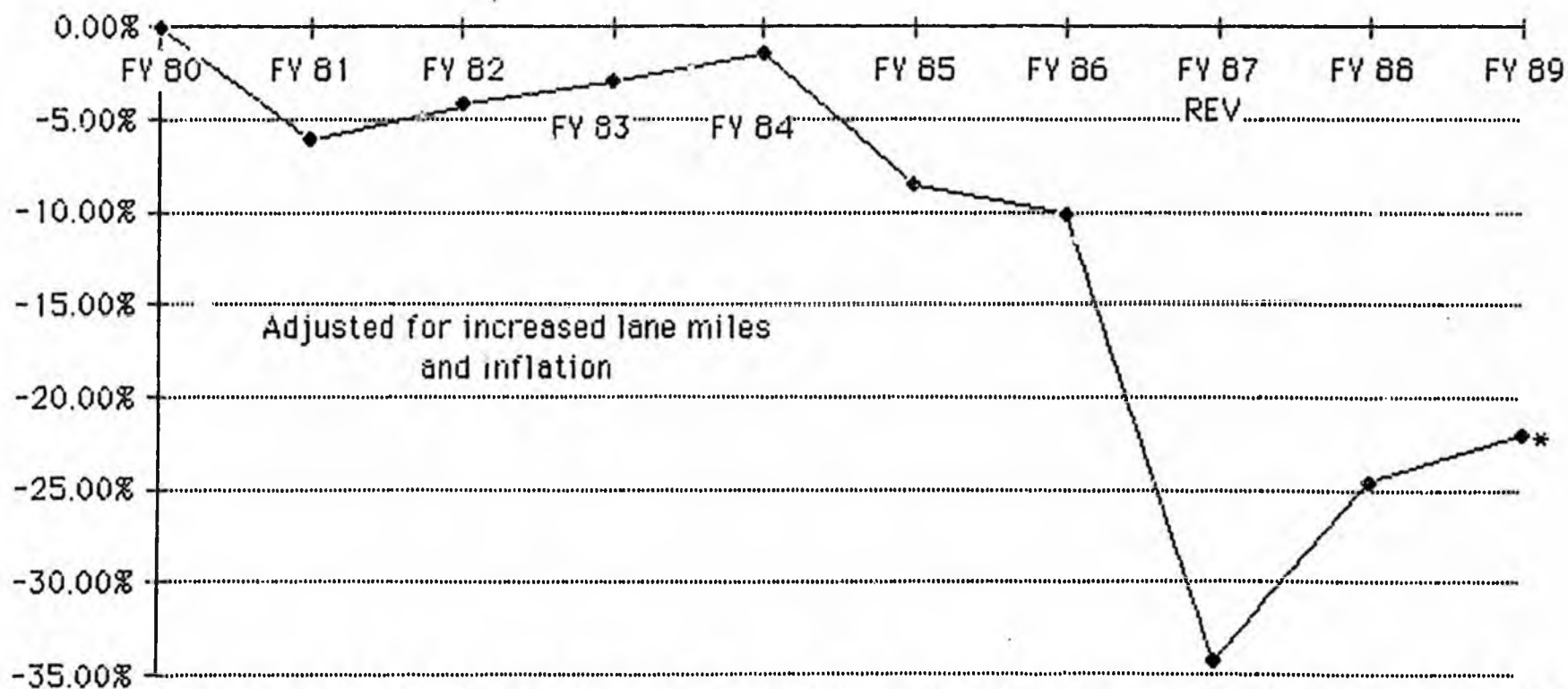
In assessing the overall status of highway user fee protection, it is important to understand that only a clear and comprehensive constitutional anti-diversion provision can provide any real protection. That point cannot be too strongly emphasized.

The kind of constitutional provision needed does not have to be long or complicated. The following language would serve quite well, for example:

No monies derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for other than the cost of administering the laws under which such monies are derived, statutory refunds and adjustments provided therein, payment of highway obligations, the cost of construction, reconstruction, maintenance, and repair of public highways and bridges, and the expense of state enforcement of traffic laws.

Seventeen states currently have language in their constitutions which affords that kind of excellent protection for highway user revenue. These states are shown in column A of the table on the next two pages. Another seven states have constitutional provisions which afford some protection for highway user revenue, but the protection is not complete. These states are shown in column B of the table.

MAINTENANCE AND OPERATIONS
COMPARATIVE EFFORT AVAILABLE
1980 THROUGH 1989 REQUEST



* increase of \$18,684,300 required in 1989 over present budget to bring the level back to the FY 1980 comparative funding level

S4

MAINTENANCE AND OPERATIONS COMPARATIVE EFFORTS AVAILABLE (1980 AS BASE)

FISCAL YEAR	AUTHOR. \$000'S	HIGHWAYS ONLY		CPI ANCH.	% CHANGE 1980 BASE	1980 AS THE BASE	
		LANE MILES	% CHANGE 1980 BASE			ADJUSTED AUTHOR.	PERCENT CHANGE
80	\$ 52,863.0	11177	100.00%	207	100.00%	\$ 52,863.0	0.00%
81	\$ 55,425.0	11325	101.32%	228	110.14%	\$ 49,662.5	-6.05%
82	\$ 62,980.0	11692	104.61%	246	118.84%	\$ 50,661.1	-4.17%
83	\$ 68,216.0	11830	105.84%	260	125.60%	\$ 51,312.6	-2.93%
84	\$ 72,242.0	11966	107.06%	268	129.47%	\$ 52,119.7	-1.41%
85	\$ 69,278.2	12050	107.81%	275	132.85%	\$ 48,369.6	-8.50%
86	\$ 71,685.1	12200	109.15%	286	138.16%	\$ 47,533.4	-10.08%
REV. 87	\$ 53,532.6	12375	110.72%	288	139.13%	\$ 34,751.7	-34.26%
88	\$ 62,721.0	12530	112.11%	291	140.58%	\$ 39,798.3	-24.71%
89	\$ 66,331.6	12656	113.23%	294	142.03%	\$ 41,245.1	-21.98%
TARGET	\$ 85,015.9	12656	113.23%	294	142.03%	\$ 52,863.0	0.00%

AMOUNTS ADJUSTED TO ADD SNOW AND ICE AND TRAFFIC SIGNAL COMPONENTS

TARGET 0% REDUCTION	\$ 85,015.9
1989 BUDGET	\$ 66,331.6
INCREASE REQUIRED	\$ 18,684.3

12X5280

S5

Federal Highway Mileage

1976

(miles)

2128.15	Primary
1740.50	Secondary
<u>105.33</u>	Urban
3973.98	

1982

1091.10	Interstate
1060.23	Primary
1765.60	Secondary
<u>98.69</u>	Urban
4015.62	

1985

1091.10	Interstate	
1074.88	Primary	increase 14.65 miles
1713.56	Secondary	decrease 37.39 miles
<u>206.70</u>	Urban	increase 108.01 miles
4086.24		

1988

1089.00	Interstate	
1075.35	Primary	
1725.81	Secondary	increase 12.25 miles
<u>217.82</u>	Urban	increase 11.20 miles
4107.98		

Since 1976, 134 miles have been added to the federal highway system. In that period, the urban routes have increased by an increment of 112.49.

MEMORANDUM

TO: Senate Transportation Committee

FROM: Senator Lloyd Jones

DATE: February 28, 1988

SUBJECT: SJR 66, proposing a constitutional amendment dedicating the proceeds from the motor fuel tax

This resolution would give the voters of Alaska the opportunity to dedicate proceeds from the highway fuel tax to a highway fund. The fund would be available for appropriation by the legislature for expenditure for construction and maintenance of roads and highways in the state. Twenty-four states presently have constitutional provisions in place which¹ protect highway user revenue through anti-diversion language.

The fund would receive an approximate annual revenue stream of an estimated \$23,235,888 ~~million~~ in proceeds from the highway motor fuel tax both highway and off-highway after the six cents per gallon off-highway rebate.

The purpose of this proposed constitutional amendment is to dedicate the proceeds of the motor fuel tax, thus making it a direct user fee. There is a direct correlation between the use of fuel and the use of roads and highways. In the case of off-highway use six cents of the eight cent tax is refundable and would remain so.

¹. According to the June 1, 1987, STATUS ON HIGHWAY USER FEE PROTECTION, by Highway Users Federation for Safety and Mobility, this fund would be available for appropriation by the legislature for the construction and maintenance of highways and roads in the State.

². Source: Department of Revenue FY 87

Page 2,
SJR 66
February 28, 1988

The highways and roads of our state have not been adequately maintained over the past few years. This has been the result of a combination of factors, among them; an expansion of the state's road system during the high growth years and an inflated DOT/PF administrative budget which resulted in less money into the maintenance of roads when the budget was reduced.

As a result of an overall shrinking state budget, DOT/PF has taken its share of budget reductions. This, combined with a more extensive state road system has created a funding shortfall for the maintenance of roads. This constitutional amendment would assure, with a diminishing state budget, these fuel tax funds would not be diverted to other uses.

I am offering this proposal to ensure all funds received from the fuel tax will continue to be utilized for the construction, and maintenance of state roads and highways. I believe dedicating these funds will give the citizens of Alaska confidence that expenditures from these user taxes will be used for highways into the future.

Attached for your consideration and information is a portion of the Highway Users Federation for Safety and Mobility report on user fee protection. Please note that page 12 is what the federation suggests as model language. The balance of the information contains information on Alaska's current law and on the constitutional protection provisions provided by various states.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

APR 11 1989

April 10, 1989

The Honorable Jan Faiks
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks:

Your committee has before it CS for SJR 20 (Transportation) - "Proposing Amendments to the Constitution of the State of Alaska creating a dedicated fund for projects, facilities, and services related to transportation." The Department of Revenue would like to submit one clarifying amendment.

Proposed Amendment

Pg 1, line 22:

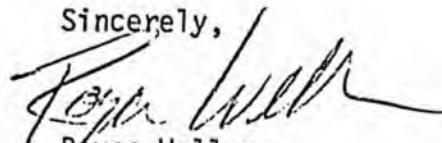
"derived from State [taxes,] licenses, and fees..."

The purpose of this amendment is to delete the reference to "taxes" as they relate to the "registration, operation, or use of vehicles, aircraft, watercraft..." Taken literally, current language would require the Department to identify and dedicate that portion of the Corporate Income Tax, Oil and Gas Property Tax, and possibly the Fisheries Business Tax (floating processor portion) that are derived from the "registration, operation, or use of vehicles, aircraft, watercraft..."

In my discussions with Sponsor staff, this was not the intention of the Sponsor.

Your consideration of this request is appreciated.

Sincerely,



Royce Weller
Assistant Commissioner

RW:sp

89-108

cc: Senator Lloyd Jones
Senator Jack Coghill

Original sponsor: Transportation Committee

1 IN THE SENATE BY THE TRANSPORTATION COMMITTEE
2 CS FOR SENATE JOINT RESOLUTION NO. 20 (Transportation)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 Proposing amendments to the Constitution
6 of the State of Alaska creating a dedi-
7 cated fund for projects, facilities, and
8 services related to transportation.

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

10 * Section 1. Article IX, sec. 7, Constitution of the State of Alaska,
11 is repealed and readopted to read:

12 SECTION 7. DEDICATED FUNDS PROHIBITED. The proceeds of any
13 State tax or license shall not be dedicated to any special purpose.
14 This provision shall not prohibit the continuance of any dedication
15 for special purposes existing on April 24, 1956, and shall not pro-
16 hibit the dedication of revenue under Sections 15 and 17 of this
17 article or when required by the federal government for State par-
18 ticipation in federal programs.

19 * Sec. 2. Article IX, Constitution of the State of Alaska, is amended
20 by adding a new section to read:

21 SECTION 17. TRANSPORTATION FUND. Effective July 1, 1991, money
22 derived from State [taxes,] licenses, and fees related to registration,
23 operation, or use of vehicles, aircraft, watercraft, the Alaska marine
24 highway system, and the use of other State transportation facilities,
25 and from taxes on fuel used for the propulsion of vehicles, aircraft,
26 and watercraft, less refunds and credits as provided by law, shall be
27 placed in a transportation fund, the principal and income of which
28 shall be appropriated by the legislature for facilities and operations
29 related to transportation and for enforcing laws applicable to

1 transportation facilities and services. The provisions of this sec-
2 tion do not apply to a tax, license, or fee levied and collected by
3 the State on behalf of a local government, or to revenue derived from
4 the use or operation of a facility constructed with bond proceeds to
5 the extent that it is necessary to satisfy the debt obligation or to
6 maintain the facility so that the facility continues to generate
7 revenues for that purpose. The legislature shall implement this
8 section.

9 * Sec. 3. The amendments proposed by this resolution shall be placed
10 before the voters of the state at the next general election in conformity
11 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-
12 tion laws of the state.



Department of Transportation & Public Facilities

POSITION PAPER

BILL NO: SJR 20

APPROVED:

A handwritten signature in black ink, appearing to read "Mark A. Hely".

TITLE: Dedicated Fund - Transportation

DATE: February 17, 1989

As a general matter, the Administration endorses the utilization of user fees to support specific government activities. However, without taking a position on the substantive merits, the administration does not support this proposal at this time because it may diminish the Governor's ability to receive a fair hearing on his constitutional amendment priority, the Education Endowment Fund.

The Department of Transportation and Public Facilities has the statutory responsibility for the development and preservation of the Alaska's transportation system. The department believes that developing and maintaining the state's transportation system in a responsible manner is of vital importance to the economic well-being of all Alaskans. Consequently, the department is concerned that the volatility of current revenue sources make it increasingly difficult to insure that the necessary funds are available to develop and maintain the system in a responsible manner. The department believes that user fees are one of the more equitable and appropriate methods of attaining a stable funding source for transportation services. The department also recognizes that a direct linkage between the expenditure of a fee and the services provided, raises the credibility of the user fee concept and may make increasing those fees more acceptable to system users.

FISCAL NOTE

Revision Date: None

Agency Affected: DOT&PF

Title: Proposed amendments to the Constitution of the State of Alaska creating dedicated funds for revenue related to aircraft, watercraft, vehicles, and the Alaska marine highway system and from related sources, and relating to accounting and expenditure of that revenue.

BRU:

Sponsor: Senate Transportation Committee

Components: Highway, Harbors, Aviation

Requestor: Senate Transportation Committee

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER*	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: M. Clyde Stoltzfus, Special Assistant to the Commissioner
Division: Commissioner Office

Phone: 465-3900

Date: 2/17/89

Approved by Commissioner: Mark S. Hickey *MSH*
Agency: Department of Transportation and Public Facilities

Date: 2/17/89

Distribution (by preparer):

Legislative Finance

Legislative Sponsor

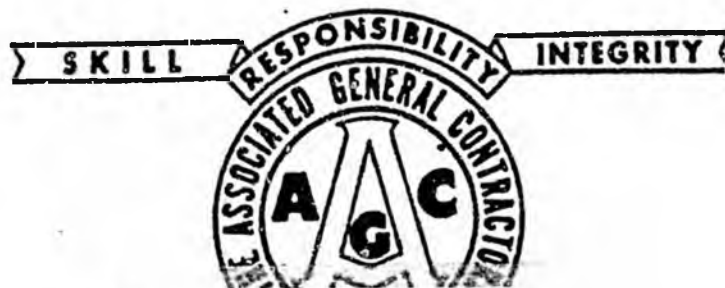
Requestor

Office of Management and Budget

Impacted Agency(ies)

POSITION PAPER
A.G.C. OF ALASKA
TO THE
SENATE TRANSPORTATION COMMITTEE
ON
SJR 20

PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF
ALASKA CREATING DEDICATED FUNDS FROM FUEL TAXES ON AIRCRAFT,
WATERCRAFT, AND MOTOR VEHICLES, AND FROM RELATED SOURCES, AND
CREATING A DEDICATED FUND FROM REVENUE EARNED BY THE ALASKA
MARINE HIGHWAY SYSTEM FOR USE BY THAT SYSTEM.



AGC Position paper

THANK YOU MR. CHAIRMAN. FOR THE RECORD, MY NAME IS RESA JERREL AND I AM THE DIRECTOR OF GOVERNMENTAL RELATIONS FOR THE ASSOCIATED GENERAL CONTRACTORS OF ALASKA. ON BEHALF OF OUR OVER 700 MEMBER FIRMS WE APPRECIATE THE OPPORTUNITY TO TESTIFY IN FAVOR OF SJR 20.

LAST WEEK YOU HEARD FROM THE GOVERNOR'S TASK FORCE ON TRANSPORTATION FACILITIES THEIR REPORT ON THE DELIVERY OF TRANSPORTATION SERVICES. IN THE PREFACE COMMISSIONER HICKEY POINTS OUT:

"FOR ALL FACETS OF THE PROBLEMS RELATED TO THE DELIVERY OF TRANSPORTATION SERVICES, ADEQUATE FUNDING AND THE ONGOING STABILITY OF FUNDING ARE THE CRITICAL ISSUES. IN THIS REGARD, THE TASK FORCE IS UNANIMOUS IN RECOMMENDING THAT THE MAINTENANCE OF THE TRANSPORTATION SYSTEM SHOULD BE SUPPORTED TO THE EXTENT PRACTICAL WITH DEDICATED USER FEES."

WE ALSO BELIEVE IN USER FEES BEING DEDICATED TO OUR TRANSPORTATION SYSTEM AND AGREE WITH THE TASK FORCES CONCLUSION AND RECOMMENDATION. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

VEHICLE-MILES TRAVELED ON ALASKA ROADS,
1970 - 1987

Year	Vehicle- miles Traveled, millions	% difference, 1980 base
-----	-----	-----
1970	1360	51%
1975	2460	92%
1980	2680	100%
1981	2930	109%
1982	3720	139%
1983	4370	176%
1984	4400	164%
1985	4820	180%
1986	4740	177%
1987	4030*	150%*

Compiled April 19, 1988

* Estimated



ALASKA STATE CHAMBER OF COMMERCE

310 Second Street
Juneau, Alaska 99801
(907) 586-2323

FEB 28 1989

February 24, 1989

Senator Lloyd Jones
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Jones:

The Board of Directors of the Alaska State Chamber of Commerce considered SJR 20 dealing with the dedication of funds from fuel taxes and have asked me to express the following concern to you and the other members on the Transportation Committee.

The Board is concerned about the maintenance of the transportation system in Alaska and are appreciative of the efforts you have expended in attempting to deal with this matter. Our objection to the adoption of SJR 20 is largely centered on a grave concern over the precedent that would be set with a constitutional amendment creating a dedicated fund.

Please call if you have any questions about our position or if we can be of assistance to you and the other members of your Committee.

Cordially,

A handwritten signature in black ink, appearing to be 'G. Krusz', is written above the typed name.

George Krusz, President

GK:ly/jonesSJR20

REVENUE⁽¹⁾

FUEL TAX REVENUE

	<u>Revenue Collected</u>	<u>Refunds and Credits</u>
Aviation gas	727,310	9,915
Aviation jet	8,570,896	3,091,522
Marine gas	539,102	2,057
Marine diesel	5,169,309	133,187
Other gas	16,450,463	298,969
Other diesel	<u>21,688,460</u>	<u>14,100,253</u>
	\$53,145,540	\$17,635,903

ACCOUNT SUB-TOTAL	53,145,540
Refunds and Credits	<u>17,635,903</u>
FUEL TAX REVENUE	\$35,509,637

FACILITIES REVENUE

DOT/PF Program Receipts:	
Airport Revenue (Other than AIAS)(2)	1,800,000
Ferry System(3)	<u>35,700,000</u>
FACILITIES REVENUE	\$37,500,000

OTHER REVENUE

Non-business taxes:	
Vehicle Instruction permits	
Title transfers	
Registration fees	
Drivers licenses	
OTHER REVENUE (2)	\$19,700,000

TOTAL REVENUE	\$92,709,637
----------------------	---------------------

(1) Prepared as back-up for SJR 20 (16th Legislative Session). (2) Source: Revenue Sources, Fall 1988, Alaska Department of Revenue. (3) AMHS estimate for FY 89 during preparation for FY 90 budget (September, 1988)

EXPENDITURES⁽¹⁾

State Match for Highway Construction (2)	\$14,350,000
State Match for Aviation Construction (2)	\$3,750,000
Facilities Design and Construction Services (2)	\$6,964,300
Administration of Transportation Services (2)(3)	\$9,590,400
Plans, Programs, Budget and Research (2)	\$2,118,000
Highway Maintenance and Operations (2)	\$54,000,000
Aviation Maintenance and Operations (2)	\$12,300,000
Harbors Maintenance and Operations (2)	\$400,000
Maintenance and Operations Administration (2)	\$1,797,300
Division of Motor Vehicles	\$6,600,000
Highway Patrol (troopers)	\$24,500,000
Alaska Marine Highway System (2)	\$62,600,000
TOTAL EXPENDITURES	\$198,970,000

(1) Prepared as back-up for SJR 20 (16th Legislative Session). Gross estimates based on FY 89 authorized budget (NOT actual expenditures). (2) Shows only current portent funded by general fund revenues. (3) Includes some support for AIAS and SEF, which would not be authorized to spend against the fund created by SJR 20.

Collected Fuel Tax and M&O expenditures

FUEL RECEIPTS

The figures in the right column represent the amount of fuel taxes collected on total highway fuel sales:

	Gas \$	Diesel \$	Total \$
FY 85	17,082,919	20,407,779	37,490,698
FY 86	17,553,500	22,436,609	39,990,109
FY 87	16,586,596	19,840,411	36,427,007

The figures in the right column this of this table represent the funds in the highway fuel account after refunds:

	Gas & diesel \$	Rebate \$	Available funds \$
FY 85	37,490,698	14,385,607	23,105,091
FY 86	39,990,109	17,977,841	22,012,268
FY 87	36,427,007	13,191,119*	23,235,888

* No rebates for marine fuel taxes have been refunded as of FY 87. The Department of Revenue is no longer rebating marine fuel taxes. Prior to this change in policy all rebates, marine and others, were withdrawn from the highway motor fuel tax proceeds.

ROAD MAINTENANCE

FY 85	\$56,000,000
FY 86	\$58,000,000
FY 87	\$44,305,000
FY 88	\$51,000,000**

** Appropriated

Revenue figures from the Department of Revenue

Transportation numbers from DOT/PF

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

P.O. BOX Z
JUNEAU, ALASKA 99811-2500
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER

March 18, 1988

The Honorable Steve Cowper
Governor, State of Alaska
Post Office Box A
Juneau, AK 99811

Dear Governor Cowper:

In your Administrative Order creating the Task Force on Transportation Facilities, we were charged with, among other things, examining "reasonable and equitable funding sources for maintenance activities, including a review of the motor fuel tax..." Pursuant to this charge, the task force has closely examined issues related to using fuel taxes as a means of providing funding for the maintenance and operations of transportation facilities and has unanimously adopted two interim recommendations which are conveyed by this letter.

There are some underlying assumptions and positions which we feel deserve highlighting. First, in reviewing historical information related to the fuel tax issue in Alaska, it is clear that the tax was meant to be a user fee collected to recoup some of the funds necessary to maintain the particular transportation system from which it was collected. We believe that over the years this purpose has become clouded by legislative action. We are unanimous in our belief that the state should clarify and reaffirm the intended purpose of the fuel tax in Alaska as a user fee for the particular transportation system from which it was collected.

After considerable thought and debate, it is the position of the task force that a fuel tax is one of the reasonable and equitable funding sources for expenses, related to transportation systems, so long as it is treated as a user fee. In this regard, it is our unanimous recommendation that the best method of re-establishing the fuel tax as a user fee is to dedicate the revenues from the tax to the expenses related to the maintenance activities of the transportation system from which the revenue was generated.

In adopting the attached interim recommendations, the task force also debated at length what expenses should be included in maintenance activity costs. It is the unanimous consensus of the task force that all direct costs for improvement, maintenance and operation of the existing transportation systems should be included in the maintenance activity costs. This analysis would include such expenses as the operation of a maintenance station

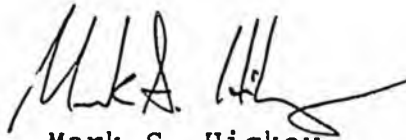
March 18, 1988

camp facility as a maintenance expense, but would exclude indirect administrative costs as a maintenance expense. Similarly, reconstruction of an existing highway to comparable standards would be a direct maintenance expense, while construction of a new highway to a higher standard, even on an existing right-of-way, would not be a maintenance expense.

The task force continues to study issues related to the distribution of responsibility and equitable funding sources for transportation facilities as you directed. As this study continues, it is becoming increasingly clear that any realignment of responsibility also involves establishing a mechanism whereby adequate funding to support a transferred facility is consistently available. We have a full schedule during the next four months, and expect to have our final recommendations to you by the June 30th deadline.

Thank you for your consideration of our recommendations. If you have any questions or would like to discuss our recommendations with the members of the task force, please do not hesitate to call upon us.

Sincerely,



Mark S. Hickey
Chairman, Governor's Task
Force on Transportation
Facilities

cc: Senator Jan Faiks, President, Alaska State Senate
Representative Ben Grussendorf, Speaker, Alaska State House
of Representatives
Members of the Governor's Task Force on Transportation
Facilities

GOVERNOR'S TASK FORCE ON
TRANSPORTATION FACILITIES

INTERIM TASK FORCE RECOMMENDATION # 2

Whereas: This task force was created by the Governor's Administrative Order #105 and under intent language adopted by the 15th Alaska Legislature.

Whereas: The charge by the Governor and the Legislature to this task force was to evaluate and examine reasonable and equitable funding sources for expenses related to transportation facilities.

Whereas: The charge by the Governor and the Legislature to this task force specifically required a review of motor fuel taxes in Alaska.

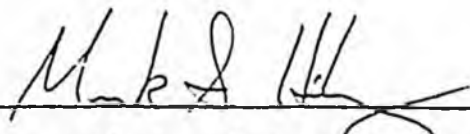
Whereas: The task force, for purposes of this resolution, interprets expenses related to transportation facilities to mean expenses for the Alaska transportation systems excluding indirect costs.

Whereas: This task force has recommended with Interim Task Force Recommendation # 1, that revenue collected and retained by the State of Alaska for fuel taxes should be dedicated for direct costs related to the transportation system from which the revenue was generated.

And Whereas: It is the determination of this task force that the current status of the dedication of fuel taxes for the Alaska transportation systems found in article IX, section 7, of the Alaska Constitution is unclear.

NOW THEREFORE BE IT RESOLVED, that it is the recommendation of this task force that the Governor and the Legislature should seek a constitutional amendment which would unequivocally dedicate all fuel tax revenues collected and retained by the State of Alaska to the direct costs associated with the improvement, maintenance and operation of the existing transportation system from which the revenues were generated.

Adopted this 8th day of March, 1988.



Mark S. Hickey, Chairman

GOVERNOR'S TASK FORCE ON
TRANSPORTATION FACILITIES

INTERIM TASK FORCE RECOMMENDATION # 1

Whereas: This task force was created by the Governor's Administrative Order #105 and under intent language adopted by the 15th Alaska Legislature.

Whereas: The charge by the Governor and the Legislature to this task force was to evaluate and examine reasonable and equitable funding sources for expenses related to transportation facilities.

Whereas: The charge by the Governor and the Legislature to this task force specifically required a review of motor fuel taxes in Alaska.

Whereas: This task force has evaluated and examined historical, constitutional and statutory information regarding fuel taxes as a source of funding for transportation facilities in Alaska.

Whereas: The task force, for the purposes of this resolution, interprets expenses related to transportation facilities to mean expenses for the Alaska transportation systems excluding indirect costs.

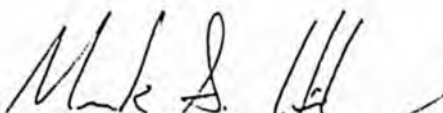
Whereas: This task force has determined that fuel taxes are one reasonable source of funding for expenses related to the Alaska transportation systems.

Whereas: This task force has determined that fuel taxes are one equitable method of assessing costs for the use of the Alaska transportation systems.

And Whereas: This task force has further determined that funding for transportation systems is an important function of government; that the Alaska transportation systems are an investment in current and future economic development and stability; that funding for the Alaska transportation systems requires a predictable and stable source of revenue.

NOW THEREFORE BE IT RESOLVED, that it is the recommendation of this task force after careful review of all information put before us, and in response to the charge of the Governor and the Legislature of the State of Alaska, that revenue collected and retained by the State of Alaska for fuel taxes should be dedicated for direct costs related to the transportation system from which the revenue was generated.

Adopted this 8th day of March, 1988.



Mark S. Hickey, Chairman

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
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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. 3AM-492-82 Civ. (Alaska Super., Jan. 21, 1982)

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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

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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.

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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 these 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.

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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.

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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

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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.

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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

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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).

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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.

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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.

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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.

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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 these 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.

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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.

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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.

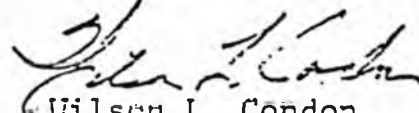
15/ In 1980, the legislature increased the percentage dedication applicable to most new mineral leases to 50 percent. AS 37.13.010(a)(2).

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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

STATUS OF HIGHWAY USER FEE PROTECTION

June 1, 1987

Prepared by

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Legal Consultant

7428 Tower Street
Falls Church, VA 22046

For the

Highway Users Federation for Safety and Mobility

1776 Massachusetts Avenue N.W.
Washington, DC 20036

Highway User Fees

Highway user fees are those taxes and fees which are imposed on the owners and operators of motor vehicles for the privilege of using the highways. Although such fees are imposed by the federal, state, and local governments, we are primarily concerned in this project with state highway user fees. State highway user fees include all of the following:

Vehicle registration fees. This is the first structure tax on highway users. It is a tax imposed directly on the owners of the vehicles which use the highways. Typically the fees are collected on an annual basis, and vary according to the weight and use of the vehicle. Heavier vehicles and commercial vehicles generally pay more.

Motor fuel taxes. This is the second structure tax on highway users. It is a tax on the fuel which is used in motor vehicles operated on the highways. The gasoline tax is the most common of this group of taxes, but taxes on diesel fuel and other special fuels are generally included.¹ The tax is typically imposed on a cents per gallon basis. It is generally assessed against distributors of the fuel, and then passed on to highway users in the price of the fuel. Most states also have some form of motor fuel use tax which is assessed directly against certain highway users such as commercial carriers. This is not really a separate tax. It is just a different means of collecting the regular motor fuel taxes. It is intended to prevent avoidance of the motor fuel taxes by out of state purchases.

Weight-distance taxes. This group of taxes, which constitutes a third structure tax on highway users, is the least well defined. Only about one-fifth of the states impose this

1. The term "special fuel" typically refers to all combustible gases and liquids suitable for use to generate power in an internal combustion engine, except gasoline.

kind of tax, and it differs from state to state.² The tax is imposed only on commercial carriers, and typically only on vehicles which exceed a specified weight limit. In most cases, the tax is based on vehicle weight and the miles operated within the state during the tax year.

Other taxes and fees. There are, of course, myriad other state and local taxes and fees imposed on highway users which are in some way related to the use of their vehicles or the highways. Some of these obviously should be considered highway user fees, and some should not. Some examples:

- Sales tax on vehicles, accessories, and fuels
- Personal property tax on vehicles
- Vehicle title fees
- Driver license fees
- Overweight permit fees and overweight fines
- Traffic law fines
- Motor carrier registration or permit fees
- Highway tolls

2. Examples of such taxes may be found in Arizona, Arkansas, Colorado, Idaho, Kentucky, New Mexico, New York, Ohio (based on number of axles rather than weight), Oregon, Utah (based on months of operation rather than mileage), and Wyoming. Several other states, Illinois and Nevada for example, have taxes which are similar to weight-distance taxes, but which are imposed only in lieu of some other kind of tax.

Not all of these taxes are discussed in the state summaries which make up the bulk of this report. In those states which have a protective constitutional anti-diversion provision, our research did not explore the statutory provisions relative to each highway user tax.

General sales taxes and personal property taxes are based on the value of the vehicle or other object of the tax. Such ad valorem taxes have generally not been considered highway user taxes, although a few states will include revenue from some such taxes as highway user revenue.³

Title fees, driver licensing fees, and other service fees charged by the motor vehicle administration are generally not large revenue producers. In most states, these fees are used to pay the administrative cost of providing the service, but there are exceptions.⁴ Motor carrier registration and permit fees are also generally used to pay the cost of administering and enforcing the carrier regulations.

Highway tolls, overweight or oversize vehicle permit fees, and size-weight fines or penalties seem clearly to be highway user fees. It is somewhat surprising that few of the constitutional or statutory provisions which protect highway user revenue specifically mention these fees.⁵ Revenue from all traffic law fines, often including size-weight violations, is often allocated to traffic safety programs or enforcement, or to the general education fund. Tolls are often collected and expended by a separate entity which owns and operates the toll roads.

3. See, for example, the state summaries for Alabama (revenue from use tax in lieu of sales tax on vehicle is not highway user revenue), Arizona (constitutional license tax in lieu of ad valorem tax on vehicle is not protected highway user revenue), and Virginia (revenue from sales tax on vehicle is highway user revenue).

4. See, for example, the state summaries for Indiana and Pennsylvania (driver license fees); Kansas (title fees); and Maryland, New York, North Carolina, and Wisconsin (all DMV revenue).

5. See, for example, the state summaries for New Hampshire (tolls), Maryland and Vermont (overweight penalties), and Connecticut (all penalties).

Some states also impose other kinds of taxes on highway users which differ from the taxes imposed in most states.⁶ Although they may clearly constitute highway user fees, it is difficult to compare one state with another on the basis of these taxes.

The goal of this project was to assess the overall status of highway user fee protection in the United States, and to identify states where that protection is particularly strong, or weak. In order to accomplish that, we have focused primarily on the first and second structure taxes -- the vehicle registration fees and the motor fuel taxes. Other highway user fees move in and out of the picture, from state to state, but the registration fees and fuel taxes are constants. Every state imposes these taxes on highway users, and they certainly constitute the largest component of state highway user revenue. Evaluation of the protection of revenue from these two user fees affords an excellent assessment of the overall status.

6. Pennsylvania, for example, imposes an "axle tax" and a "gross receipts tax" on commercial carriers

Legitimate Use and Diversion

The purpose in assessing highway user fees is to create a fund to defray the expense of providing the highways being used, now and in the future. Some uses of highway funds are unquestionably legitimate. Using the funds for construction and maintenance of a highway, for example, is clearly legitimate. Highways cannot be built without right of way, so using the funds to purchase right of way is obviously legitimate. Highways are often funded through the sale of bonds. Where the proceeds of the bond sale are used entirely for highway purposes, highway funds can legitimately be used to pay off those bonds. These are easy conclusions.

There are some other uses of highway funds which are clearly not legitimate. Expending highway funds to build schools or pay teachers, for example, would clearly be a diversion. Spending highway money on a subway system or other forms of nonhighway transportation is also a diversion of the funds from their proper use.

Between these extremes, however, there are many potential uses for highway funds which are less clearly either legitimate or diversionary. This report will not attempt to determine which expenses are legitimate. It will list some of the potential uses for highway funds, along with references to identify the state summaries in which there is some discussion of the manner in which the issue has been addressed by the states. This listing follows in the tables on the next six pages.

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PROTECTION OF HIGHWAY FUNDS

- A = Has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.
- B = Has a constitutional provision, but protection is incomplete.
- C = Has a constitutional provision which specifically permits or requires diversion.
- D = Has no relevant constitutional provision but current statutes generally apply highway user revenue to highway purposes.
- E = Has no relevant constitutional provision and current statutes afford little or no protection for highway user revenue.
- F = Has no relevant constitutional provision and current statutes provide for significant diversion of highway user revenue to nonhighway purposes.

Designated states are marked with an 'O'

	A	B	C	D	E	F
Alabama	-	O	-	-	-	-
Alaska	-	-	-	-	O	-
Arizona	O	-	-	-	-	-
Arkansas	-	O	-	-	-	-
California	-	-	O	-	-	-
Colorado	O	-	-	-	-	-
Connecticut	-	-	-	-	O	-
Delaware	-	-	-	-	O	-
D. of Columbia	-	-	-	-	O	-
Florida	-	-	-	-	-	O
Georgia	-	O	-	-	-	-
Hawaii	-	-	-	-	O	-
Idaho	O	-	-	-	-	-
Illinois	-	-	-	-	O	-
Indiana	-	-	-	O	-	-
Iowa	O	-	-	-	-	-
Kansas	-	O	-	-	-	-
Kentucky	O	-	-	-	-	-
Louisiana	-	-	-	-	-	O
Maine	O	-	-	-	-	-
Maryland	-	-	-	-	-	O

PROTECTION OF HIGHWAY FUNDS — Continued

Designated states are marked with an 'O'

	A	B	C	D	E	F
Massachusetts	-	-	O	-	-	-
Michigan	-	-	O	-	-	-
Minnesota	O	-	-	-	-	-
Mississippi	-	-	-	O	-	-
Missouri	O	-	-	-	-	-
Montana	-	-	O	-	-	-
Nebraska	-	-	-	-	-	O
Nevada	O	-	-	-	-	-
New Hampshire	O	-	-	-	-	-
New Jersey	-	O	-	-	-	-
New Mexico	-	-	-	-	-	O
New York	-	-	-	-	O	-
North Carolina	-	-	-	O	-	-
North Dakota	O	-	-	-	-	-
Ohio	O	-	-	-	-	-
Oklahoma	-	-	-	-	-	O
Oregon	O	-	-	-	-	-
Pennsylvania	O	-	-	-	-	-
Rhode Island	-	-	-	-	O	-
South Carolina	-	-	-	O	-	-
South Dakota	O	-	-	-	-	-
Tennessee	-	-	-	-	-	O
Texas	-	-	O	-	-	-
Utah	-	O	-	-	-	-
Vermont	-	-	-	-	O	-
Virginia	-	-	-	-	-	O
Washington	O	-	-	-	-	-
West Virginia	O	-	-	-	-	-
Wisconsin	-	-	-	-	O	-
Wyoming	-	O	-	-	-	-

The situation in the remaining states is much worse. Four states are shown in column D as having no constitutional provision but having current statutes which apply highway user revenue to highway purposes. While the current application of the revenue in these states is laudable, that status could change at any time the legislature decided to change it. There is no real protection for highway user revenue in these states.⁷ A statutory dedication cannot provide any real protection for highway user revenue.

The 18 states shown in columns E and F of the table have no constitutional provision, and current statutes do not allocate all of the revenue to highway purposes. In some cases, the statutes provide for diversion of the funds. Statutes in the eight column F states provide for significant diversions to nonhighway purposes.

The five states shown in column C have constitutional provisions which specifically permit or require a diversion of some highway user revenue to nonhighway purposes.

It is interesting to compare the status today with the status of constitutional anti-diversion provisions in 1965.⁸ Today there are 17 states with excellent protection. In 1965 there were 22. One of the 22 has been repealed (Louisiana). The other four were not repealed but were amended to specifically permit or require some diversion of funds (California, Massachusetts, Michigan, and Montana). The total number of relevant constitutional provisions remains 29 today, just as it was in 1965. The one provision newly adopted since 1965 (New Jersey) affects only a portion of highway user revenue and dedicates it to general transportation purposes rather than specifically to highway purposes. We might conclude that there has not been a significant amount of change since 1965, but all the change has been negative.

7. The point is well illustrated by the statutory laws of Illinois. One section attempts to dedicate highway user revenue to highway purposes, while other sections provide for extensive diversion. See the Illinois summary.

8. In 1965 the National Highway Users Conference published the text of the then-current constitutional anti-diversion provisions in a paper entitled, "Texts of Good Roads Amendments." That is the basis for this comparison.

ALASKA

Alaska lacks a constitutional anti-diversion provision. Current statutes afford protection for motor fuel tax revenue only. The constitution prohibits any new dedication of tax revenue to any particular purpose.

A statutory provision specifies that revenue from the tax on motor fuels used to propel vehicles on the highways must be deposited in a special highway fuel tax account.¹ These funds may be expended only for highway construction and maintenance, construction of ferries, right of way acquisition, and other highway costs, including surveys, administration, and related matters.²

The constitution prohibits dedication of the proceeds of any state tax or license fee to any special purpose except when such dedication is required by the federal government as a condition of participation in federal programs.³ The provision also specifies that dedications existing at the time the provision was adopted (1956) may be continued. The statutory dedication of motor fuel tax revenue described above was in effect prior to the adoption of the constitution's prohibition of dedications.⁴

1. Alaska Stat. § 43.40.010 (g) (1985).

2. The law also permits paying valid motor fuel tax refund claims from the highway fuel tax account. Alaska Stat. § 43.40.010 (h) (1985).

3. Alaska Const. art. 9, § 7 (1985).

4. This constitutional provision was ratified on April 24, 1956. This provision has been construed strictly against dedications. The state attorney general has concluded that the only power which the legislature retains with respect to existing dedications is to repeal them. Existing dedications may be continued but may not be revised in any way which would increase or decrease either the percentage or total amount of the proceeds which are dedicated. Op. Atty. Gen. No. 7, No. 14 (1959). If the tax is decreased, the entire dedication falls and all of the tax revenue goes to the general fund; if the tax is increased, all of the increased revenue goes to the general fund. Op. Atty. Gen. No. 14 (1959).

ARIZONA

Arizona has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitution provides that revenue from taxes relating to the registration, operation, or use of vehicles on the highways, and revenue from taxes on fuels or other energy sources used to propel vehicles on the highways shall not be expended for other than highway purposes. The section also provides for distribution of the funds to local governments to use solely for highway purposes.¹

The section specifies that highway purposes includes construction, reconstruction, maintenance, and repair of highways; right of way acquisition; principal and interest on highway bonds; highway department administration; highway safety program administration; roadside development; and the cost of publishing and distributing Arizona Highways magazine.² This last item constitutes a minor diversion from the traditional concept of "highway purposes."

The constitution also provides for a license tax, in lieu of all property taxes based on the value of the vehicle, on all vehicles registered for operation on the highways, and it specifically exempts the revenue derived from this tax from protection by the anti-diversion section described above.³

1. Ariz. Const. art. 9, § 14 (1984). The Statutes identify a large number of taxes and fees which constitute "highway user revenues," and provide for the use of those revenues for highway purposes, consistent with the constitution. See Ariz. Rev. Stat. §§ 28-1595, -1598 (Supp. 1985).

2. The cost of utility relocation due to highway construction is not a legitimate use of these funds. Op.Att'y.Gen No. 60-27.

Construction of buildings for county highway officials is a legitimate use. Op.Att'y.Gen. No. 184-087. Where such a building is later sold to an agency whose function is not directly related to highway purpose, the highway users fund must be reimbursed. Op.Att'y.Gen. No. 179-319.

3. Ariz. Const. art. 9, §§ 11, 14 (1984). A large percentage of the revenue from this tax is used for non-highway purposes. See Ariz. Rev. Stat. § 1591 (Supp. 1985). Property taxes based upon the value of the vehicle have traditionally not been considered highway user taxes.

COLORADO

Colorado has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitution provides that revenue from any license, registration fee, or other charge with respect to the operation of a motor vehicle on the highways, and revenue from the imposition of any excise tax on gasoline or other liquid motor fuel, except aviation fuel used for aviation purposes, must be used exclusively for the construction, maintenance, and supervision of the highways.¹

1. Colo. Const. art. 10, § 18 (1980). The provision also specifies that the revenue may be used for the cost of administration of the tax law.

Since this section sets aside the whole of the revenues from the specified taxes for highway purposes, no appropriation by the legislature is required. *Johnson v. McDonald*, 49 P.2d 1017 (Colo. 1935).

IDAHO

Idaho has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitution specifies that revenue from any tax on gasoline and other fuels used to propel motor vehicles on the highways, and revenue from motor vehicle registration fees must be used exclusively for the construction, repair, maintenance, and traffic supervision of the highways; and for payment of the interest and principal on bond obligations incurred for such highway purposes.¹

This provision has been interpreted to prohibit use of these funds to pay for relocation of utilities necessitated by highway construction.² Also, use of the funds to advertise the state and its highways for tourism development is illegal.³

1. Idaho Const. art. 7, § 17 (1980).

2. State ex rel. Rich v. Idaho Power Co., 346 P.2d 596 (Idaho 1959).

3. State ex rel. Moon v. Jonasson, 299 P.2d 755 (Idaho 1956).

IOWA

Iowa has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitution provides that revenue from motor vehicle registration fees and all taxes and license fees on motor vehicle fuel must be used exclusively for the construction, maintenance, and supervision of the highways, or for the payment of principal and interest on highway construction bonds.¹

This provision has been interpreted to allow use of the funds to pay for relocation of utilities necessitated by highway construction;² to lease land in order to provide barriers to control wind erosion which interferes with highway maintenance and safety;³ to pay the salaries of the highway patrol, since supervision of the highways is one of their primary duties;⁴ to erect a garage to house and maintain highway construction and maintenance equipment;⁵ and to provide rest areas along the highways.⁶ On the other hand, the provision prohibits use of highway funds to pay for construction of a bridge when part of it would lie in another state;⁷ to develop and operate a motor vehicle ferry service;⁸ and to purchase billboards, signs, and

1. Iowa Const. art. 7, § 8 (1949). Motor vehicle certificate of title fees and lien notation fees are not "registration fees" within the meaning of this provision. Op.Att'y.Gen. (Thompson) April 13, 1971. Also, revenue from tax on motor vehicle fuel used for non-highway purposes is not covered by this provision. Op.Att'y.Gen. (Tieden) March 13, 1970.

2. Edge v. Brice, 113 N.W.2d 755 (Iowa 1962).

3. Op.Att'y.Gen. (Scott) April 26, 1979.

4. Op.Att'y.Gen. (Walsh) May 3, 1971.

5. Op.Att'y.Gen. (Fenton) June 2, 1969.

6. Op.Att'y.Gen. Jan. 16, 1968.

7. Frost v. State, 172 N.W.2d 575 (Iowa 1969).

8. Op.Att'y.Gen. (Rigler) Oct. 12, 1977.

IOWA -- Continued

junk yards located adjacent to highways but outside the right of way.⁹ The highway fund must be reimbursed for highway department manpower and equipment used in flood prevention activities.¹⁰

One statutory provision threatens some potentially significant diversion. It provides for an appropriation from protected highway funds of whatever amount is necessary in order to pay a judgement against the department of transportation under the state tort claims act, when the judgement cannot be charged to a current appropriation.¹¹ The constitutionality of this law is yet to be tested in the courts, but the Iowa Attorney General has upheld it.¹²

9. Op.Att'y.Gen. (Holden) Feb. 16, 1972.

10. Op.Att'y.Gen. (Coupal) May 12, 1969. This ruling is due to a comingling of restricted and nonrestricted highway department funds. If the funds were not comingled, nonrestricted funds could be used without any reimbursement.

11. Iowa Code Ann. § 313.16 (Supp. 1985). The section actually applies to awards or judgements rendered under chapter 25, the Claims Against the State Act, or chapter 25A, the State Tort Claims Act. There is no limitation on the amount of a judgement which can be rendered against the state under the tort claims act. See Iowa Code Ann. §§ 25A.1 to 25A.23 (1978, Supp. 1985). The department has some protection in discretionary function immunity, and some design immunity. See § 25A.14 (1) (1978) and § 25A.14 (8) (Supp. 1985).

12. Op.Att'y.Gen. (Rodgers) Sept. 26, 1984. This appears to overrule an earlier opinion. 1946 Op.Att'y.Gen. 7. Courts in other states have frequently ruled that payment of tort claims is not a legitimate use of protected highway funds. See State ex rel. Varnado v. Louisiana Highway Comm., 147 So. 361 (La. 1933); Malard v. State, 194 So. 447 (La. App. 1939); State ex rel. Wharton v. Babcock, 232 N.W. 718 (1930); Automobile Club of Washington v. City of Seattle, 346 P.2d 695 (1959).

KENTUCKY

Kentucky has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitution provides that money derived from taxes related to gasoline and other motor fuels, and from taxes relating to registration, operation, or use of vehicles on the highways may be expended only for the payment of highway obligations; the costs of construction, reconstruction, maintenance, and repair of the highways and bridges; the cost of highway right-of-way; and the cost of enforcing the state traffic and motor vehicle laws.¹ Several judicial and attorney general's opinions have construed this section.²

1. Ky. Const. § 230 (1973). The section also specifies that such money may be expended for the cost of administration and for refunds and adjustments relating to the tax from which the money is derived.

2. The funds may be used for publication and distribution of highway information which results in increased revenue for use in the highway program. *Keck v. Manning*, 231 S.W.2d 604 (Ky. 1950). The funds may be used for necessary relocation of utilities belonging to a municipality. Op. Atty. Gen. 74-199. The funds may not be used for a transit authority. Op. Atty. Gen. 78-144. A municipality may not expend the funds for a parking lot. Op. Atty. Gen. 82-492. Where a municipality places road funds in an interest bearing account, the interest earned on the funds is subject to the same restrictions as the road funds. Op. Atty. Gen. 81-143.

MAINE

Maine has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitutional section provides that revenue derived from taxes relating to registration, operation, or use of vehicles on the highways, and revenue derived from taxes relating to fuels used for the propulsion of such vehicles may be expended only for the payment of debts and liabilities incurred in construction and reconstruction of highways and bridges; the costs of construction, reconstruction, maintenance, and repair of the highways and bridges under the direction and supervision of the state department having jurisdiction; and the cost of state enforcement of traffic laws.¹ The section specifically provides that it does not apply to revenue from any excise tax on motor vehicles imposed in lieu of a personal property tax. The section has been rather strictly construed.²

1. Me. Const. art. 9, § 19 (1964). The section also specifies that such money may be expended for the cost of administration and for refunds and adjustments relating to the tax from which the money is derived.

The section provides that only expenditures on highways under the jurisdiction of a "state department" are qualified. Because the Maine turnpike authority is not a state department, a law which would credit revenue from the tax on gasoline consumed on the turnpike to the turnpike authority would be unconstitutional. Opinion of the Justices, 80 A.2d 417 (Me. 1951); *Nelson v. Maine Turnpike Authority*, 170 A.2d 687 (Me. 1961).

2. The funds may not be expended for relocation of a utility facility necessitated by a change in a highway. Opinion of the Justices, 132 A.2d 440 (Me. 1957). A charge which is imposed as a prerequisite to the registration of a motor vehicle falls within the limitations of this section regardless of what the charge is called. Opinion of the Justices, 152 A.2d 494 (Me. 1959). The funds may be used for that portion of the state police budget which is used for enforcement of traffic laws, but may not be used for other portions of the state police budget. Op. Atty. Gen. (Feb. 11, 1981).

MINNESOTA

Minnesota has several constitutional provisions which together afford excellent protection for highway user revenue.

One section creates a highway user tax distribution fund to be used solely for highway purposes.¹ This fund is divided into three other funds, for use on state, county, and municipal highways. The sections which create these funds allow expenditures only to pay the principal or interest on highway bonds or for construction, improvement, and maintenance of highways.²

The highway user tax distribution fund consists of revenue from taxes authorized by two other sections. The first of these sections authorizes the legislature to tax motor vehicles using the highways, and specifies that this tax is in lieu of any other tax upon motor vehicles except wheelage taxes imposed by political subdivisions solely for highway purposes.³ The second of the two sections authorizes an excise tax on any means or substance used for propelling vehicles on the highways, or on the business of selling such a substance.⁴

1. Minn. Const. art. 14, § 5 (1976).

2. Minn. Const. art. 14, §§ 2, 6, 7, 8 (1976); art. 14, § 11 (Supp. 1985).

3. Minn. Const. art. 14, § 9 (1976).

4. Minn. Const. art. 14, § 10 (1976).

MISSOURI

Missouri has several extensive constitutional provisions which afford excellent protection for highway user revenue.

One section deals with the state road fund.¹ It covers all revenue derived from highway users as an incident to their use or right to use the highways. With some exceptions, this includes all taxes on the manufacture, receipt, storage, distribution, sale, or use of vehicles or motor vehicle fuels, and state license fees and taxes on vehicles.²

The same section specifies that expenditures may be made from these revenues only for the following purposes: for payment of principal and interest on state road bonds; to complete, widen, improve, or maintain existing state highways; to reimburse political subdivisions for highways taken over by the state or for cash advanced by the subdivision to expedite state highway construction or improvement; to locate, relocate, establish, acquire, construct, and maintain new highways and bridges; to acquire materials, equipment, and buildings necessary to carry out these purposes; to maintain the highway-related activities of the highway commission and the department, including workmen's compensation and retirement programs; for administering and enforcing state motor vehicle and traffic laws; and for such

1. Mo. Const. art. 4, § 30(b) (Supp. 1986).

2. The exceptions are as follows: property taxes are not covered; twenty-five percent of the revenue from the tax on motor vehicle fuel is allocated to local governments for highway purposes (as described in the text above), and does not pass through the state road fund; and revenue from sales tax on vehicles is not covered, although one-half of that revenue is dedicated to highway use under another provision (also described in the text).

A section added to the constitution in 1979 provides that revenue from any increase in state license fees and taxes on vehicles adopted subsequent to adoption of the constitutional section must be distributed as follows: ten percent to the counties, fifteen percent to the cities, and seventy-five percent to the state road fund. The money distributed must be allocated as provided in section 30(a) of the constitution for highway and transportation purposes. Mo. Const. art. 4, § 30(b)3 (Supp. 1986).

MISSOURI -- Continued

other purposes and contingencies relating and appertaining to the construction and maintenance of highways and bridges as the commission may deem necessary and proper.³

Another constitutional provision specifies that one-half the revenue from the state sales tax on vehicles shall be dedicated to "highway and transportation use."⁴ Most of this revenue goes to the state road fund described above.⁵

Another section deals with revenue from the motor vehicle fuel tax, and specifies how the portion of that revenue which does not go to the state road fund is to be spent. Ten percent of the fuel tax revenue goes to a county road fund, to be used by counties only for construction, reconstruction, maintenance, and repair of highways and bridges.⁶ Fifteen percent of the fuel tax revenue goes to municipalities to be used only for construction, reconstruction, maintenance, repair, policing, signing, lighting, and cleaning highways.⁷

3. The section specifically allows the payment of fuel tax refunds, and payment of costs of collecting all the taxes before the revenue is credited to the state road fund. Some of the expenses listed in the text are authorized before the revenue is credited to the state road fund; others are authorized from the road fund itself.

4. Mo. Const. art. 4, § 30(b)2 (Supp. 1986).

5. Seventy-four percent goes to the state road fund; twenty-five percent goes to political subdivisions for highway and transportation use; one percent goes to the state transportation fund to be used as provided by law.

6. Mo. Const. art. 4, § 30(a)1(1) (Supp. 1986).

7. Mo. Const. art. 4, § 30(a)1(2) (Supp. 1986). This provision also allows the money to be used for payment of principal and interest on indebtedness incurred prior to January 1, 1980 for highway purposes.

MISSOURI -- Continued

These provisions have been strictly construed. One interesting case holds that interest earned by the state road fund must remain in that fund and cannot be diverted to the general fund or for any other use.⁸

8. State Highway Comm. v. Spainhower, 504 S.W.2d 121 (Mo. 1973). The attorney general has reached the same conclusion with respect to the county road fund. Op. Atty. Gen. No. 171 (Antonio, 8-15-80).

Another case holds that since fees paid for copies of driving records (and other similar fees) are obtained directly from highway users, they are covered fees and must be credited to the state highway fund. State Highway and Transp. Comm'r v. Mo. Dept. of Revenue, 672 S.W.2d 953 (Mo. 1984). Also, although the constitution specifically allows use of the funds to construct a highway in, to, and through a state park, this does not allow use of the funds to create a new park or highway rest area. State ex rel. State Highway Comm. v. Pinkley, 474 S.W.2d 46 (Mo. App. 1971).

The attorney general has ruled that the funds may not be used to defray the cost of administering a system of permits to regulate outdoor advertising. Op. Atty. Gen. No. 23 (Graham, 2-1-72). Also the funds may not be used to defray the cost of providing a driver education program in the schools. Op. Atty. Gen. No. 85 (Lang, 6-7-74).

NEW HAMPSHIRE

New Hampshire has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitutional section provides that revenue from registration fees, operators licenses, motor fuel road tolls, and any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels may be used only for the costs of construction, reconstruction, and maintenance of highways; for the payment of principal and interest of highway obligations; and for the costs of supervision of traffic on the highways.¹

1. N.H. Const. part 2, art. 6-a (1970). The section also specifies that such revenue may be expended for the cost of administration and collection of the tax or fee from which the revenue is derived.

NORTH DAKOTA

North Dakota has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The section specifies that revenue from gasoline and other motor fuel taxes, and from motor vehicle registration and license taxes may be used only for construction, reconstruction, repair, and maintenance of highways, and for payment of obligations incurred for those highway purposes.¹ Several judicial opinions have construed the section.²

1. N.D. Const. art. 10, § 11 (1981). The section also specifies the revenue may be expended for the costs of administration and collection of the tax and for authorized tax refunds.

2. The funds may be used for necessary relocation of utility facilities on interstate highways. *Northwestern Bell Telephone Co. v. Wentz*, 103 N.W.2d 245 (N.D. 1960). The funds may be used to control advertising and billboard use both on the highway right of way and on land abutting the right of way, if such control is provided for by law. *Newman v. Hjelle*, 133 N.W.2d 549 (N.D. 1965). The funds may be used to pay the cost of a bridge or culvert on a highway, even where the drain being bridged is built after the highway. *Brenna v. Hjelle*, 161 N.W.2d 356 (N.D. 1968).

OHIO

Ohio has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The section provides that revenue derived from fees or taxes relating to the registration, operation, or use of vehicles on the highways, or to fuels used for propelling such vehicles may be used only for the payment of highway obligations; the costs of construction, reconstruction, maintenance, and repair of highways and bridges; other statutory highway purposes; expenses of state enforcement of traffic laws; and expenses authorized for hospitalization of indigent persons injured in motor vehicle accidents on the highways.¹

This section has been held applicable only to state revenue; it does not restrict the use of revenue from taxes and fees imposed by municipal corporations.²

1. Ohio Const. art. 12, § 5a (1979). The section also specifies that such revenue may be expended for the cost of administration and for refunds and adjustments relating to the tax from which the revenue is derived.

It has been held that the funds may be used for street lighting systems on urban portions of limited access highways. State ex rel. Walter v. Vogel, 159 N.E.2d 892 (Ohio 1959).

2. Garrett v. Cincinnati, 139 N.E.2d 35 (Ohio 1956).

OREGON

Oregon has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The section specifies that revenue from any tax on motor vehicle fuel or other product used for the propulsion of motor vehicles, and revenue from any tax on the ownership, operation, or use of a motor vehicle may only be used for construction, reconstruction, improvement, repair, maintenance, operation and use of the highways, including roadside rest areas.¹ The section specifies that the revenue "may also be used for retirement of bonds for which such revenues have been pledged." It further specifies that if the revenue is produced by application of a tax to a vehicle which is used for commercial purposes, the revenue may also be used for enforcement of commercial vehicle weight, size, load, conformation, and equipment regulations.²

1. Ore. Const. art. 9, § 3a (1985). The section also specifies that the revenue may be used for the costs of administration of the tax, and for any refunds or credits authorized by law. The language used to describe the tax on motor vehicle fuels is as follows: "Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel"

2. The section also provides that if the revenue is produced by application of a tax on the ownership, operation, or use of recreational vehicles such as campers, mobile homes, motor homes, travel trailers, and snowmobiles, the revenue may also be used for acquisition, development, maintenance, and care of parks and recreation areas.

PENNSYLVANIA

Pennsylvania has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The provision applies to revenue from gasoline and other motor fuel taxes, motor vehicle registration fees, drivers license fees, and other taxes on products used in motor transportation.¹ It specifies that these funds must be used solely for highway construction, reconstruction, maintenance, and repair; highway safety; expenses incident to those activities; or to pay bond obligations incurred for those purposes.² The section also provides for distribution of the funds to political subdivisions to use solely for the same purposes.

The provision also permits the state to borrow from the funds for a period not exceeding eight months. The loan must be repaid within one month after the beginning of a new fiscal year.

1. Pa. Const. art. 8, § 11(a) (Supp. 1985). A tax on gross receipts of a motor carrier has been held not to be covered by this provision. *Shirks Motor Express Corp. v. Messner*, 100 A.2d 913 (Pa. 1954), appeal dismissed, 347 U.S. 941 (1954).

2. The language of this provision which would permit use of the funds for construction of a bridge does not permit use of the funds for purchase of an already constructed bridge. *Peoples Bridge Co. v. Shroyer*, 50 A.2d 499 (Pa. 1947). But see 1973 Op.Att'y.Gen. No. 19. Payment of that portion of a county engineer's salary attributable to the highway purposes specified in the section is a legitimate use of the funds. 1975 Op.Att'y.Gen. No. 10. Payment by the Dept. of Transportation to lease an aircraft for use in highway construction and maintenance is also a legitimate use. 1973 Op.Att'y.Gen. No. 40.

SOUTH DAKOTA

South Dakota has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitutional provision applies to revenue from registration fees or other charges with respect to the operation of a motor vehicle on the highways, and revenue from any tax on gasoline or other liquid motor fuel used to propel a motor vehicle on the highways.¹ It specifies that such revenue may be used only for the maintenance, construction, and supervision of highways and bridges.²

1. S.D. Const. art. 11, § 8 (1978).

2. The section also specifies that the revenue may be used for the cost of administration of the gasoline and motor fuel tax law.

Ad valorem taxes on motor vehicles are not covered. Op.Atty.Gen. p. 325 (1967-68).

The provision has been tightly construed. The funds may not be used to pay either the interest or the administrative costs on highway bonds. In Re Opinion of Supreme Court, 257 N.W.2d 442 (S.D. 1977). The funds may not be used to pay contractors for cost overruns or damages for breach of contract on highway contracts. *G. B. Lindekugel & Sons, Inc. v. State Highway Comm.*, 202 N.W.2d 125 (S.D. 1972); *Northern Improvement Co. v. State Highway Comm.*, 202 N.W.2d 861 (S.D. 1972); *John A. Carlson, Inc. v. State Highway Comm.*, 202 N.W.2d 867 (S.D. 1972). A special, additional tax on motor fuels imposed to fund the operation and maintenance of a state-owned railroad was declared unconstitutional because a railroad is not a "highway." *South Dakota Automobile Club, Inc. v. Volk*, 305 N.W.2d 693 (S.D. 1981). The funds may not be used for regulation and removal of public utility facilities and billboards along the highway right of way. Op.Atty.Gen. p. 34 (1963-64). Motor vehicle funds distributed to municipalities must be used for maintenance of streets. Op.Atty.Gen. p. 118 (1951-52).

On the other hand, highway "maintenance, construction, and supervision" includes the cost of acquiring and developing land for roads; acquiring and utilizing materials and equipment for building new roads and maintaining existing ones; and salaries for all highway department employees, including back pay ordered paid by the state personnel policy board. *Chilstrom v. State Department of Transportation*, 271 N.W.2d 4 (S.D. 1978).

WASHINGTON

Washington has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitutional provision applies to all fees collected by the state as license fees for motor vehicles; all excise taxes collected by the state on the sale, distribution, or use of motor vehicle fuel; and all other state revenue intended to be used for highway purposes.¹ All such revenue must be placed in a special fund and may be used only for highway purposes.²

The section provides that "highway purposes" includes construction, reconstruction, maintenance, repair, and betterment of state, county, and city highways and bridges. More specifically, this includes the cost of right of way acquisition; the cost of installing, maintaining, and operating traffic signs and signal lights; the cost of policing the highways by the state; the cost of operation of movable span bridges; and the cost of operation of ferries which are a part of any highway.³ The section also provides that "highway purposes" includes the necessary operating, engineering, and legal expenses connected with the administration of the highways.⁴

1. Washington Const. amend. 18 (1966). The section also specifies that it shall not be construed to apply to revenue from general or special taxes or excises not levied primarily for highway purposes, or to vehicle operator's license fees, any excise tax imposed on motor vehicles or the use thereof in lieu of a property tax thereon, or fees for certificates of ownership of motor vehicles.

2. The section specifically allows use of the revenue for refunds authorized by law on taxes paid on motor vehicle fuels, and for paying the cost of collecting any revenues described in the section.

3. See State ex rel. Toll Bridge v. Yelle, 377 P.2d 466 (Wash. 1962). The funds may not be used for public transportation systems. State ex rel. O'Connell v. Slavin, 452 P.2d 943 (Wash. 1969). The funds may be used for construction and operation of "park and ride" lots. State Highway Commission v. O'Brien, 523 P.2d 190 (Wash. 1974).

4. The section also specifies that "highway purposes" includes the payment or refunding of any obligation of the state or any political subdivision thereof for which any of the described revenues may have been legally pledged prior to the effective date of the section.

WEST VIRGINIA

West Virginia has a constitutional provision which affords excellent protection for highway user revenue.

The constitutional provision applies to revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, and all other revenue derived from motor vehicles or motor fuels.¹ It specifies that such revenue must be used only for construction, reconstruction, repair, and maintenance of the highways; or for payment of interest and principal on highway bonds; or for the payment of obligations incurred in such highway work.²

1. West Virginia Const. § 52 (1982).

2. The provision specifies that statutory refunds and the cost of administration and collection may be paid from the revenues.

The cost of relocation of utility facilities is an obligation incurred in highway construction and may be paid from these revenues. State ex rel. Appalachian Power Co. v. Gainer, 143 S.E.2d 351 (W.Va. 1965). The cost of construction, maintenance, and operation of an office building and related facilities for the exclusive use of the highway department is a necessary and proper incident of highway construction, maintenance, and repair, and is a legitimate use of these revenues. State ex rel. State Bldg. Comm'n v. Moore, 184 S.E.2d 94 (W.Va. 1971).

An aerial, black and white photograph of a town in Alaska. A road winds through the town, and a river flows through it. The town is surrounded by dense forest. The image is the background for the report cover.

CROSSROADS:

**A REPORT ON THE DELIVERY OF
TRANSPORTATION SERVICES IN ALASKA**

**Final Report to
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**Governor's Task Force On
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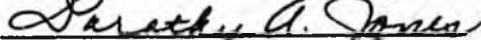
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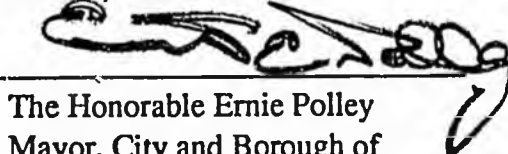
Howard "Buzz" Otis

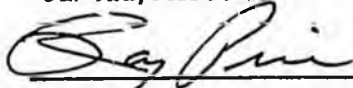
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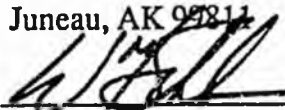
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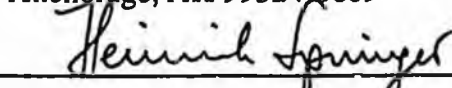
TASK FORCE MEMBERS

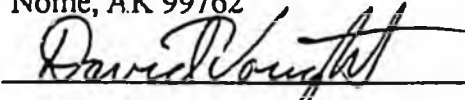

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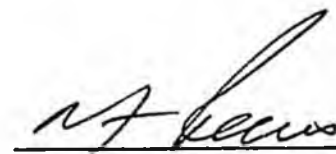

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**Governor's Task Force on Transportation
Facilities**

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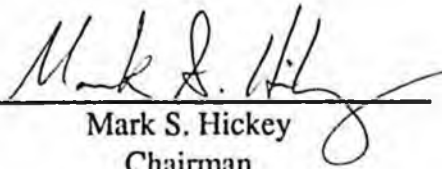
PREFACE

The task force has reviewed the problems associated with the efficient and equitable delivery of transportation services in Alaska as directed by the Governor and the Legislature and provides this report for the general public and for state policy makers.

In addition to other benefits gained, the task force has determined that the delivery of transportation services could be more efficiently and equitably provided if the continued care of some of Alaska's transportation facilities would be more widely distributed among various private and governmental entities. As an example, the Department of Transportation and Public Facilities (DOT/PF) estimates that 28% of the department's highway responsibilities are roads that primarily serve a local function.

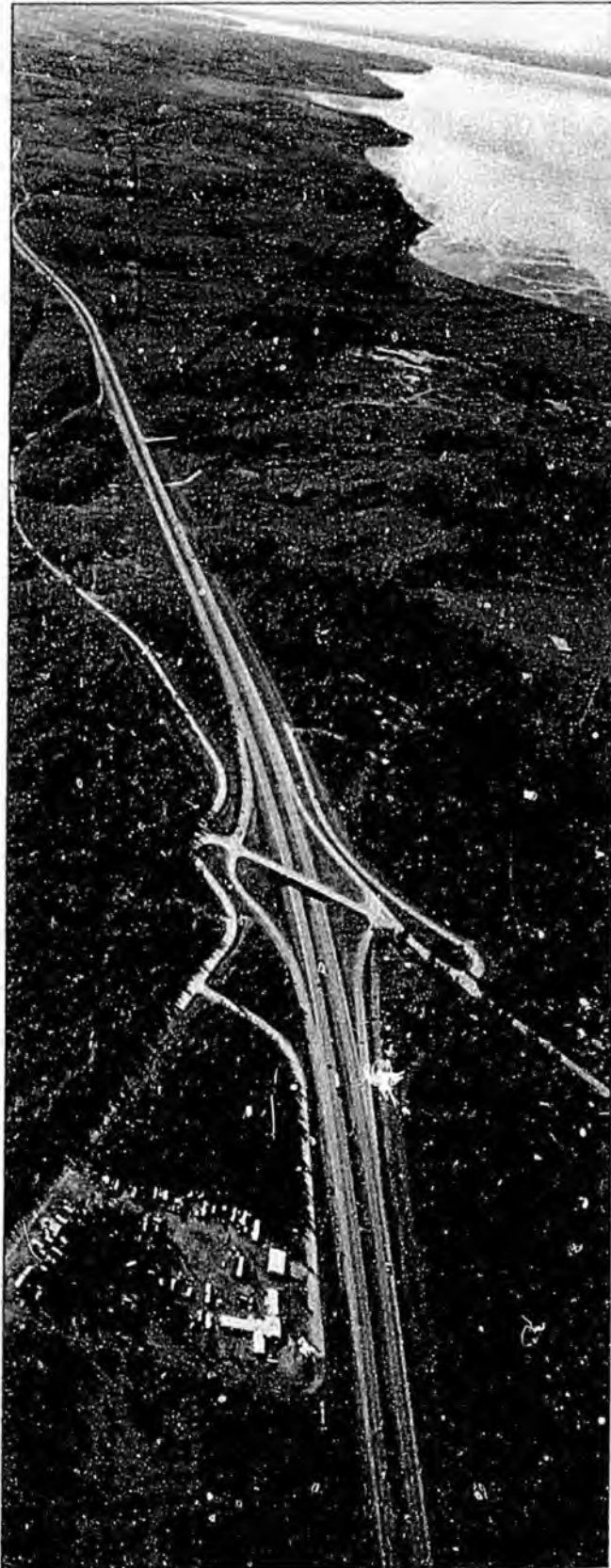
For all facets of the problems related to the delivery of transportation services, adequate funding and the ongoing stability of funding are the critical issues. In this regard, the task force is unanimous in recommending that the maintenance of the transportation system should be supported to the extent practical with dedicated user fees.

The problems associated with the efficient and equitable delivery of transportation services present many complicated issues which the task force finds need addressing as a state policy matter. This report sets out a policy framework which the task force believes will assist state policy makers at this critical juncture of the development of the transportation delivery system.



Mark S. Hickey
Chairman

INTRODUCTION



The main task of the Governor's Task Force on Transportation Facilities was to make recommendations on the equity and efficiency of Alaska's transportation delivery system. The task force understood the transportation delivery system to be the sum of all activities and physical facilities managed or undertaken by an Alaskan government entity that results in the provision of transportation services to the general public. (The Alaska Railroad is not part of this discussion because of its unique position in the state system by statute.)

For this report, the goal of the task force was to present a short concise synopsis of the issues relevant to achieve an efficient and equitable transportation delivery system. The task force understood the equity and efficiency of Alaska's transportation delivery system to be dependent in large part on what entity is responsible for components of the system and how the system is funded.

The report is organized so that the first section develops the context that decision-makers should be aware of with funding being the most important issue. The second and third sections of the report focus on the responsibility issues related to Alaska's transportation delivery system with the delineation of responsibility between state government and local government being the major focus.

SUMMARY OF FINDINGS

1. The condition and efficiency of Alaska's transportation system is of vital importance to all Alaskans.
2. There is a vast inventory of transportation facilities that requires constant maintenance and periodic rehabilitation.
3. There is currently not enough funding allocated to maintain and rehabilitate the transportation system.
4. Maintenance is being increasingly deferred over portions of the transportation system.
5. Portions of the transportation system are deteriorating and as deterioration progresses become more costly to repair.
6. There is little likelihood that additional funding will be available from the general fund; therefore, other sources of funding need to be examined.
7. The DOT/PF is responsible for some transportation facilities that would ordinarily in other states be the responsibility of local government.
8. The DOT/PF's responsibility for local transportation facilities makes it difficult to give clear focus to statewide issues including performance of a statutory duty to provide statewide planning.
9. Financial considerations associated with rehabilitating local roads will need to be addressed regardless of how alignment of responsibility is resolved.
10. The frequent changes in leadership at DOT/PF cause problems that affect the efficiency of the delivery of transportation services.
11. Funding for the road service account in the Municipal Revenue Sharing Program should be stabilized.

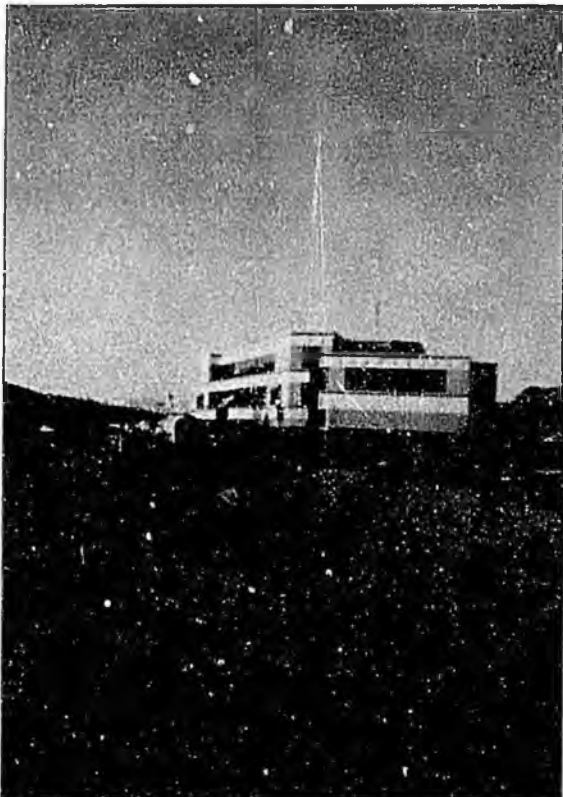
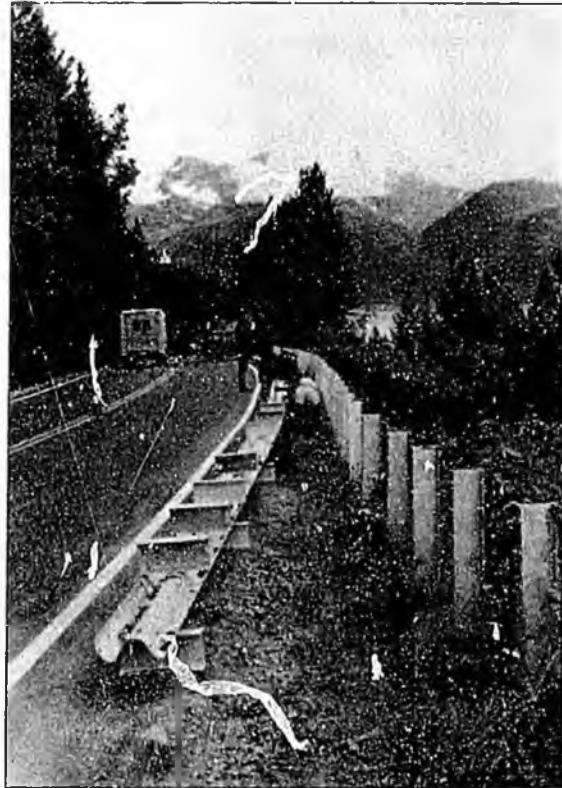
SUMMARY OF RECOMMENDATIONS

1. The maintenance of Alaska's transportation system should be supported, to the degree possible, through user fees.
2. User fee revenues should be dedicated.
3. The state should have an annually updated six year revenue plan for transportation.
4. There should be greater emphasis on a cost/benefit analysis of capital projects during the state planning process.
5. Responsibility for the maintenance of capital projects should be determined before they are built.
6. Responsibility for existing transportation facilities should be clarified and revisions made where cost efficiencies can be clearly indicated.
7. There should be an orderly program developed to transfer responsibility for some transportation facilities from the state to local government.
8. Statutory powers of local government for providing transportation services should be made more uniform.
9. The state and local communities should eliminate duplication of transportation services in some communities.
10. The state should aggressively attempt to influence the new federal highway program.
11. The merits of creating a board of commissioners to oversee DOT/PF should be analyzed.

I. ALASKA'S TRANSPORTATION DELIVERY SYSTEM

Transportation Services

The task force finds that the condition of Alaska's transportation delivery system is a critical factor in enhancing the state's productivity and Alaska's ability to compete and survive in today's demanding economic environment. The task force finds that there is a vast inventory of transportation facilities that require constant maintenance and periodic rehabilitation, and that on a portion of this inventory maintenance and rehabilitation is currently being deferred.



Additionally, the task force is concerned that future expansion of Alaska's infrastructure for strategic economic development is in danger of stagnation because of the declining funds available for capital projects. The task force is concerned about funding for capital expenditures because of the combination of the uncertainty over federal transportation policy direction after 1991 and reduced state revenues.

A deteriorating infrastructure combined with a stagnation of the strategic development of Alaska's infrastructure will eventually lead to economic decline. The task force finds that above all other issues it has explored, the lack of adequate and stable future funding for the transportation system is the most troubling.

The Revenue Picture

In addition to the well publicized decline in state revenue, the task force warns that Alaska must be prepared to face potential declines of unknown magnitude in the current sizeable federal contribution to our capital construction program.

Caveat: *The following estimates are provided to illustrate the potential revenue problem. Although the task force believes these estimates to be reliable enough for this exercise, readers should be aware that these figures are not provided for any purpose other than to help explain the revenue problem.*

ALASKA HIGHWAY REVENUE(1)

	<u>FY87</u>	<u>FY88</u>	<u>FY89</u>	<u>FY90</u>	<u>FY91</u>
FEDERAL HIGHWAY (2) (3) (4)	152	129	135	135	135
FUEL TAX (5)	18	19	19	19	19
VEHICLE FEES (6)	19	19	19	19	19
TOTAL	189	167	173	173	173

ALASKA HIGHWAY EXPENSES(1)

	<u>FY87</u>	<u>FY88</u>	<u>FY89</u>	<u>FY90</u>	<u>FY91</u>
MAINTENANCE AND OPERATIONS	44	51	55	60	60
REHABILITATION /IMPROVEMENTS(7)	200	210	220	230	230
TOTAL	244	261	275	290	290

REVENUE SHORTFALL(1)

	<u>FY87</u>	<u>FY88</u>	<u>FY89</u>	<u>FY90</u>	<u>FY91</u>
TOTAL	55	94	102	117	117

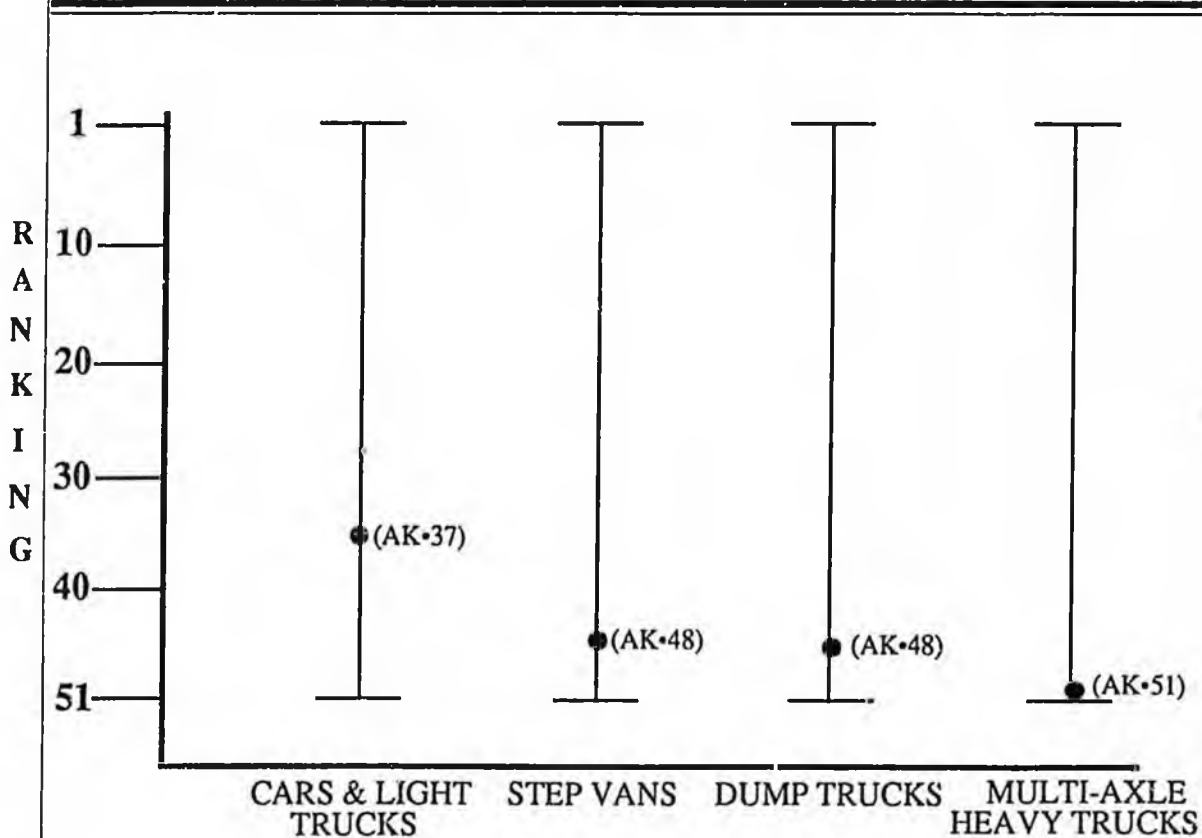
(1) Dollars in millions. (2) The statute that authorizes federal highway dollars expires in 1991 and it is recognized that the program as it exists today may be terminated. (3) Actual spending level set annually by Congress and has been shrinking in part due to Gramm-Rudman. (4) Spending limit or amount obligated (1987) - not appropriation. (5) Highway account only - not including the off-highway tax. (6) Collection costs not deducted. (7) Represents an optimal level of expenditures to protect current investments and expand the system, not actual expenditures.

Paving For Alaska's Transportation Delivery System

The task force finds that the state has no revenue policy for transportation services. Consequently, there is no clear view concerning who should pay for services at what level or what revenue sources should be tapped. Moreover, this results in major differences between the support that government subsidized transportation services provide to some users and the impact that these users have on the system.

It is the opinion of the task force that users will willingly accept additional user fees if they have confidence that the fees will be used to support the infrastructure needs and that the revenue will be strictly accounted for. The task force feels this would be especially true if an organized effort was made to educate the public about the value of transportation facilities toward improving the quality of life.

RELATIVE RANK OF USER TAXES & FEES BY VEHICLE CLASS*
(ALASKA COMPARED TO OTHER STATES & DISTRICT OF COLUMBIA)



YEAR - 1987

*Includes registration fee, property tax, fuel tax, & other vehicle taxes & fees
Source: Road User & Property Tax on Selected Vehicles, FHWA, 1987

TASK FORCE RECOMMENDATIONS:

1. The task force recommends that the Governor and the Legislature seek a Constitutional amendment to dedicate all fees collected and retained by the state for transportation related activities to pay for direct costs associated with the improvement, maintenance and operation of the existing transportation system from which the revenue was generated.
2. The task force recommends that decisions for new construction should be determined, in part, on the basis of the economic benefit to the state and that a finding should be made that would determine who should be responsible for the maintenance of the facility. These determinations should be an element of the state planning process.
3. The task force recommends that state policy-makers be diligent in monitoring, and vocal in advocating, new federal transportation programs that include consideration for federal involvement in the maintenance of existing transportation facilities and for the development of transportation infrastructure necessary for the movement of raw materials and the support of national interests.
4. The task force recommends that a six year revenue plan be developed including user fees, vehicle fees, motor fuel taxes, weight/distance fees and other revenue generating devices with a view toward establishing an equitable system of raising the monies needed to plan, operate and maintain Alaska's transportation systems. For the purposes of this plan, the national average for revenue collected from each vehicle type should be used as the basis for equitable taxes and fees.
5. The task force recommends that the current motor fuel tax exemption for off-highway usage be continued.

II. RESPONSIBILITY FOR ALASKA'S TRANSPORTATION DELIVERY SYSTEM

Responsibility of the Department of Transportation and Public Facilities

In addition to highway responsibilities which includes roughly 800 bridges and nearly 5,500 miles of roads, DOT/PF administers two international airports, over 200 smaller airports, a nine vessel ferry system, the state equipment fleet and most state-owned buildings. The task force finds that included in the transportation facilities that the department currently cares for are facilities that serve primarily a local interest including, by the department's estimate, over 2,000 miles of local roads.

Because of the sheer magnitude of the DOT/PF's overall responsibilities and the additional responsibilities associated with attending to facilities with mostly a local interest, the task force is concerned that DOT/PF may have difficulty in making choices based on the best interest of the state. The task force feels this would be especially true where a decision involves allocating resources to a project which is of long-term statewide interest with no immediate constituency or allocating those same resources to a project with an immediate local constituency.



Responsibility of Other Entities

The task force finds that inconsistency exists between accepted responsibility among municipalities, organized boroughs, the unorganized borough and among private ventures.

For the local government entities, the task force finds that the range of powers granted under the Municipal Code (AS 29.35) for duties related to transportation issues vary significantly from one local government type to another. The task force believes that equity issues cannot be dealt with until this basic issue is addressed.

The task force finds that it should be a goal of state policy makers to deliver transportation services as uniformly as practical.



Local Control Issues

Ideally control goes hand in hand with responsibility. The task force finds that because of the amount of local interest facilities for which the state has responsibility, there is a lack of local control over local transportation services in Alaska. The task force recognizes that as a result there has developed a system of state control over the delivery of transportation services including local issues.

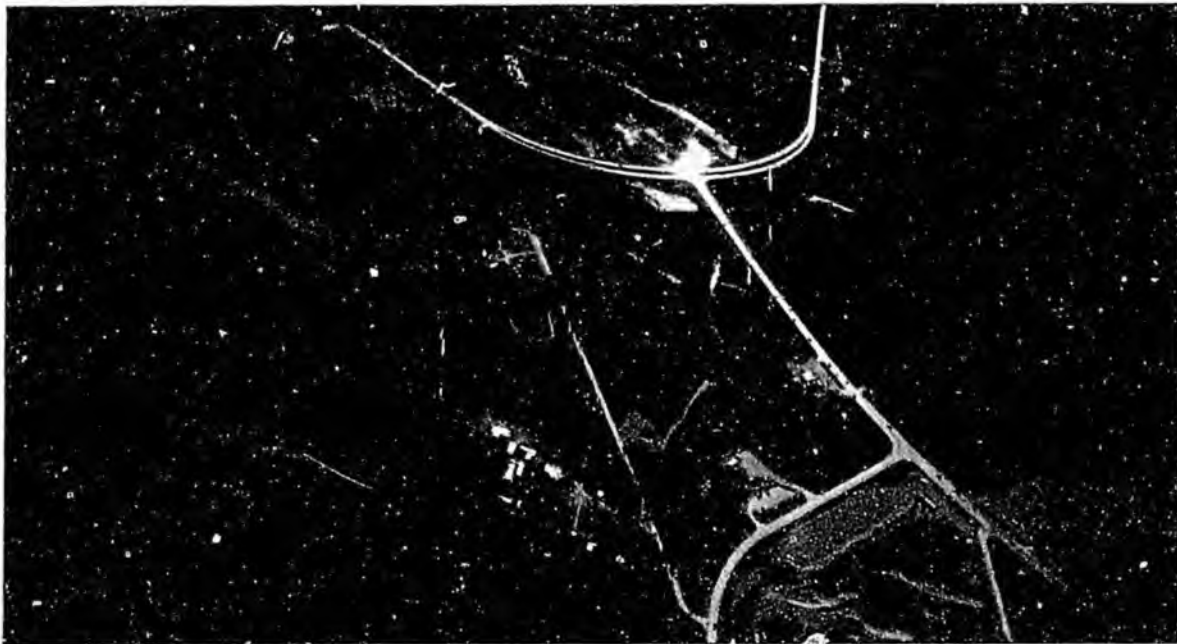
The task force further recognizes that state control forces more local transportation funding considerations through the Legislature. As a result, local interest must compete at the statewide level against other state programs. The task force finds that the cumulative effect is that often decisions about these kinds of transportation services may be more difficult to make based on a rational policy.

In addition, there are practical problems associated with this centralization such as the difficulty for local residents to get a prompt response to complaints and local interest issues consuming statewide resources.

Strategic Statewide Planning

For intelligent statewide transportation development, Alaska needs to better define the scope of options available, outline what the specific needs for all options are and then identify what resources can be marshalled and by whom. To create this basic information, the task force believes the key is to develop a broad consensus that there is some statewide transportation development needed. In Alaska, energizing this united effort of a variety of people is the statutory duty of DOT/PF through strategic statewide transportation planning.

The task force finds that as a direct result of the department's multiple levels of responsibility, few state resources are available for strategic statewide transportation planning.



Efficiency of the Transportation Delivery System

The task force finds that little logical thought went into determining who should be responsible for the maintenance and operation of a particular facility. Consequently, the task force recognizes that there are situations where transportation facilities are being maintained by an entity for historical reasons when it may be more efficient for another entity to provide the maintenance.

In some communities, DOT/PF has a full compliment of equipment, personnel and facilities to provide transportation services while the community also maintains a similar array of transportation support resources. The task force finds that there are some communities that would be served as well with one entity providing services while eliminating duplicate support resources and providing for the more efficient delivery of transportation services.

TASK FORCE RECOMMENDATIONS:

1. The task force recommends an organized approach to transferring responsibility for some transportation facilities from the state to local governments.
2. The task force recommends that the Governor and the transportation committees of the Legislature, after examining and analyzing the merits of creating a transportation commission to direct the delivery of all transportation services in the State of Alaska, report its findings to the people of Alaska by the beginning of the 16th legislative session (see Formal Recommendation # 3).
3. The task force recommends that statutes related to local powers for providing transportation services be reviewed and revised so that more uniformity can be achieved.
4. The task force recommends that the state pursue a policy of shared responsibility for transportation facilities related to economic development.
5. The task force recommends realignment of responsibility, clarification of areas of responsibility and transfer of some transportation facilities from the state to local governments to enable DOT/PF to more clearly focus on strategic statewide planning (see minimum elements in Key Elements of a Model Transfer Program).
6. The task force recommends, as part of the transfer program, that negotiation occur between DOT/PF and local communities to pursue adjustments that provide for the most efficient delivery of transportation service by reducing the duplication of services, effort, personnel and equipment.

III. TRANSFER OF RESPONSIBILITY

Key Elements of a Model Transfer Program

The task force unanimously recommends a transfer program because it finds that the assumption of local responsibility by the state distracts state attention from issues that should be attended to by the state. In addition, the task force recognizes that many issues could be better handled by local officials while at the same time providing for more control over local priorities. Moreover, the task force finds that it is poor public policy to have local projects competing directly with statewide projects for state resources and that, in the long run, transfer of responsibility for some facilities to local communities would distribute the costs for

providing transportation services more equitably. The task force also finds that equity in the delivery of transportation services is a worthwhile goal and recommends that during transfer discussions attention should be given to the various levels of service provided by the state to different communities.

While recommending that a transfer program be adopted, the task force recognizes that certain elements must be present for the program to be successful (see the recommended Model Transfer Program in the Supplemental Documents).

MINIMUM ELEMENTS OF A TRANSFER PROGRAM

- A revenue stream must be dedicated to the program.
- The program must be voluntary.
- Prior to transfer, all facilities must be rehabilitated.
- A facility transferred eligible for federal funds must remain eligible for federal funds after transfer.
- Additional capital costs must be the responsibility of the municipality including any match for federal funds.
- Negotiated yearly maintenance costs must be guaranteed.
- Liability must transfer with the facility.
- Any transfer of personnel must provide for equitable treatment of employees.
- Primary responsibility for bridges should remain with the state.

IV. APPENDIX

Administrative Order No. 105

It is in the best interest of the people of Alaska, and necessary for the efficient administration of government, that a review be conducted, as requested by the Legislature, of the distribution of responsibility for transportation facilities, and that the Governor and the Legislature be advised of changes which can be made to increase the efficiency and equity of Alaska's transportation delivery system.

THEREFORE, I, Steve Cowper, pursuant to the authority vested in me by article III of the Alaska Constitution and by AS 44.17.060 and AS 44.19.145 (c), order the following:

Section 1. Creation and Composition.

The Governor's Task Force To Evaluate Responsibility For Transportation Facilities (hereafter Governor's Task Force on Transportation Facilities) is hereby created within the Department of Transportation and Public Facilities. The task force shall be chaired by the Commissioner of the Department of Transportation and Public Facilities and shall consist of six members representing local government, one member representing the unorganized borough, one legislator from each house nominated by the presiding officer of the house, and one representative of a transportation user group. All members of the task force will be appointed by me.

Section 2. Administration.

Members of the Governor's Task Force on Transportation Facilities will receive no compensation for their services but will be entitled to per diem and travel allowance authorized by law for members of other boards and commissions under AS 39.30.180. The Department of Transportation and Public Facilities shall provide whatever administrative services to the task force that the commissioner determines are necessary to enable it to perform its responsibilities under this order.

Section 3. Responsibilities.

The Governor's Task Force on Transportation Facilities shall evaluate the feasibility of transferring the responsibility of direct maintenance on certain transportation facilities from the state to local government, and examine reasonable and equitable funding sources for maintenance activities, including a review of the motor fuel tax and of the existing road service account in the state's revenue sharing program. The task force shall also study the issues of road ownership, liability, and the transfer of equipment and employees.

Section 4. Report.

The Governor's Task Force on Transportation Facilities shall submit a report to me and the Legislature by June 30, 1988. The report shall represent a majority view of the Task Force with the opportunity for each dissenting member to include a dissenting view. In the report, the task force shall adopt recommendations for any course of action, including maintenance of the status quo, that it believes will provide the best level of service given limited resources, or based on an assumption of expanded resources so long as a specific proposal is also made regarding provision of these resources. In all instances, the task force shall give its reasons for adopting the recommendations and specifically state how those recommendations address state and local financial considerations, statewide transportation planning, and the equity of distributed responsibilities.

Section 5. Duration.

The Governor's Task Force on Transportation Facilities shall cease to exist on July 1, 1988, unless it is extended by subsequent administrative order or legislation.

This order takes effect immediately.

TASK FORCE RECOMMENDATION #2

Whereas: This task force was created by the Governor's Administrative Order # 105 and under intent language adopted by the 15th Alaska Legislature.

Whereas: The charge by the Governor and the Legislature to this task force was to evaluate and examine reasonable and equitable funding sources for expenses related to transportation facilities.

Whereas: The task force, for purposes of this recommendation, interprets expenses related to transportation facilities to mean expenses for the Alaska transportation systems excluding indirect costs.

Whereas: This task force has recommended with Task Force Recommendation # 1, that revenue collected and retained by the State of Alaska for fees directly related to use of transportation facilities should be dedicated for direct costs related to the transportation system from which the revenue was generated.

And Whereas: It is the determination of this task force that the current status of the dedication of fuel taxes for the Alaska transportation systems found in Article IX, Section 7, of the Alaska Constitution is unclear.

NOW THEREFORE BE IT RESOLVED, that it is the recommendation of this task force that the Governor and the Legislature should seek a constitutional amendment which would unequivocally dedicate all directly related fees collected and retained by the State of Alaska to the direct costs associated with the improvement, maintenance and operation of the existing transportation system from which the revenues were generated.

TASK FORCE RECOMMENDATION # 3

Whereas: This task force was created by the Governor's Administrative Order # 105 and under intent language adopted by the 15th Alaska Legislature.

Whereas: The charge by the Governor and the Legislature to this task force was to adopt recommendations for any course of action which will provide the best level of transportation services for the state.

Whereas: The charge by the Governor and the Legislature to this task force specifically requested that the Governor and the Legislature be advised of any changes which could be made which would increase the efficiency of Alaska's transportation delivery system.

Whereas: This task force finds that frequent changes in the top administrative position of the Department of Transportation and Public Facilities (seven commissioners in ten years) and the abolition of the Alaska Transportation Commission without a clear plan for the continuance of certain vital transportation services, has had serious negative effects on the delivery of transportation services by creating uncertainty and instability within the transportation field.

Whereas: It is the determination of this task force that the uncertainty and instability of the agency that delivers transportation services, has an additional detrimental effect on state government, local government, industry, unions and employees.

Whereas: This task force finds that many other states have successfully created stability in their transportation delivery system by instituting a transportation board or commission which develops transportation policy and long term planning strategy which the state transportation agency implements.

And Whereas: It is the position of this task force that the regional and modal differences of the transportation field in Alaska could best be accommodated by a board of commissioners with similar diversity.

NOW THEREFORE BE IT RESOLVED, that it is the recommendation of this task force that the Governor and the transportation committees of the legislature should report to the people of Alaska by the beginning of the 16th legislative session their findings after examining and analyzing the merits of creating a board of transportation commissioners to direct the delivery of all transportation services in the State of Alaska.

TASK FORCE RECOMMENDATION # 4

Whereas: It is the duty of this task force to examine and consider transportation issues which will affect the delivery of transportation services in the State of Alaska.

Whereas: It is a specific duty of this task force to consider and express opinions on issues affecting the funding of transportation services in the State of Alaska,

Whereas: It is a specific duty of this task force to consider and express opinions on issues affecting the planning for transportation services in the State of Alaska.

Whereas: The Federal-aid Highway Act of 1987 authorized the completion of the Interstate Highway network system thus signaling the end of a national transportation objective and raising questions concerning the future direction of federal participation in transportation funding.

Whereas: A new direction for a national transportation initiative will have long term and serious effects on the planning and delivery of transportation services in the State of Alaska.

Whereas: The Alaska transportation needs are unique because of adverse conditions, inordinate dependence on non-traditional modes of transportation, remote and vast terrain, large federal land holdings, a minimally developed transportation infrastructure and a small population to deal with these immense transportation problems.

Whereas: Alaska will play an important role in the continued growth of the nation through the provision of essential natural resources to the nations industry but will require a continued national commitment for the development of a transportation infrastructure in Alaska.

And Whereas: The use of the existing Alaska transportation systems for the service of national facilities such as nation interest lands and military installations will also require a continuing commitment by the federal authorities to the maintenance of the systems.

NOW THEREFORE BE IT RESOLVED: Because of considerable national benefits, it is the position of this task force that any new national transportation objective should include consideration for federal involvement in the maintenance of existing transportation facilities and for the development of transportation infrastructure necessary for the movement of raw materials and the support of national interests.

List of Supplemental Documents

1. 1987 Road User Taxes in Selected States Compared to Alaska
2. Recommended Model Transfer Program
3. Identification of Municipal Road Maintenance Flow of Funds
4. Community Comparison of Responsibility for Local Road Maintenance
5. Review of Statutes Related to Powers and Duties of DOT/PF
6. Report on Dedicated Funds in Alaska
7. Understanding the Governmental Planning Function
8. Task Force Meeting Minutes:

December 11, 1987

January 26, 1988

February 9, 1988

March 8, 1988

April 6, 1988

May 25 & 26, 1988

June 25, 1988