

SB334

(11)

HOUSE COMMITTEE REPORT

Date Referred: March 25, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/9/92

The FINANCE Committee considered:

SB 334

SENATE BILL NO. 334

FUNDING SOURCE FOR APPROPRIATIONS

"An Act relating to the National Petroleum Reserve - Alaska special revenue fund; and providing for an effective date."

- RECOMMENDATIONS:  the same title  
 be replaced with \_\_\_\_\_  a new title
- have attached amendments(s)  
 do pass  
 do not pass  
 no recommendations  
 individual recommendations  
 additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_  zero fiscal note(s) REVENUE 2/15/92  
DCRA 2/15/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Mike Savane NAVAYRE	✓	RODNEY CROOK Phillips		✓	
Mark Bayn BAYN	X	James H. Barnes BARNES		X	
Tony Brown BROWN	✓				
Richard J. Larson LARSON	X				

Mike Savane NAVAYRE  
 CO-CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 2

Bill Version: SB - 334

(S) Publish Date: 2-5-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: "...Relating to the NPRA Special Revenue Fund."  
Sponsor: Senator Adams  
Requestor: \_\_\_\_\_

Department Affected: Community and Regional Affairs  
BRU: Local Government Assistance  
Component: National Petroleum Reserve Program

COMPONENT SERIAL NO. 

1	2	1	4
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: No current year impact.

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson  
Division: Administrative Services Division

Phone: 465-4708  
Date: 1/16/92

Approved by Commissioner: Remond Henderson for  
Agency: Department of Community and Regional Affairs

Date: 1/16/92

FISCAL NOTE

No. 1

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill Version: SR-334

Revision Date: 1/28/92

Department Aff (S) Publish Date: 2-5-92

Title: An act relating to the National Petroleum Reserve - Alaska special revenue fund.

BRU: Operatic Revenue

Component: Treasury Management

Sponsor: Senator Adams

Component Serial No.

Requestor: Senator Adams

0	1	2	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND/Unrestricted						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

estimate of current year impact: None

ANALYSIS:
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Prepared by: Brian C. Andrews *[Signature]*

Phone: 465-2350

Division: Treasury *[Signature]*

Date: January 28, 1992

Approved by Commissioner: *[Signature]*

Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 12/91

## SENATE BILL NO. 334

IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR ADAMS

Introduced: 1/13/92  
Referred: Finance

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to the National Petroleum Reserve - Alaska special revenue fund; and  
2 providing for an effective date."

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

4 \* Section 1. PURPOSE. The purpose of this Act is to

5 (1) identify the funding source for appropriations from the National Petroleum Reserve - Alaska  
6 special revenue fund; and

7 (2) ratify past administrative practices of the Department of Revenue and the Department of  
8 Community and Regional Affairs relating to identification of the fund receipts that are the funding source  
9 for appropriations from the special revenue fund.

10 \* Sec. 2. AS 37.05.530 is amended by adding a new subsection to read:

11 (h) Notwithstanding other provisions of law and unless expressly provided by the  
12 legislature in the appropriation item making the appropriation, an appropriation from the National  
13 Petroleum Reserve - Alaska special revenue fund shall, for the purposes of determining the  
14 funding sources for the appropriation be treated as though the appropriation takes effect in the

1 fiscal year in which the appropriation passes the legislature. The authorization to expend funds  
2 appropriated from the fund shall take effect as otherwise provided by law.

3 \* Sec. 3. This Act is retroactive to May 31, 1986.

4 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

# Alaska State Legislature

Senator Al Adams

WHILE IN SESSION  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-3707  
Fax 463-4867

OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3245

Official Business

March 26, 1992

TO: Representative Navarre, Co-Chair  
Representative MacLean, Co-Chair  
House Finance Committee

FROM: Senator Al Adams *AA*

RE: Scheduling of SB 334

This memo is to request a hearing on SB 334, relating to the NPR-A special revenue fund.

SB 334 addresses one issue, and that is the funding source for appropriations from the NPR-A special revenue fund. This bill ratifies the past administrative actions of both the Department of Revenue and the Department of Community and Regional Affairs.

I am enclosing the following information for the members files:

- copy of SB 334
- fiscal notes from Departments of Revenue and Community and Regional Affairs
- NPR-A special revenue fund statute
- NPR-A Impact Mitigation Program Report to the Legislature-  
January 1992
- legal opinion--Div. of Legal Services, Leg. Affairs
- legal opinion--AG's Office

STATE OF ALASKA  
**DEPT. OF COMMUNITY & REGIONAL AFFAIRS**

OFFICE OF THE COMMISSIONER

**WALTER J. HICKEL, GOVERNOR**

150 THIRD STREET  
JUNEAU, ALASKA 99801-1291  
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

January 31, 1992

POSITION PAPER

RE: Senate Bill 334

SPONSOR: Senator Adams

Program Effects of Bill

There are no programatic effects on the department.

Comments

Under existing law the language may be interpreted in two ways regarding the appropriation of deposits.

Appropriations can be made based upon the amount of receipts in the fiscal year the appropriation is made or the amount of receipts in the budget year for which the appropriation is made.

This bill will clarify the statute and will conform law with the past practice of appropriating funds on the basis of the deposits made in the fiscal year of the appropriation.

This department supports this legislation.

*Edgar Blatchford*

Edgar Blatchford, Commissioner



**STATE OF ALASKA**

**Legislative Affairs Agency**

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**A**  
**REPORT TO THE**  
**SEVENTEENTH STATE LEGISLATURE**

**Examining Court Decisions**  
**And Opinions of the**  
**Attorney General**  
**Construing Alaska Statutes**

Prepared by the  
**LEGISLATIVE AFFAIRS AGENCY**  
Pouch Y, State Capitol  
Juneau, Alaska 99811

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**OCTOBER**

**1991**

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**APPROPRIATIONS FROM THE NATIONAL PETROLEUM RESERVE - ALASKA SPECIAL REVENUE FUND.**

In response to an inquiry from a Deputy Commissioner of Revenue, the Attorney General considered the question of whether the revenue source for P.L. 96-514 grants (impact grants relating to oil development) is the federal revenue received in the fiscal year in which the appropriation takes effect or the fiscal year in which the appropriation is made. Op. Atty. Gen. (September 6, 1990) (Question #4 in that opinion.)

The Assistant Attorney General who answered the question suggested that there were good legal arguments for both results. He noted that money is not normally considered appropriated until the appropriation takes effect and that the lapse language of AS 37.05.530 tends to support the view that budget-year money is the source of the appropriation, not prior-year money. However, he also noted with respect to this special fund that the Department of Revenue has a long-standing practice of using receipts in the year the appropriation is made to fund the appropriation, even though the appropriation does not take effect until the next fiscal year. This practice has resulted in less lapsing of money from the special fund to other funds at the end of various fiscal years. The Assistant Attorney General advised the Department that this practice was supportable under the perceived ambiguity of AS 37.05.530 even though it was not the usual practice with respect to other appropriations.

We do not agree that AS 37.05.530 is ambiguous about appropriations from the special fund. There is no language in the statute to suggest that appropriations from this fund should relate to prior-year money rather than money available in the year the appropriation takes effect. Furthermore, the department's practice clearly subverts the explicit statutory language that money be lapsed from the special revenue fund to other funds at the end of each fiscal year.

We suggest legislative review of this issue.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

JUN 5 1991

LEGISLATIVE AUDIT

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

MEMORANDUM

June 5, 1991

**SUBJECT:** Lapse of money in the National Petroleum Reserve - Alaska special revenue fund (Work Order No. 7-LS1412)

**TO:** Randy S. Welker  
Legislative Auditor

**FROM:** George Utermohle *GU*  
Legislative Counsel

You have asked what is the funding source for appropriations made from the National Petroleum Reserve - Alaska special revenue fund for purposes of implementing the lapse provisions of AS 37.05.530(g).<sup>1/</sup>

The National Petroleum Reserve - Alaska special revenue fund was established to hold oil and gas leasing revenues from the National Petroleum Reserve - Alaska that the federal government shares with the state under 42 U.S.C. 6508. Money received by the state under 42 U.S.C. 6508 is to be used for construction, maintenance, and operation of essential public facilities, planning, and other necessary provisions of public service. In using the money, the state must give priority to the needs of municipalities "directly or severely impacted by development of oil and gas" in the National Petroleum Reserve - Alaska. Municipalities affected by federal leasing activities in the petroleum reserve may apply for grants from the Department of Community and Regional Affairs. Grants to impacted municipalities are funded by appropriations from the special revenue fund. The unappropriated balance of the special revenue fund at the end of each fiscal year lapses under AS 37.05.530(g).

AS 37.05.530(g) states:

(g) Amounts received by the state under 42 U.S.C. 6508 and not appropriated for grants to municipalities under (d) of this section lapse at the end of each fiscal year as follows:

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<sup>1/</sup> The National Petroleum Reserve - Alaska special revenue fund was originally established in temporary law by ch. 94, SLA 1984. The special revenue fund was substantially rewritten by secs. 2 and 3, ch. 53, SLA 1986 and is currently codified in statute as AS 37.05.530.

- (1) 50 percent to the principal of the Alaska permanent fund;
- (2) .5 percent to the public school fund (AS 37.14.110); and
- (3) the remainder to the general fund for use by the state for the following facilities and services:
  - (A) planning;
  - (B) construction, maintenance, and operation of essential public facilities; and
  - (C) other necessary public services.

AS 37.05.530(g) clearly states that money remaining in the special revenue fund at the end of the fiscal year that has not been appropriated for grants to municipalities lapses into the permanent fund, public school fund, and general fund in the proportions set out. However, there is disagreement over how to determine what has been appropriated from the fund. The Department of Law finds that subsection (g) is ambiguous in regard to identifying what has been appropriated from the special revenue fund. 1990 Inf. Op. Att'y Gen., 3-4 (Sept. 6; 663-90-0175). As the result of the ambiguity, the Department of Law believes that the Department of Revenue may consider money to be appropriated from the special revenue fund in the fiscal year in which the appropriation is enacted, whether or not the appropriation takes effect during that fiscal year. Evidently, this approach has been followed by the Department of Revenue since the special revenue fund was enacted in 1984. In effect, this approach allows the Department of Revenue to reduce the amount of money that lapses under subsection (g) by attributing appropriations for subsequent fiscal years to the fiscal year in which the appropriation is enacted and to shift the funding source for the appropriations from the receipts of the special revenue fund in the fiscal year in which the appropriation takes effect to the receipts of the fund during the fiscal year in which the appropriation is enacted.

AS 37.05.530(g) was enacted in 1986 and took effect on May 31, 1986. Secs. 3 and 4, ch. 53, SLA 1986. Prior to May 31, 1986 money in the special revenue fund did not lapse. It did not make any difference what fiscal year an appropriation took effect because the unappropriated balance of the special revenue fund was carried forward from fiscal year to fiscal year. Money remained in the special revenue fund until it was appropriated out of the fund. After May 31, 1986, the unappropriated balance of the special revenue fund lapses at the end of each fiscal year.

The complete restructuring of the special revenue fund (including the addition of the lapse provision in subsection (g)) in 1986 indicates that the legislature intended to change the manner in which money was appropriated from and lapsed from the special revenue fund. Subsection (g) eliminated the ability to carry forward a surplus in the special revenue fund. After fiscal year 1985, appropriations from the special revenue fund are to be funded from annual receipts of the fund and not from the prior years' surplus, unless the legislature provides otherwise in the act making the appropriation. Any surplus in the special revenue fund is to lapse into other funds.

The approach followed by the Department of Revenue significantly undermines the intent of the legislature that surplus funds in the special revenue fund should lapse into the permanent fund, public school fund, and general fund by reducing the possibility that a surplus would occur.

The Department of Law finds some textual support for the position of the Department of Revenue in the first sentence of AS 37.05.530(d) which reads:

It is the intent of the legislature that each year all of the money in the National Petroleum Reserve - Alaska special revenue fund be made available for appropriation by the legislature to municipalities that demonstrate under (c) of this section present impact, or the need to determine or plan for future impact, from oil and gas development under 42 U.S.C. 6508.

The Department of Law focuses on the legislature's intent that each year all of the money in the special revenue fund be available for appropriation by the legislature to conclude that all of the money in the fund at the time that the legislature makes an appropriation from the fund should be used to fund that appropriation without regard to when the appropriation is to take effect.

The first sentence of subsection (d) is equivocal at best and must be read together with the remainder of that subsection, which goes on to state:

It is the intent of the legislature that an initial appropriation be made to the Department of Community and Regional Affairs to cover anticipated impact grants, and that additional funds be made available through supplemental appropriations if the impact is greater than anticipated and the legislature considers the additional grants proposed by the department to be meritorious.

Taken as a whole, subsection (d) provides that all of the money in the special revenue fund during a fiscal year be available for appropriation by the legislature to impacted municipalities, that the legislature appropriate money to cover anticipated grants to impacted municipalities, and that if additional grants are necessary then the legislature should make supplemental appropriations to fund these additional grants rather than wait till the next fiscal year to fund them.<sup>2/</sup> Through this mechanism

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<sup>2/</sup> Subsection (d) was completely rewritten in 1986 (sec. 2, ch. 53, SLA 1986) when the legislature changed the priority for use of the federal revenue sharing receipts so that the needs of the impacted communities be satisfied from the special revenue fund before obligations to the permanent fund and the public school fund are taken into consideration. The legislature changed the priority for use of those funds in response to a state superior court decision (Barrow v. State, No. 1JU-85-2634 Civ.

the legislature seeks to give priority to the use of fiscal year receipts of the special revenue fund for grants to municipalities impacted by federal oil and gas exploration programs while providing that any surplus money remaining in the fund at the end of the fiscal year shall lapse into the permanent fund, public school fund, and general fund. Subsection (d) intends that the legislature make supplemental appropriations to prevent lapsing of surplus money in the fund. Subsection (d) does not authorize either the suspension of the lapse provision in subsection (g) or the carrying forward of surplus money in order to fund appropriations that take effect during subsequent fiscal years. Such a deviation from the usual procedure of funding appropriations out of current fiscal year receipts, as envisioned by subsection (g), must be based on a clearer authority than that contained in subsection (d).

As a general rule an appropriation is not legally effective until the act of the legislature making the appropriation takes effect. An appropriation is generally funded from current year receipts, i.e. money received by the state during the fiscal year in which the appropriation becomes effective. If an appropriation is to be funded from a source other than current year receipts, the legislature specifically identifies the source of money by specifying an appropriate effective date or a specific funding source for the appropriation. Subsection (g) does not explicitly provide that appropriations from the special revenue fund are to be funded from the receipts of the fund in the year in which the appropriation is enacted. Without substantive indication that the legislature intended to change the funding source for appropriations from the special revenue fund from current year receipts to prior year receipts, it must be presumed that the legislature meant to continue funding these appropriations from the receipts of the fund in the year in which the appropriation takes effect.

Thus, as the Department of Law states in its memorandum (*id.* at 3), the language of AS 37.05.530 does favor the conclusion that appropriations from the special revenue fund are to be funded from the money received by the fund in the fiscal year in which the appropriation takes effect. Though this conclusion is subject to reasonable debate, as the department suggests (*id.*), the strength of the position of the Department of Revenue for using prior year revenues to fund an appropriation from the special revenue fund (unless the legislature specifically provides for such funding) is much weaker than the memorandum from the Department of Law implies. In the absence of a clear statement from the legislature, contained in the appropriation itself or in AS 37.05.530, an appropriation from the special revenue fund should be funded out of receipts of the fund in the fiscal year in which it takes effect. And, as a consequence, the amount of money lapsed from the special revenue

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<sup>2/</sup>(...continued)

(Alaska Super., March 18, 1986)) which held that the former scheme for distribution of the funds was not consistent with the intent of federal law (42 U.S.C. 6508).

fund at the end of each fiscal year is the difference between the amount received by the state as federal revenue sharing from National Petroleum Reserve - Alaska and deposited into the fund<sup>3/</sup> and the amount of appropriations from the fund that take effect during the fiscal year or otherwise clearly identified by the legislature as being funded from the receipts of the fund during that fiscal year.<sup>4/</sup>

If the Department of Revenue intends to continue using prior year receipts to fund appropriations from the special revenue fund, the department should either seek an amendment to AS 37.05.530 that would clearly authorize such a practice or include the necessary language in appropriations from the fund. The latter alternative would seem to be the preferred alternative because it would allow the legislature to consider each request to use prior year receipts of the special revenue fund on a case-by-case basis.

If I may be of further assistance, please advise.

GU:mi  
91-112.mai

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<sup>3/</sup> In addition to federal revenue sharing receipts, the fund may also contain money that has lapsed from prior legislative appropriations and departmental grants to municipalities impacted by federal leasing activities in the National Petroleum Reserve - Alaska. The money that has lapsed back into the special revenue fund will at the end of the fiscal year be subject to further lapse under the provisions of AS 37.05.530(g).

<sup>4/</sup> This memorandum does not address the issues that would be raised by multi-year appropriations from the special revenue fund. A multi-year appropriation is an appropriation that cannot be funded by one year's receipts of the special revenue fund or that is intended to be funded out of the fund over a series of fiscal years. A cursory review of the appropriations from the special revenue fund, indicates that there have been no multi-year appropriations from the special revenue fund during the period from 1986 to the present.

# MEMORANDUM

State of Alaska  
Department of Law

TO: Milton B. Barker  
Deputy Commissioner  
Department of Revenue

DATE: September 6, 1990  
FILE NO.: 663-90-0175  
TEL. NO.: 465-3600  
SUBJECT: Closing books on NPRA  
Special Revenue Fund

*GTK*  
FROM: G. Thomas Koester  
Assistant Attorney General  
Natural Resources Section - Juneau

You asked a number of questions relating to the National Petroleum Reserve-Alaska ("NPRA") Special Revenue Fund created in AS 37.05.530.

Much of the background to your request is set out in 1986 Inf. Op. Att'y Gen. (Aug. 8; 663-87-0003) and 1987 Inf. Op. Att'y Gen. (June 22; 663-87-0003), copies of which are attached, and will not be repeated here. In brief, P.L. 96-514 (the relevant portion of which is codified at 42 U.S.C.A. § 6508 (1983)) provides that Alaska is to receive 50 percent of federal NPRA oil and gas leasing revenues, and requires that the state "shall give priority" to political subdivisions impacted by that leasing when allocating the money received. The state initially deposited 50 percent of all NPRA receipts in the Alaska Permanent Fund, somewhat less than one-half of one percent in the Public School Fund, and the balance in the General Fund, which then was spent pursuant to legislative appropriation.

In Barrow v. State, No. 1JU-85-2634 Civ. (Alaska Super., March 18, 1986), the court ruled that P.L. 96-514 requires the state to establish a process for considering NPRA leasing impacts on political subdivisions before the state uses shared NPRA revenues for any other purpose, including deposit in the Alaska Permanent Fund and the Public School Fund. In response, the legislature enacted AS 37.05.530 in chapter 53, SLA 1986, which provides a procedure for considering impact grant applications by political subdivisions prior to state use of NPRA receipts. Shared NPRA receipts are first deposited in the NPRA Special Revenue Fund. AS 37.05.530(a). Municipalities impacted by NPRA leasing then apply for grants under regulations adopted by the Department of Community and Regional Affairs ("DCRA"). AS 37.05.530(c); 19 AAC 50.010--090. Grants may be funded by the legislature through an appropriation from the fund to DCRA. AS 37.05.530(c). Any unappropriated balance lapses at the end of the fiscal year as follows: 50 percent to the Alaska Permanent Fund, one-half percent to the Public School Fund, and the remainder to the General Fund. AS 37.05.530(g).

The implementation of AS 37.05.530 is what gave rise to your questions.

Question 1: When an excess amount is lapsed from a fund, may it be administratively adjusted, or must a legislative appropriation be secured to correct the imbalance? If the latter, must otherwise valid appropriations be restricted pending legislative action? If so, how are the appropriations to be restricted to be selected?

Answer: As we understand it, "an excess amount is lapsed from a fund" when an amount which exceeds the amount in the fund is erroneously debited from that fund and credited elsewhere. If this understanding is correct, the lapsing of an excess amount should be considered an allocation error which may be administratively adjusted. See 1987 Inf. Op. Att'y Gen. (June 22; 663-87-0003) at 5-7. While that informal opinion was limited to the specific circumstances presented there, we believe the procedure set out in it may appropriately be employed here to enable the executive branch to correct an administrative allocation error without legislative involvement.

Question 2: AS 37.05.530 provides that funds remaining after appropriations are made to political subdivisions are to lapse in specified percentages to the Alaska Permanent Fund and the Public School Fund. When those two funds' cumulative entitlements exceed the amount being lapsed, how should the lapsed funds be apportioned between the two funds?

Answer: AS 37.05.530 specifies the percentage allocations to the two funds whenever funds lapse from the NPRSA Special Revenue Fund. Even if the total amount lapsed is insufficient to satisfy both funds' entitlements, the statutory percentages still govern the allocations to the two funds.

As you point out in your June 7, 1990 memorandum to me, however, this question is moot in light of our earlier advice in 1987 Inf. Op. Att'y Gen. at 5-7 (June 22; 663-87-0003) that shortfalls in the entitlements of the Alaska Permanent Fund and the Public School Fund may be made up administratively from the general fund. We again caution, as we did then (at 6-7), that, "[i]n our view, the safest approach, both legally and politically, is to seek explicit legislative authority (through an appropriation) when dealing with state funds." For the reasons set out in that 1987 memorandum, however, that is not required.

Milton B. Barker, Deputy Commissioner  
Department of Revenue  
Our file: 663-90-0175

September 6, 1990  
Page 3

Question 3: How should a discrepancy between an amount appropriated from the NPRA Special Revenue Fund and the amount listed at the back of the appropriation bill for the funding source be resolved?

Answer: To the extent that the amount listed at the end of the appropriation bill may exceed the amount appropriated, there is no particular problem since the excess can simply be reported as available from that funding source in future revenue summaries. To the extent the amount listed at the end of the appropriation bill may be less than the amount appropriated, however, any shortfall which might otherwise result should be made up from other funds available in the indicated funding source even if that exceeds the specific amount listed for that source. The rationale for this approach is that the legislature presumably intended the funding source amounts to match the amounts appropriated. (To the extent the amount appropriated exceeds the amount actually available in the designated funding source, however, the appropriation normally will have to be reduced to the funds available. See the answers to Questions 6 and 7 below.)

Question 4: What revenues are the funding source for P.L. 96-514 grants -- those received in the fiscal year that the appropriation is effective or those received in the year the appropriation is enacted? If the latter, are the lapse provisions to apply to amounts appropriated but not yet effective at the end of a fiscal year?

Answer: Legal arguments can be made to support either result. In support of the position that the funding source for P.L. 96-514 grants are those revenues received in the fiscal year in which the appropriation is effective -- i.e., "budget year receipts" -- we note that the statutory language suggests this result. AS 37.05.530(g) provides for the lapse of any amounts remaining in the NPRA Special Revenue Fund at the end of the fiscal year which are "not appropriated". Monies are not normally considered appropriated until the appropriation becomes effective. If an appropriation from the NPRA Special Revenue Fund is effective on the first day of a fiscal year (see, e.g., the appropriation for the Barrow Group Home in chapter 96, SLA 1985, which became effective July 1, 1985), no monies from the prior fiscal year would be available to fund it. In addition, this is the manner in which appropriations generally are funded: the legislature in one fiscal year makes appropriations authorizing the expenditure of the revenues received in the following fiscal year.

Supporting the conclusion that revenues received in the fiscal year the appropriation is enacted -- i.e., "prior year

receipts" -- should fund P.L. 96-514 grants is the fact that this is the manner in which the NPRA special revenue fund statute has been administered since it was enacted. This contemporaneous administrative interpretation of the statute is a useful guide in determining the legislature's intent. Textual support for this result can be found in AS 37.05.530(d), which provides in pertinent part that "[i]t is the intent of the legislature that each year all of the money in the National Petroleum Reserve -- Alaska special revenue fund be made available for appropriation by the legislature" to impacted municipalities. This suggests that the appropriations for P.L. 96-514 grants are to be funded by money already received by the state and held in the NPRA Special Revenue Fund at the time the legislature makes the appropriation, and not money which might be received thereafter.

While the statute therefore is ambiguous because it is subject to differing interpretations, we believe the current administrative practice of interpreting it as calling for prior year receipts to fund P.L. 96-514 grants is a permissible interpretation. (Should a statutory amendment be desired to resolve this ambiguity, we would be happy to work with you to develop appropriate language. A simpler approach might be to simply have the appropriations for P.L. 96-514 grants take effect on June 30 of the year in which they are enacted.)

Question 5: Are appropriations from the NPRA fund which are not P.L. 96-514 grants to be netted from the state's NPRA receipts in determining the entitlements of the Permanent Fund and Public School Fund?

Answer: No. The only funds that should be netted from the state's NPRA receipts in determining the entitlements of the Permanent Fund and the Public School Fund are those that qualify as grants under P.L. 96-514.

Question 6: Do P.L. 96-514 appropriations in excess of available NPRA funds reduce entitlements of the Permanent Fund and Public School Fund from the NPRA Fund in subsequent fiscal years?

Answer: As we understand it, this question addresses the situation where a legislative appropriation from the NPRA Special Revenue Fund for P.L. 96-514 grants exceeds the amount available in that fund. If that understanding is correct, such an appropriation normally would not reduce the entitlements of the Alaska Permanent Fund and the Public School Fund in subsequent fiscal years because the legislature normally provides in appropriation bills that appropriations that exceed available revenues are

Milton B. Barker, Deputy Commissioner  
Department of Revenue  
Our file: 663-90-0175

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reduced accordingly. See, e.g., sec. 4, ch. 154, SLA 1988. This would be consistent with the legislature's intent that the NPRA Special Revenue Fund end each fiscal year with a zero balance, neither positive nor negative.

Question 7: Does an appropriation in excess of available fund balances result in a reduction in the appropriation -- at least in the case of a reappropriation as suggested in the enclosed memo of October 30, 1989 -- or merely require a restriction, possibly temporary, on expenditures pursuant to the appropriation?

Answer: A reappropriation situation is different from the situation where one is concerned with balances lapsing from the NPRA Special Revenue Fund. In a reappropriation situation, the legislature has made a specific appropriation for a specific purpose and, thereafter, reappropriated some of those already-appropriated monies for a different purpose. Under that narrow circumstance, a reappropriation in excess of the amount remaining available in the original appropriation must be reduced to the amount available because no additional funds would be available in the absence of additional legislative action. It would then be the legislature's prerogative either to leave the level of reappropriation at the amount available or, by an additional appropriation, increase it to the amount originally intended in the reappropriation.

The same result is normally reached with respect to general NPRA Special Revenue Fund monies, but for a different reason. NPRA shared revenues are credited directly to the NPRA Special Revenue Fund upon receipt. Thereafter, they either are appropriated from that fund by the legislature or, if not appropriated, lapse by operation of law. Where the legislature appropriates more than the balance available in the fund, it might be argued that NPRA receipts in a subsequent year should be used to make up the difference as long as the appropriation remains valid under AS 37.25.010 for one-year appropriations and under AS 37.25.020 for capital project appropriations. In your words, this would "merely require a restriction, possibly temporary, on expenditures pursuant to the appropriation." As noted in the response to question 6 above, however, the legislature normally includes a provision in appropriation bills that appropriations that exceed available revenues are reduced accordingly. See, e.g., sec. 4, ch. 154, SLA 1988. As also noted in the response to question 6 above, this would be consistent with the legislature's intent that the NPRA Special Revenue Fund end each fiscal year with a zero balance, neither positive nor negative.

Milton B. Barker, Deputy Commissioner  
Department of Revenue  
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We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

GTK:tg

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