

SB 163

SENATE FINANCE COMMITTEE REPORT

DATE: 3/4/91

FURTHER:

Date of 5-Day Notice: 3-13-91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE 3-26-91

The Finance Committee considered SB 163

Budget and finances of the Alaska Housing Finance Corporation.

and recommended:

replace with _____ CS
 or adopt _____ CS

SB 163 (Fix)

same title
 new title
 technical title change (HB only)

attached amendment(s)

letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) _____

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

2 zero fiscal note(s) DOR/AHFC
DIYED & (AIDEA) 3-11-91
3/28/91

zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Al Adams
[Signature]
[Signature]
[Signature]
[Signature]

[Signature]

1. [Signature] 2. [Signature]
Co-Chairs: Signatures and Recommendations

FISCAL NOTE

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

BILL NO. GS SB 163

Revision Date: _____ Department Affected: Commerce & Economic Development
 Title: An Act relating to the budget and finances of AIED and AIDEA BRU: AK Industrial Development & Export Authority
 Sponsor: Adams & Ponschore Component: N/A
 Requestor: Senate Finance Committee COMPONENT SERIAL NO.

1	2	3	4
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)
 This bill creates a reporting requirement whereby the Authority will provide information to the legislature which in itself has no fiscal impact.

Prepared By: Bertram L. Wassen, Executive Director Phone: 907/561-8050
 Division: AK Industrial Development & Export Authority Date: March 27, 1991

Approved by Commissioner: Commissioner Glen Olds *(Signature)*
 Agency: Department of Economic Development Date: 3/28/91

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

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 163

Revision Date: _____
Title: An Act relating to the budget and finances of
the Alaska Housing Finance Corporation.

Department Affected: Revenue
BRU: Alaska Housing Finance Corporation
Component: Alaska Housing Finance Corporation

Sponsor: Senators Adams, Pouchot

Requestor: _____

COMPONENT SERIAL NO.

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

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	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
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REVENUE	0	0	0	0	0	0
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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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Changes in SB 163 (Fix)
have no fiscal impact. This
fiscal note is appropriate.

3-26-91 JN
date Comte Aide (initial)

Prepared By: Judy DeSpain
Division: Alaska Housing Finance Corporation/Administration

Phone: (907)561-1900
Date: March 8, 1991

Approved by Commissioner: [Signature]
Agency: DEPT. OF REVENUE

Date: 3-11-91

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

3-26-91
RU-3
#1
7-LS0883A.1
Chenoweth
03/21/91

A M E N D M E N T

OFFERED IN THE SENATE
TO: SB 163

BY SENATOR ADAMS

Page 1, line 1, after "Corporation":

Insert "and the Alaska Industrial Development and Export Authority"

Page 2, following line 14:

· Insert new bill sections to read:

"* Sec. 2. AS 44.88.205 is amended to read:

Sec. 44.88.205. COMPLIANCE WITH EXECUTIVE [OPERATING] BUDGET ACT; CORPORATION FINANCES. (a) The [FOR FISCAL YEARS BEGINNING AFTER JUNE 30, 1981, THE] operating budget of the authority is subject to AS 37.07 (Executive Budget Act).

* Sec. 3. AS 44.88.205 is amended by adding a new subsection to read:

(b) To further ensure effective budgetary decision making by the legislature, the authority shall

(1) annually review the authority's assets to determine whether assets of the authority exceed an amount required to fulfill the purposes of the authority as defined in this chapter during the next fiscal year; in making its review, the members of the authority shall also determine whether, and to what extent, money in excess of the amount required to fulfill the purposes of the authority during the next fiscal year is available for appropriation by the legislature without breaching any agreement entered into by the authority or without materially impairing the operations or financial integrity of the authority; and

(2) present to the legislature by January 10 of each year a complete accounting of all assets of the authority and a report of the review and determination made under (1) of this subsection; the accounting shall be audited by the auditor who conducts the audit required by AS 44.88.200 and must include a full description of all loan interest and principal payments and program receipts, including

(A) loan commitment fees received by or accrued to the authority during the preceding fiscal year, and

(B) all income earned on assets of the authority during that period."

SENATE BILL NO. 163

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS ADAMS, Pourchot

Introduced: 3/4/91
Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the budget and finances of the Alaska Housing Finance Corporation."

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

3 * Section 1. AS 18.56.089 is amended to read:

4 Sec. 18.56.089. COMPLIANCE WITH EXECUTIVE BUDGET ACT;
5 CORPORATION FINANCES. (a) The operating budget of the corporation is subject to the
6 Executive Budget Act (AS 37.07).

7 (b) To further ensure effective budgetary decision making by the legislature, the
8 corporation shall

9 (1) annually review the corporation's assets, including the assets of the Alaska
10 housing finance revolving fund under AS 18.56.082, to determine whether assets of the
11 corporation exceed an amount required to fulfill the purposes of the corporation as defined
12 in this chapter during the next fiscal year; in making its review, the board shall also
13 determine whether, and to what extent, money in excess of the amount required to fulfill
14 the purposes of the corporation during the next fiscal year is available for appropriation

1 by the legislature without breaching any agreement entered into by the corporation or
2 without materially impairing the operations or financial integrity of the corporation; and

3 (2) present [A COMPLETE ACCOUNTING OF ALL ASSETS OF THE
4 CORPORATION, INCLUDING ASSETS OF THE ALASKA HOUSING FINANCE
5 REVOLVING FUND,] to the legislature by January 10 of each year a complete accounting of
6 all assets of the corporation, including assets of the Alaska housing finance revolving fund
7 under AS 18.56.082, and a report of the review and determination made under (1) of this
8 subsection; the [. THE] accounting shall be audited by an independent outside auditor and
9 must [SHALL] include a full description of all mortgage loan interest and principal repayments
10 and program receipts, including

11 (A) mortgage loan commitment fees [,] received by or accrued to the
12 corporation during the preceding fiscal year, and

13 (B) all income earned on assets of the corporation during that period,
14 including earnings on assets of the state assisted mortgage fund.

3/22/91
SFL

Alaska State Legislature

Al Adams
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Official Business

March 8, 1991

TO: Sen. Pourchot, Co-Chairman
Sen. Kerttula, Co-Chairman
Senate Finance Committee

FROM: Senator Al Adams *AK*

RE: SB 163

I would appreciate it if you would please schedule SB 163 for a hearing in the Senate Finance Committee.

Under current law AHFC is subject to the Executive Budget Act and is required to present a complete audited accounting of assets to the Legislature by January 10 of each year.

SB 163 would not change these requirements, but would require AHFC to also determine whether, and to what extent, the Corporation has excess assets. AHFC would notify the legislature on the amount needed to fulfill the purposes of the corporation and the amount, if any, that was available for appropriation by the Legislature without damaging the financial integrity of the corporation.

Your attention to this matter is much appreciated.

page 12: "CAN STATE LEGALLY EXPROPRIATE FUNDS FROM AHFC?"

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January 11, 1990

James A. Gibson
Project Director
Ernst & Young

Dear Mr. Gibson:

You have requested our opinion as to certain matters pertaining to your consulting contract with the Alaska Housing Finance Corporation ("AHFC").

In responding to your queries, we have performed extensive legal research including a thorough review of relevant provisions of the United States and Alaska Constitutions, provisions of the Alaska Statutes, together with numerous cases interpreting such constitutions and statutes, other judicial authorities and commentaries. We find that most of the issues raised in your queries have not been ruled upon by either the Alaska Supreme Court or other courts of last resort.

We have endeavored to provide you with our best legal analysis of the issues presented by your queries and with our view of the likely outcome if the issues were presented to the Alaska Supreme Court.

The attached format follows the organization of the queries which you presented.

STATEMENT OF QUERIES PRESENTED

I. GENERAL

1. Define AHFC. Is it unique from other Alaska state agencies (e.g., Alaska Railroad Corporation)? Is AHFC different from a private corporation?
2. Under the existing statutes, does AHFC have the power and authority to issue revenue bonds as to a specifically identified group of mortgages?

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3. Are there any legal constraints to establishing a new agency to implement only the original legislative intent programs of AHFC?
4. Can the legislature by appropriate legislative enactment exempt AHFC from the provisions of the Executive Budget Act?
5. (a) Can the legislature by appropriate legislative enactment terminate the AHFC taxable bond program?
(b) Can the legislature by appropriate legislative enactment terminate the AHFC tax-exempt bond program?
(c) Can the legislature by appropriate legislative enactment terminate the tax-exempt veterans mortgage bond program?
6. Can specific AHFC programs be removed from AHFC and incorporated into a new entity?
7. What legal constraints are there to modifying the public corporation status of AHFC so that it functions like a private corporation, but still is a state organization?

II. TRANSFER OF ASSETS

1. Can the state legally expropriate funds from AHFC?
2. Does AHFC have any legal responsibility to provide a return on capital to the state?
3. Can the legislature direct AHFC to purchase specific assets?
4. (a) Will an extraction of any, but not substantially all, unrestricted or unpledged assets from AHFC by the state give rise to a valid claim by bondholders against the state?
(b) Will an extraction of any, but not substantially all, restricted or pledged assets from AHFC by the state give rise to a valid claim by bondholders against the state?

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- (c) Will an extraction of substantially all the assets from AHFC by the state give rise to a valid claim by bondholders against the state?
- 5. Are there any legal grounds for AHFC to compel the state to appropriate or transfer funds to AHFC?
- 6. If AHFC, pursuant to legislative enactment, purchases loans from the HAD program, is the application of payments of principal and interest received on such loans restricted to making future HAD loans?

III. SUBSIDY

- 1. If the interest reduction subsidy is legislatively eliminated as of June 30, 1990, can the proceeds of bonds sold prior to this date be used to finance loans under the new legislation?
- 2. Can AHFC change the eligibility requirements for loans made from bond proceeds, if the bonds are already sold?
- 3. Are there legal constraints to discontinuing or diminishing the interest rate subsidy by appropriate legislative enactment?
- 4. What legally needs to be done to implement a change in the interest rate subsidy?
- 5. Is AHFC an unlawful monopoly in restraint of trade because of its market position?

IV. CHANGE OF OWNERSHIP

- 1. Are there any legal constraints to:
 - (a) AHFC issuing and selling common stock in AHFC, thereby transferring 100% of ownership and control of AHFC to a private party?
 - (b) AHFC selling all assets?
 - (c) AHFC selling its REO disposition operation to a private party?
 - (d) AHFC selling loans within a bond program, i.e., where loans have been pledged as collateral?

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- (e) AHFC selling a loan not used as collateral for a specific loan program?
2. Are there legal constraints to AHFC entering into a partnership?

ANALYSIS

I. GENERAL

1. Define AHFC. Is it unique from other Alaska state agencies (e.g., Alaska Railroad Corporation)? Is AHFC different from a private corporation?

AHFC is a public corporation created pursuant to statute as opposed to a private corporation which is created by the issuance of a certificate of incorporation by the State of Alaska upon the filing of articles of incorporation. AHFC has neither articles of incorporation nor a certificate of incorporation.

AHFC is a separate legal entity; however, this separate legal existence serves only to accommodate a centralized business-type of corporate management and the isolation of certain state activities within a functioning unit. The essential test to determine whether an entity such as AHFC is a state agency is the financial nexus between the entity and the State of Alaska and the actual control or lack of control of the entity by the State of Alaska. Various factors are applied in determining the actuality of financial nexus or dependency and control. "An administrative agency may be called a commission, board, authority, bureau, office, officer, administrator, department, corporation, administration, division or agency. Nothing of substance hinges in the choice of name. . . ." Alaska State Housing Authority v. Dixon, 496 P.2d 649, 651 (Alaska 1972) quoting 1 K. Davis, Administrative Law, § 1.01, at 1 (1958) (emphasis added). The Alaska Supreme Court has expressly stated that independent corporate status does not prevent a finding of state agency. Alaska Commercial Fishing & Agriculture Bank v. O/S Alaska Coast, 715 P.2d 707, 711 (Alaska 1986). Rather, the court considers a state agency's separate corporate status as a neutral factor. Id. at 710.

While the Alaska Supreme Court has repeatedly stated that a determination of whether an entity is a state agency depends on the

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particular facts and circumstances presented and the purpose of the inquiry, certain factors have been consistently applied by the Alaska Supreme Court in determining status. These factors, referred to as the "DeArmond factors", balance an entity's authority against the state's retained control. The factors considered include: (a) whether the creation and funding of the agency fulfilled a public purpose, (b) whether the statute expressly locates the agency within a department, (c) the submission of annual reports to the state, (d) certified copies of minutes sent to the governor, (e) appointment by the governor of at least some of the board of directors, (f) financial contributions by the legislature to the annual budget, and (g) any additional controls retained by the state. Alaska Commercial Fishing & Agriculture Bank ["CFAB"], supra at 709-712 citing DeArmond v. Alaska State Development Corp., 376 P.2d 717 (Alaska 1962), Walker v. Alaska State Mortgage Ass'n, 416 P.2d 245 (Alaska 1966), Alaska State Housing Authority v. Dixon, supra, Alaska State Operated School System v. Mueller, 536 P.2d 99 (Alaska 1975).

AHFC has characteristics similar to other public corporations which have previously been determined to be "state agencies" in other contexts in the aforementioned cases. See also University of Alaska v. National Aircraft Leasing, Ltd., 536 P.2d 121 (Alaska 1975).

In addition to state controls over AHFC, constitutional concerns also weigh in favor of the status of AHFC as an agency rather than an entity with complete autonomy from the state. The Alaska Constitution requires substantial ties between a public corporation and the executive branch. The Alaska Constitution provides that all executive and administrative functions shall be placed within not more than 20 principal departments and that each department shall be under the supervision of the governor. Alaska Const., article III, sections 22 and 24. If AHFC is regarded as an entity with complete autonomy entirely independent from the State of Alaska, as opposed to an agency, a constitutional challenge would foreseeably be mounted against the statute creating AHFC on the basis that it attempts to create an overly independent agency in violation of article III, sections 22 and 24, of the Alaska Constitution. Article III, section 22 states:

All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by

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law and need not be allocated within a principal department.

Article III, section 24 states:

Each principal department shall be under the supervision of the governor.

Pursuant to statute, AHFC is expressly located within the Department of Revenue. AS 18.56.020. Executive controls over AHFC are present which were also found to exist in the above-referenced cases. The express classification of AHFC within the Department of Revenue weighs in favor of a determination that AHFC is an instrumentality or agency of the state as opposed to being an entity which is "independent" of the state. Further, AHFC does not appear to fall within one of the three exceptions to the constitutional requirement that all agencies of the state be allocated within twenty principal departments. See Walker, supra, at 249, n. 11, wherein the Alaska Supreme Court affirmed the determination that Alaska State Mortgage Association (ASMA) was not an agency independent of the state and that ASMA was not a regulatory, quasi-judicial, or temporary agency of the state within the exceptions provided under article III, section 22 of the Alaska Constitution.

AHFC is unique from other state agencies in the sense that it is performing unique public purposes in the provision of housing to residents of the state through mortgage loan subsidies.

AHFC is significantly different from a private corporation in that:

- (a) A private corporation has shareholders, AHFC has no issued or outstanding stock. However, the courts generally state that the "interests" in public corporations are held by the state. The term "interests" being used in place of references to the rights of shareholders.
- (b) The board of directors of a private corporation are elected by the shareholders. The board of directors of AHFC consist of five members who all are, in effect, appointed by the governor.
- (c) The board of directors of a private corporation generally have a duty to apply the assets and funds of the corporation with a view towards earning a profit and providing a return to the shareholders. The board of

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directors of AHFC, on the other hand, has a duty to apply the funds and assets of AHFC in fulfillment of the public purposes for which the entity was created and to specific programs adopted by legislative enactment.

AHFC would seem to be different from the Alaska Railroad. While the Alaska Railroad is also a public corporation, its purpose is generally to provide a reliable, safe and efficient means of transportation throughout the railbelt, and also to be self-sustaining (AS 42.40.100) and presumably generate a profit if possible.

2. Under existing statutes, does AHFC have the power and authority to issue revenue bonds as to a specifically identified group of mortgages?

It would seem that under the presently existing statutes AHFC does have the authority to issue limited purpose obligations in the form of revenue bonds as to a specifically identified group of mortgages.

Alaska Statute 18.56.110(f) provides that AHFC has the power to pledge to any payment or purpose all or any part of its revenues to which its right then exists or may thereafter come into existence. Under such provision AHFC could determine to pledge the revenues from a specifically identified group of mortgages as a source of payment of limited purpose obligations or "revenue bonds".

We have considered AS 18.56.110(b) which provides:

The principal and interest on these bonds or notes, except state guaranteed bonds, is payable from corporation funds, excluding funds in the housing development fund. (emphasis added);

and AS 18.56.170 which provides:

Obligations issued under the provisions of this chapter other than state guaranteed obligations do not constitute a debt, liability or obligation of the state or of any political subdivision of the state or a pledge of the faith and credit of the state or of a political subdivision but are payable solely from the revenue or assets of the corporation. (Emphasis added.)

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It would seem that the provisions of AS 18.56.170 and 18.56.110(b) are provisions of liability limitation in the sense that they seek to limit the recourse of bondholders to AHFC funds, revenues, or assets as opposed to limiting the power of AHFC to issue limited purpose obligations which appears to be generally granted in the statute.

As a practical matter, we would recommend specific enabling legislation as to limited purpose obligations to remove any doubt as to the authority to issue such bonds and enhance the marketability of such bonds.

It appears that revenue bond funds are not subject to expropriation and are therefore an exception to the constitutional prohibition against dedicated funds.

3. Are there any legal constraints to establishing a new agency to implement only the original legislative intent programs of AHFC?

Focusing only on the transfer of "original legislative intent programs" presently administered by AHFC to a new agency, we find no constitutional impediments under either the United States or the Alaska Constitutions. By appropriate legislative enactment a new state agency could be created and the implementation and administration of the "original legislative intent programs" could be transferred to such agency. AHFC, being a state agency (see discussion under I.1 above), could not itself create such a new state agency and transfer to it the "original legislative intent programs". While a private corporation might create a subsidiary corporation and spin-off a division or branch into such a new corporate entity, such action is not within the power or authority of AHFC because while it is a public corporation it remains a state agency.

It would also seem that the governor would have the power by executive order to create a new state agency to implement the "original legislative intent programs" of AHFC. However, because AHFC was originally charged with the implementation and administration of such programs by legislative enactment, such changes would "require the force of law" and pursuant to article III, section 23, of the Alaska Constitution be subject to legislative approval. The case of Suber v. Alaska State Bond Committee, 414 P.2d 546 (Alaska 1966) would seem to so indicate.

The rights of bondholders must also be considered in regard to such restructuring. While legislative enactment would effect

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such restructuring, the transfer of program and assets from AHFC may be a technical breach of outstanding bond indentures. Consent of bondholders should be sought to avoid the potential of such a challenge and would seem likely obtainable in the context of an economically viable plan of restructuring.

4. Can the legislature by appropriate legislative enactment exempt AHFC from the provisions of the Executive Budget Act?

The legislature by appropriate legislative enactment may exempt AHFC from the provisions of the Executive Budget Act.

Legislative enactment has previously exempted at least one public corporation from the provisions of the Executive Budget Act (AS 37.07.10-37.07.130). The Alaska Railroad Corporation is a public corporation, an instrumentality of the state within the Department of Development. It is stated to have a legal existence independent and separate from the state (AS 42.40.010). In AS 42.40.920 the legislature has specifically exempted the Alaska Railroad Corporation from the provisions of the Executive Budget Act.

The legislature appears to have indicated past legislative intent that it could include or exempt AHFC from the application of the Executive Budget Act. The Executive Budget Act was enacted in 1970 (Ch. 188, § 4, SLA 1970). However, it was not until 1980 that the legislature enacted AS 18.56.089 specifically making the operating budget of AHFC subject to the Executive Budget Act for fiscal years beginning after June 30, 1981 (Ch. 106, § 20, SLA 1980).

5. (a) Can the legislature by appropriate legislative enactment terminate the AHFC taxable bond program?

The legislature may by appropriate legislative enactment terminate the AHFC taxable bond program. This program is generally established under AS 18.56.098(a). While AHFC has the authority to adopt regulations implementing the taxable bond program, it cannot unilaterally terminate the program without appropriate legislative enactment.

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5. (b) Can the legislature by appropriate legislative enactment terminate the AHFC tax-exempt bond program?

The legislature may by appropriate legislative enactment terminate the tax-exempt bond program. The AHFC tax-exempt bond program is likewise referenced in AS 18.56.098 and it would likewise seem that AHFC is without the power to unilaterally terminate the program without appropriate legislative enactment.

5. (c) Can the legislature by appropriate legislative enactment terminate the tax-exempt veterans mortgage bond program?

The legislature may by appropriate legislative enactment terminate the tax-exempt veterans mortgage bond program.

We note that in 1982 article IX, section 8, of the Alaska Constitution was amended to permit the issuance of state debt (general obligations) authorized by law for housing loans for veterans. However, state statutes authorize and create the tax-exempt veterans mortgage bonds program (AS 18.56.098(g) and AS 18.56.101). Accordingly, the legislature by appropriate legislative enactment may terminate the tax-exempt veterans mortgage bond program. Since the program is referenced in the state statutes, it would seem AHFC unilaterally is without the power to terminate the program without appropriate legislative enactment.

6. Can specific AHFC programs be removed from AHFC and incorporated into a new entity?

Specific AHFC programs may be removed from AHFC and incorporated into a new entity by appropriate legislative enactment or executive order (see discussion under I.3. above). The governor is without power to transfer programs to a private entity and while the legislature may do so by proper legislative enactment, it must be for a valid public purpose (see discussion under IV. below).

Again, the rights of bondholders must be considered as to any such restructuring. (See discussion under I.3. above.)

It is relevant to note that in 1981 amendments changed CFAB's organic act. Ch. 109, §§ 2 and 3, SLA 1981. The legislature deleted from former AS 44.81.010(a) the language which stated:

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The bank is a public corporation and government instrumentality in the Department of Commerce and Economic Development, but also has a legal existence independent of and separate from the state.

Also deleted by the 1981 amendments was the language that the exercise by the bank of its powers is considered "an essential governmental function of the state." The 1981 amendments also stated that CFAB employees were not state employees and that CFAB directors were not to be reimbursed as though they were members of state boards. CFAB is owned by its members. The state owns non-voting stock which CFAB is obligated to repurchase. AS 44.81.010, 44.81.220. Thus, although CFAB was created by the state, it will ultimately be privately owned. However, the exercise by the bank of the powers conferred to it continue to be considered to be for a public purpose.

7. What legal constraints are there to modifying the public corporation status of AHFC so that it functions like a private corporation, but still is a state organization?

Generally, the state may not transfer the assets of AHFC other than for a valid public purpose.

It would seem that, subject to the rights of bondholders (see discussion under I.3. above), by proper legislative enactment a private corporation could be created and all of the stock of the private corporation held by the State of Alaska as the sole shareholder of the corporation. The assets of AHFC could then be transferred to the private corporation. This would seem to be a change in form rather than substance in that the new so-called "private" corporation would, in effect, still be a public corporation and state agency because it would continue to serve a public purpose, the directors of the corporation would continue to be appointed by the State of Alaska, an annual report would be due the State of Alaska as the sole shareholder of the corporation, and substantial assets of the corporation would seem to remain dedicated to the purposes for which AHFC was established and those assets would serve as collateral for outstanding bonds.

Any transfer of outstanding shares to a third party would have to be for a valid public purpose and the modification itself seemingly would have to also be for a valid public purpose. (See discussion under IV.1. below.)

AHFC presently has no responsibility to operate on a self-sustaining basis or to yield a profit. It would appear somewhat

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inconsistent with the purposes for which AHFC was organized and with the loan subsidy program. It would seem however, that the legislature could by proper legislative enactment, simply provide for an interest rate subsidy without unjust discrimination and otherwise require that AHFC seek to operate on a self-sustaining and profit-making basis.

II. TRANSFER OF ASSETS

1. Can the state legally expropriate funds from AHFC?

AHFC is a state agency (see discussion under I. 1. above) and is subject to the Executive Budget Act (AS 37.07.010-37.07.130). As such AHFC is subject to expropriation of its funds.

We have considered whether the holdings in DeArmond and Walker, supra, compel a conclusion that the state is without power to expropriate monies from the AHFC revolving loan fund (AS 18.56.82). We conclude that such cases do not so hold. In DeArmond, at 722, the court implicitly held that funds generated from the sale of bonds by the Alaska State Development Corporation (ASDC) were not public funds in the limited context of considering whether the issuance of bonds by ASDC constituted either a transfer of public funds in violation of article IX, section 6, of the Alaska Constitution or the use of public credit for other than a public purpose likewise in violation of such constitutional provision. The court held that the issuance of the bonds did not constitute the transfer of public funds stating that "it is clear enough that its (ASDC's) objective must be accomplished without the use of public funds and state credit." No statement is made by the court as to whether the proceeds of the ASDC bonds were either funds of the State of Alaska or were subject to expropriation. In DeArmond the court did not so state, but apparently was also considering article IX, section 8, of the Alaska Constitution. That is, whether the bonds of ASDC constituted debts of the state within the scope of such provision.

In Walker, the court again considered whether bonds issued by the Alaska State Mortgage Association were debts of the state within the scope of article IX, section 8, of the Alaska Constitution. The Walker court referred to DeArmond as concluding that funds realized through the sale of ASDC bonds did not constitute debts of the state and that the proceeds of the bonds were not public funds. Again, there is no ruling whether the funds were funds of the State of Alaska or whether the funds were subject to appropriation by the State of Alaska.

While the earlier cases of National Bridges v. Alaska Housing Authority, 375 P.2d 696 (Alaska 1962), Aircraft Leasing, Walker,

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DeArmond, and Dixon, supra, were arguably not completely definitive as to the status of AHFC as a state agency, (which arguably, but not necessarily might suggest that the funds of AHFC were or were not subject to expropriation), the recent CFAB case when compared to the earlier referenced rulings, seems to clearly indicate AHFC is a state agency. Such status serves to further support the conclusion that the funds of AHFC are subject to expropriation by the State of Alaska.

AHFC has entered into covenants to replace from its general funds any deficiencies in pledged mortgage loan funds, that is to draw from the revolving loan fund to maintain collateral at a given level to secure outstanding bonds. However, such covenants on the part of AHFC cannot impede or frustrate the power of the legislature and governor to appropriate such funds even though the appropriation of such funds may result in a technical violation of the covenants by AHFC if it is not otherwise able to maintain such levels of collateral.

Such conclusion is required by article IX, section 8, of the Alaska Constitution as well as other provisions of the Alaska Constitution.

The power to appropriate is vested in the governor and the legislature under article IX, section 12, of the Alaska Constitution. Section 13 of article IX would be violated if the provisions of AHFC covenants as to the potential use of the revolving loan fund are held to be paramount over the power of the governor and the legislature to appropriate. Section 13 provides that no obligation for the payment of money shall be incurred except as authorized by law.

Article IX, section 7, of the Alaska Constitution should also be considered in determining whether the legislature has the power to expropriate from the AHFC revolving loan fund. To hold that the legislature did not have such power and that the bond covenants of AHFC are paramount would in effect permit AHFC to dedicate funds in violation of such section to at least the extent that the source of the funds could be initially traced to state appropriations.

MK Engineering Co. v. Alaska Power Authority, 662 F.Supp. 303 (D. Alaska 1986), would also suggest the revolving loan fund was subject to expropriation by the state and that a contrary result would violate article IX, section 7, of the Alaska Constitution.

While our view is as set forth above, it is simply our view as legal technicians. We would recommend that appropriate consideration be given to the foreseeable impact or reaction in the

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market place to any expropriation of the AHFC funds and that in connection with any such expropriation, consideration also be given to adopting specific enabling legislation which might provide appropriate assurances to bondholders and protect the future marketability of AHFC obligations.

- 2.. Does AHFC have any legal responsibility to provide a return on capital to the state?

AHFC has no legal responsibility to provide a return on capital to the State of Alaska. AHFC is charged with the public purpose of assisting in the provision of housing in certain areas and circumstances and is not required to operate on a self-sustaining basis. AHFC may not waste its assets, but must apply them to the purposes for which it was created.

3. Can the legislature direct AHFC to purchase specific assets?

The legislature may direct AHFC to purchase specific assets so long as there is a valid public purpose served by the purchase of such assets.

4. (a) Will an extraction of any, but not substantially all, unrestricted or unpledged assets from AHFC by the state give rise to a valid claim by bondholders against the state?

Bondholders would not have a valid claim against the state by virtue of an extraction by the state in the exercise of its powers of appropriation of any unrestricted assets from AHFC.

It is our understanding the only state guaranteed bonds which have been issued by AHFC are qualified veterans mortgage bonds which were authorized by constitutional amendment in 1982. With that exception, the bonds issued by AHFC are payable solely from the revenue or assets of AHFC and neither the faith and credit nor the taxing power of the state is pledged to the payment of such bonds (AS 18.56.170).

Some of the indenture covenants and related documents of obligation and security may well require AHFC to maintain given levels of certain unpledged assets. Accordingly, while bondholders may have a valid claim against AHFC due to such extraction, depending upon the specific language of the various trust indenture

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covenants, bondholders would not have a claim for such breach of covenant against the state.

4. (b) Will an extraction of any, but not substantially all, restricted or pledged assets from AHFC by the state give rise to a valid claim by bondholders against the state?

Bondholders would not have a valid claim against the State of Alaska by virtue of the extraction of a pledged asset from AHFC by the State of Alaska.

The analysis under II.4.(a) above applies. The state has the power to appropriate the funds and assets of AHFC despite the fact that the assets may have been specifically pledged by AHFC. The extraction of a pledged asset by the state from AHFC would give rise to a valid claim against AHFC by bondholders to whom the asset had been pledged. It would seem, however, that this claim can be satisfied only to the extent of the unrestricted assets of AHFC and does not constitute a valid claim against the state. This is not to suggest that such an extraction would necessarily be a prudent endeavor or without significant negative impact on the future sale of bonds by the state, its political subdivisions or AHFC.

4. (c) Will an extraction of substantially all the assets from AHFC by the state give rise to a valid claim by bondholders against the state?

The extraction of all or substantially all the pledged and unpledged assets of AHFC away from AHFC by the State of Alaska would give rise to substantial claims by bondholders against the State of Alaska which would likely be upheld.

The AHFC bonding statute specifically provides that the credit of the state is not pledged as to AHFC bonds except as to state guaranteed bonds which presently would only include the VA bonds described above (AS 18.56.170). However, the financial statements of AHFC indicate that a substantial portion of its assets have been pledged as collateral for issuance of outstanding bonds. Further, stringent covenants have been undertaken by AHFC as to the maintenance of certain asset levels. It would likely be held that there have been at least implicit, if not express, continuing promises, representations, covenants, contracts, and undertakings by the State of Alaska that the bulk of the assets of AHFC would remain available for recourse by bondholders and that bondholders have relied on same to their detriment. Thus, in the context of an extraction of all or substantially all of the assets of AHFC by the State of Alaska, it would seem that bondholders

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would prevail in their claims against the state at least to the extent of the assets extracted.

5. Are there any legal grounds for AHFC to compel the state to appropriate or transfer funds to AHFC?

There are no legal grounds for AHFC to compel the state to appropriate or transfer funds to AHFC. AHFC is a state agency (see discussion under I.1. above). It is not a branch of government such as the judiciary which might in appropriate circumstances compel the appropriation to it of funds.

6. If AHFC, pursuant to legislative enactment, purchases loans from the HAD program, is the application of payments of principal and interest received on such loans restricted to making future HAD loans?

AHFC could not unilaterally apply payment of principal and interest on Housing Assistance Loan Fund (HAD) loans to other than the purposes set forth in AS 18.56.210(10). Such purposes are to make further HAD loans in accordance with HAD loan criteria as they existed on June 10, 1988.

The legislature and governor could appropriate such payments of principal and income to other purposes. Further legislative enactment could remove the restriction on AHFC to make such applications of payments of principal and interest on HAD loans.

III. SUBSIDY

1. If the interest reduction subsidy is legislatively eliminated as of June 30, 1990, can the proceeds of bonds sold prior to this date be used to finance loans under the new legislation?

The proceeds of bonds issued prior to June 30, 1990 may by appropriate legislative enactment be directed to be applied to finance loans under the new legislation. Such application, however, may be a technical breach of outstanding bond indentures. Consent of bondholders should be sought to avoid such a challenge and would seem likely obtainable as the elimination of the subsidy would appear to further enhance the economic viability of AHFC and the bond programs involved.

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2. Can AHFC change the eligibility requirements for loans made from bond proceeds, if the bonds are already sold?

Whether AHFC can subsequently change the eligibility requirements for loans made from bond proceeds would depend on the bond covenants set forth within each particular indenture. Changing an eligibility requirement subsequent to the sale of a particular issue of bonds may be a technical breach of the particular bond indenture. Consent of bondholders should be sought and again would seem likely obtainable if the eligibility requirements were made more financially stringent.

3. Are there legal constraints to discontinuing or diminishing the interest rate subsidy by appropriate legislative enactment?

It is unlikely any successful constitutional challenge could be made to legislation prospectively discontinuing or diminishing the interest rate subsidy on new loans. Such legislation could possibly result in a constitutional challenge being brought on the basis that such legislation violated either the equal protection or due process clauses of the United States and Alaska Constitutions.

Equal Protection.

The guarantee of equality of treatment prohibits legislation which denies to one group of persons the enjoyment of certain rights which are afforded to another group, if when considering the purpose of the legislation, there is no reasonable basis for the disparity. Leege v. Martin, 379 P.2d 447, 452 (Alaska 1963).

It does not appear that changing the interest rate subsidy would result in any classification of persons into separate groups.

Equal protection claims under the Alaska Constitution are measured by a different test than equal protection claims under the United States Constitution. State v. Erickson, 574 P.2d 1 (Alaska 1978). In the course of our research we have examined possible equal protection claims under both the United States and Alaska Constitutions. However, as it is our view that discontinuing or diminishing the interest rate subsidy will not result in a classification of persons, we are not in this opinion providing further analysis of equal protection rulings.

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Due Process.

Procedural due process (notice and an opportunity to be heard) may be due to individuals who have loan applications pending with AHFC at the time of the effective date of any legislation discontinuing or diminishing the interest rate subsidy. This issue can be avoided by making the new legislation applicable only to loan applications received after a given date.

Assuming the issue is not avoided, in order for procedural due process protection to apply, there must be state action and the deprivation of an individual interest of sufficient importance to warrant constitutional protection. Nichols v. Eckert, 504 P.2d 1359, 1362 (Alaska 1973). It is highly questionable whether the interest of one who has a loan application pending is sufficient to require procedural due process.

A property interest invokes due process safeguards whereas a "mere expectancy" has been held not entitled to due process protection. Estate of Miner v. Commercial Fisheries Entry Commission, 635 P.2d 827, 829-30 (Alaska 1981).

In Estate of Miner, the Alaska Supreme Court determined the applicant's interest under the scheme of the Limited Entry Act (AS 16.43.010-16.43.990) represented a property interest entitled to due process protection. In so holding the court clearly stated that not every application for a state benefit represents a property interest entitled to due process protection. Id. at 831.

In State, Department of Natural Resources v. Universal Education Society, 583 P.2d 806, 809 (Alaska 1978), the Alaska Supreme Court determined that an application for a mining lease was not a property interest entitled to due process safeguards.

Seemingly, a loan application would be more accurately characterized as a "mere expectancy" as opposed to a vested property right and a loan applicant would not therefore be entitled to due process safeguards with respect to a loan application.

Procedural due process requires notice and an opportunity to be heard. Notice must be reasonably calculated under all circumstances to apprise the individual of the pendency of the deprivation and to afford an opportunity to present objections. Aquchak v. Montgomery Ward Co., 520 P.2d 1352, 1356 (Alaska 1974).

In determining what procedural due process, if any, should be afforded concerning change in the interest rate subsidy, considerations should include legislative notice and hearings as

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to the legislation changing the subsidy, whether, and to what extent, AHFC has in the past undertaken to inform the public of the statute and its requirements and past changes in interest rate subsidies.

4. What legally needs to be done to implement a change in the interest rate subsidy?

The interest rate subsidy change would need to be implemented by appropriate enactment by the legislature.

5. Is AHFC an unlawful monopoly in restraint of trade because of its market position?

AHFC is an agency of the State of Alaska. (See discussion under I.1.) Accordingly, its acts and conduct must be viewed as acts of the State of Alaska. The Sherman Antitrust Act was not intended to restrain a state or its officers from activities directed by the state legislature. See Parker v. Brown, 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed 315 (1943). The acts of AHFC in purchasing home mortgages and in assisting in the provision of housing for residents of the State of Alaska is an act of government and accordingly the market position resulting from such acts is not an unlawful monopoly in restraint of trade.

IV. CHANGE OF OWNERSHIP

1. Are there any legal constraints to:
 - (a) AHFC issuing and selling common stock in AHFC, thereby transferring 100% of ownership and control of AHFC to a private party?
 - (b) AHFC selling all assets?
 - (c) AHFC selling its REO disposition operation to a private party?

If there is no valid public purpose served in selling AHFC in its entirety or selling all of the assets of AHFC, then such transfer could be subject to constitutional challenge on the basis that it violates the Alaska constitutional prohibition against transferring public property.

A constitutional challenge might be brought against legislation transferring AHFC to the private sector through either

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a direct transfer of assets or through a spinoff of AHFC to a third party as a private corporation. Such action arguably constitutes a transfer of public property in violation of article IX, section 6, of the Alaska Constitution. This provision of the Alaska Constitution prohibits transferring public property except for a public purpose.

The Alaska Supreme Court has stated that the term "public purpose" is a concept which will change as changing conditions create changing public needs. DeArmond v. Alaska State Development Corporation, 376 P.2d 717, 721 (Alaska 1962). Whether a public purpose is being served must be decided in the light of the particular facts and circumstances of each case. Id. Most courts look to the entire factual and governmental context to determine whether a plan of action serves a public purpose. The Alaska Supreme Court generally defers to the legislature's judgment as to what constitutes a public purpose. Comtec, Inc. v. Municipality of Anchorage, 710 P.2d 1004, 1005 (Alaska 1985). The Alaska Supreme Court has stated it is not likely to strike down a plan because it does not serve a public purpose unless the plan is plainly foolhardy, or if it amounted to the pledging of credit or the giving away of assets without any corresponding discernible benefit. Wright v. City of Palmer, 468 P.2d 326, 331 (Alaska 1970). In Lien v. City of Ketchikan, 383 P.2d 721 (Alaska 1963), the Alaska Supreme Court determined that the purpose of a hospital did not become non-public simply because the city leased it to a private organization. The court found that the use of the public hospital would not be changed by the lease and the public purpose would therefore continue to be served.

In the present situation, there is arguably a public purpose served in selling any AHFC assets which are causing either a negative cash flow to AHFC and/or an undue financial burden on AHFC. It would seem a public purpose may be served in selling the REO disposition operation in order to allow AHFC to eliminate the financial burden of holding and maintaining the REOs.

Under outstanding bond indentures the REOs will be found to be collateral for outstanding bonds. Accordingly, consent of bondholders should be sought as to AHFC selling the REO disposition.

A sale of the REO disposition operation might be structured in terms of either substitution of collateral for outstanding bonds or transfer of REOs to a third party for administration and servicing with the collateral rights of the bondholders in the REOs continuing. In either of such forms the transfer may further

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enhance the economic viability of AHFC thus suggesting the consent of bondholders may be obtainable.

If, however, a sale of the REO disposition together with a change in the interest subsidy allowed AHFC to operate profitably, then a sale of AHFC to the private sector could be considered to be in violation of article IX, section 6, on the basis that there is no valid public purpose served in selling a profitable public asset.

Affordable housing being available to lower income citizens of the state is a legislative objective of AHFC. There is a question of whether this public purpose of AHFC would continue to be served if AHFC was privately owned. Relief and support of the poor has been recognized as an obligation and a public purpose of the government. Suber, supra, at 552. Seemingly there would be no obligation by a private entity to maintain such a public purpose unless terms and conditions of a transfer were imposed which required the private owner to continue the public purpose objectives of AHFC. Such terms and conditions would seem to significantly impact the value of the assets thus transferred from AHFC.

1. Are there any legal constraints to:

- (d) AHFC selling loans within a bond program, i.e., where loans have been pledged as collateral, or
- (e) AHFC selling a loan not used as collateral for a specific loan program?

A sample review of outstanding bond indentures indicates loans within a bond program have been pledged as collateral for payment of the outstanding bonds. Accordingly, such loans may not be sold without a violation of the indenture covenants. To avoid a breach of the covenants the consent of the bondholders for which the loan is collateral should be obtained.

The state has the power to sell such a loan, subject to constitutional issues as to the public purpose (see discussion under IV.1.(a), (b) and (c) above) but the sale may constitute a breach of the related indenture covenants.

If a loan has not been used as collateral, the legal constraints as to its sale are the issues of the transfer of public property only for a public purpose (see discussion under IV.1.(a), (b) and (c) above) and the possible violation of indenture

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covenants requiring certain levels of specific assets be maintained by AHFC.

2. Are there any legal constraints to AHFC entering into a partnership?

Serious constitutional issues are raised by the possibility of AHFC entering into a partnership.

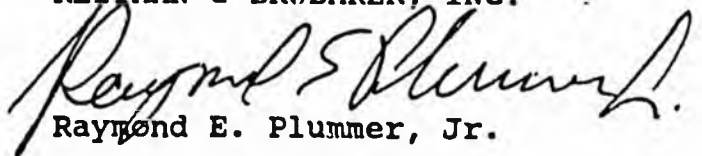
It is questionable whether the formation of a partnership with AHFC would be for a valid public purpose as presumably other private parties would have partnership interests or interests in the assets transferred to the partnership. Further, contracts and debts incurred by the partnership would arguably seem to violate article IX, section 12, of the Alaska Constitution which vests the power to appropriate in the legislature and in the governor. Additionally, it would seem the transfer of assets to a partnership by AHFC would violate article IX, section 7, of the Alaska Constitution which prohibits the dedication of funds.

More pragmatically, it is questionable whether the State of Alaska as a governmental unit may enter into a partnership. The Uniform Partnership Act as adopted in Alaska defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit." AS 32.05.010. For the purposes of the Uniform Partnership Act, a person is defined in AS 32.05.420(5) as including "individuals, partnerships, corporations and associations;" The State of Alaska is neither an individual, a partnership, a corporation, nor an association. At least one state, however, has expanded the definition of person with reference to what entities may be partners to include a form of at least a quasi-governmental unit. The State of Oregon includes "housing authorities" in the definition of "person". ORS 68.020(3).

We are pleased to have been engaged on this matter.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.


Raymond E. Plummer, Jr.

REP:jaf

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May 6, 1985

Honorable Albert P. Adams
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Re: Appropriation of AHFC assets
Our file: 366-479-85

Dear Representative Adams:

By letter of April 24, 1985, we addressed whether the legislature may appropriate unrestricted assets of the Alaska housing finance revolving fund (AS 18.56.082). While we advised that it is likely that the legislature does enjoy the prerogative to appropriate these assets, we recommended that the legislature consider adoption of an amendment to AS 18.56 which clarifies the legislature's substantive authority to do so. Pursuant to your recent request, we attach a proposed amendment to AS 18.56.089.

While the proposed amendment to AS 18.56 provides prospective clarification, we recognize that it would have no bearing on an appropriation enacted during the immediate session of the legislature. If an appropriation of assets of the revolving fund is adopted this year, we propose that it be accompanied by the following effective date clause:

* Sec. __. This Act takes effect on the date that the board of directors of the Alaska Housing Finance Corporation adopts a resolution which provides that there exists a surplus of at least \$ _____ in the Alaska housing finance revolving fund (AS 18.56.082) and that the amount of \$ _____ is available for appropriation by the legislature.

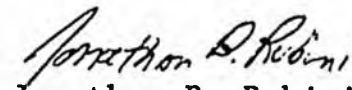
Honorable Albert P. Adams
Alaska House of Representatives
Re: 366-479-85

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If you have any questions, please feel free to contact
me.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Jonathan B. Rubini
Assistant Attorney General

JBR/pjg

Enc.

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April 24, 1985

Hon. Al Adams, Chairman
House Finance Committee
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Re: Legislative power of appropriation over funds of public corporations
Our file: 366-463-85

Dear Representative Adams:

You have requested our advice whether the legislature's power of appropriation includes the power to appropriate money administered by the Alaska Housing Finance Corporation (AHFC). AHFC was created to administer a state enterprise consisting almost entirely of making housing loans or providing a secondary mortgage market for housing loans originated by private lending institutions. AHFC is a state agency with the power to incur indebtedness if repayment is secured by pledging revenue earned from AHFC enterprises. See Alaska Const. art. IX, § 11. The pledge is secured by dedicating money, including revenues earned from the loan enterprise, to special accounts established for the benefit of bondholders. You desire to know whether the legislature may appropriate directly from AHFC's Alaska housing finance revolving loan fund (AS 18.52.082) for a purpose unrelated to AHFC. In addition, you ask if the unobligated balance of an appropriation from the general fund to the revolving fund may be reappropriated for another purpose.

First, we believe there is little doubt that the legislature may reappropriate the unencumbered and unobligated balance of an existing appropriation. See Inf. Op. Att'y Gen. (Sept. 26; 366-132-81). The legislature is merely reducing the authorization to spend money. The formal act of appropriating money does not invest a person or entity with the right to ultimately expend the money unless a valid, binding contract is made with that entity. It is very doubtful that a political subdivision of the state being entirely a creature of statute could claim a vested right to expend money under an appropriation absent the intervention of innocent third parties. Based on these principles, we

conclude that the unexpended and unobligated balance of an appropriation to the AHFC revolving fund may be appropriated for purposes unrelated to AHFC.

We next turn to the more difficult question of whether the balance of the AHFC revolving fund may be appropriated by the legislature for a purpose unrelated to AHFC. The AHFC revolving fund serves as a central pool of money consisting of the following:

- (1) appropriations from the legislature;
- (2) assets transferred there by AHFC; and
- (3) unrestricted repayments of principal on loans made or purchased by AHFC.

The assets of the revolving fund are transferred to separate funds when necessary to satisfy covenants made with bondholders. Amounts remaining in the fund do not secure specific bond issues of AHFC and remain unrestricted for use by AHFC "for the purposes of the corporation." Id.

The answer to your question turns on whether the revolving fund is within the state treasury or, failing that, if the fund is an asset of the state which may be appropriated by the legislature. Revolving funds administered by state agencies are generally included in the state treasury for financial reporting purposes. However, the AHFC revolving fund is not carried on the state's ledgers as an asset of the state treasury. Rather, the revolving fund is an asset of AHFC. In a recent appropriation Act, the legislature has specifically appropriated to the AHFC revolving fund interest earned on loans made or purchased by AHFC on deposit in the fund. See sec. 1, ch. 129, SLA 1984. This was done to remove any question that AHFC had improperly dedicated an unrestricted revenue source of the state for a special purpose in violation of the dedicated fund prohibition set out in section 7, article IX of the Alaska Constitution. This provides some evidence that the legislature considers unrestricted earnings of AHFC to be subject to appropriation. It is important to note that we have identified these earnings as "unrestricted." This means that the rights of innocent third parties to retain the fund balance as security for the payment of debt service on bonds have not intervened to restrict the ability of AHFC to spend them. We believe that the AHFC revolving fund is not in the state treasury. The effect of this conclusion is that AHFC may spend money in the fund without further appropriation. However, money earned from investments or assets of the

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House Finance Committee
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fund have customarily been considered a state asset which may be transferred and deposited into the general fund.

The question then becomes: if the AHFC revolving fund is not in the state treasury, but is an asset of a state agency, is the fund subject to appropriation? We believe that unrestricted money in the fund is probably available for appropriation. No specific authority was located to support this conclusion. We base our opinion on a belief that the legislative power of appropriation will be liberally construed by the courts. The appropriation power is often described as plenary. That is, the power to appropriate is limited only by express provisions set out in the Alaska Constitution. Judicial decisions reciting this principle are legion. See, e.g., San Francisco Labor Council v. Regents of University of California, 608 P.2d 277 (Cal. 1980); City of Sand Springs v. Department of Public Welfare, 608 P.2d 1139, 1148 (Okla. 1980). Absent a specific prohibition in the Alaska Constitution against appropriating assets of an executive branch agency held outside the state treasury, we believe that the legislature may do so. This opinion does not hold that the legislature must appropriate revenue of a public corporation before it can be spent, only that the legislature may exercise control over unrestricted assets of a public corporation. To deny this power would establish an entity capable of segregating unrestricted state revenue forever. At some point, this would do violence to the dedicated fund prohibition set out in article IX, section 7 of the Alaska Constitution.

We believe it is also our responsibility to inform you that there is a contrary view on this subject. The argument could be made on behalf of bondholders that AHFC has undertaken certain obligations to bondholders which are binding on AHFC and the legislature. AHFC bonds are issued as general obligations of the corporation. Typically, AHFC covenants in its indenture that it will "defend, preserve and protect the pledge of the program obligations, pledged revenues, and other assets." Bondholders could attack any direct appropriation of the AHFC revolving fund as a violation of the covenant to preserve assets. We believe this covenant will not restrict legislative appropriations of unrestricted assets of AHFC which are unnecessary to secure the repayment of debt service on bonds. See Opinion of the Justices, 313 N.E.2d 882 (Mass 1977); Opinion of the Justices, 136 N.E.2d 223 (Mass 1956). This means that the directors of AHFC must be certain that an appropriation of corporation assets will not jeopardize its ability to pay debt service on outstanding bonds.

To prepare for and meet any challenge to the appropriation of AHFC assets, we recommend that the legislature not only

appropriate the asset but also amend the enabling Act of AHFC to assure bondholders that an impairment of their security will not occur. Under this approach, a valid transfer of assets requires not only an appropriation from the AHFC revolving fund but also an amendment to AS 18.56.020 which provides authority for AHFC to transfer unrestricted surplus to the general fund. */ Authorization by general law for the transfer of assets of public corporations has been used in the past. In 1980, the legislature transferred the assets of the Alaska State Development Corporation (AS 44.59.010), the Small Business Development Corporation (AS 44.60.020), and the Alaska Toll Bridge Authority (AS 44.57.010) to the Alaska Industrial Development Authority. Sec. 42, ch. 106, SIA 1980. The transfer was made not in an appropriations bill, but in a bill proposing the enactment of general law. It is curious to note that no corresponding appropriation was made. This approach is consistent with another familiar adage of public finance law that appropriation bills may not be used to amend substantive law. Legislative Budget & Audit Committee v. Hammond, No. 1JU-80-1163 CIV. It could be argued that AS 18.56.020 implies that the assets of AHFC will be transferred to the state treasury only upon termination. Because an appropriation cannot amend existing law, a transfer from the fund before dissolution of AHFC would be subject to question.

While we believe that a direct appropriation of surplus AHFC assets is legally defensible, to avoid any question as to the validity of a transfer appropriation, we recommend that the legislature

(1) enact an amendment to AS 18.56.020 authorizing interim transfers of unrestricted surplus assets of AHFC to the general fund;

(2) provide that the board of directors shall annually determine the amount of surplus available for transfer; and

*/ AS 18.56.020 provides:

ALASKA HOUSING FINANCE CORPORATION. The Alaska Housing Finance Corporation is a public corporation and government instrumentality within the Department of Revenue, but havein a legal existence independent of and separate from the state. The corporation may not be terminated as long as it has bonds, notes or other obligations outstanding. Upon termination of the corporation, its rights and property pass to the state.

Hon. Al Adams, Chairman
House Finance Committee
366-463-85

April 24, 1985
Page #5

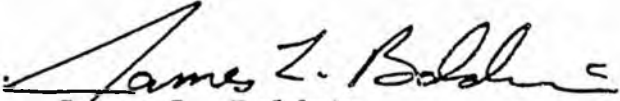
(3) appropriate the assets from the fund to the general fund in accordance with the transfer authorization.

We hope this memorandum has answered your questions.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


James L. Baldwin
Assistant Attorney General

JLB/pjg

Alaska Housing

FINANCE CORPORATION

520 East 34th Avenue
Anchorage, AK 99503
(907) 561-1900
P.O. Box 101020
Anchorage, AK 99510

March 19, 1991

The Honorable Al Adams
Senator
State of Alaska
P.O. Box V
Juneau, Alaska 99811

Re: Senate Bill 163

Dear Senator Adams:

Your office has asked us to comment on Senate Bill 163 in anticipation of it coming before the Senate Finance Committee this Friday, March 22nd. Senate Bill 163 raises numerous policy and legal issues. At this time staff is not prepared to comment on the bill. The next AHFC Board meeting is scheduled for April 5, 1991 in Juneau. We intend to prepare a legislative update for Board review. At that meeting we expect to receive direction from the Board as to the Corporation's position with respect to Senate Bill 163 as well as others of impact to AHFC.

I am enclosing, as requested, copies of information which updates much of that which was presented in last year's Ernst & Young report. I would encourage your staff to contact Mark Cameron, our Finance Director, with any questions regarding the enclosed material.

Please let me know if I can be of any further assistance. I look forward to commenting on SB 163 as soon as we receive Board direction.

Sincerely,



Thomas C. Behan
CEO/Executive Director

DRAFT
MEMORANDUM

Date: Draft of March 21, 1991

To: Thomas C. Behan
CEO/Executive Director

From: Mark Cameron
CFO/Finance Director

Subject: Senate Bill 163

The Corporation has been asked to comment on Senate Bill 163 "An Act relating to the budget and finances of the Alaska Housing Finance Corporation introduced by Senators Adams and Pourchot. Staff has reviewed the Bill and feels that it raises numerous policy and legal issues which should properly be addressed by the AHFC Board prior to staff comment. The following summarizes some of the more significant aspects of the proposed bill and potential implications should it become effective.

What the Bill Does

Senate Bill No. 163 would amend AS 18.56.089, requiring the Corporation to review its assets each year and determine how much "money" it had that was in excess of that "amount required to fulfill the purposes of the corporation as defined in this chapter during the next fiscal year." The AHFC Board would then determine what portion of this excess could be appropriated by the Legislature without breaching any of the Corporation's outstanding agreements or "materially impairing the operations or financial integrity of the Corporation."

The logical presumption is that the Legislature would then reappropriate this amount to the State's General Fund.

SB 163 would further require that the Board's determinations be published in a report along with the Corporation's audited financial statements. This report would be filed on or before January 10th of each year.

Positive Aspects of the Bill

While the overall effect of SB 163 is of severe consequence to the maintenance of existing Corporate resources, the bill has several positive aspects, many of which have not appeared in previous legislation dealing with this matter. Specifically, the bill:

- * is not an appropriation bill.
- * imposes only reporting requirements.
- * has the AHFC Board making the determinations.
- * recognizes AHFC has outstanding contractual agreements which must be honored.
- * permits the AHFC Board to determine the amount giving effect to its ongoing operations and financial integrity.
- * lets the Corporation withhold from the calculation of the excess, that amount necessary to continue its programs for the next fiscal year.

Concerns Regarding the Bill

Depending upon interpretation of existing language, or clarifying amendments to the bill, the Corporation's unrestricted assets in excess of what it determined necessary to operate its programs for the next year would be categorized as "excess" and subject to appropriation to the State's General Fund. After the initial removal of all excess, annual determinations would primarily include earnings and assets released from accounts related to bonds retired. The Corporation would soon be dependent upon annual legislative appropriations for ongoing loan program operations.

Thomas C. Behan
March 21, 1991
Page 3

The bill could put the AHFC Board in a precarious position. The determination of the Board will be the amount of existing resources which it feels are surplus to its operations. By making a finding of any amount, it would be stating that the resources are "available for appropriation by the legislature." Under various financing agreements, the Corporation is charged with protecting its resources and prudently administering its financial affairs. Since all of the Corporation's approximate \$3.5 billion in outstanding debt is additionally secured by its general obligation, it is not clear whether assisting in, or even permitting, a reappropriation of corporate assets would be in conflict with these representations.

The bill raises several issues in addition to the basic question of Legislative powers with respect to corporate resources. The review called for is of existing assets. The Board's finding of any excess is restricted to "money." It is not clear whether the definition of money is to be liberally interpreted to include short-term investments.

A serious timing question also arises. What happens if a determination is made by the Board, funds are reappropriated, yet when payment is due, the resources have been otherwise committed? From a practical standpoint, as soon as the Board makes the determination, the funds would have to be segregated and available to facilitate any potential transfer request.

The Corporation has recommended that prior to passage of any legislation dealing with the removal of existing resources, the attorney general's office, and with respect to (ii) through (v) below, the Corporation's bond counsel, provide opinions that (i) the Legislature has the power to reappropriate AHFC assets, (ii) the reappropriation is not inconsistent with AHFC representations and is not likely to give rise to bondholder litigation, (iii) the AHFC Board does not have an obligation to contest or dispute the removal of its general assets, (iv) the act will not effectively result in the assumption by the State of AHFC's outstanding debt, and (v) the reappropriation does not destroy the wall of separate legal existence which permits AHFC to issue debt without voter approval.

Thomas C. Behan

March 21, 1991

Page 4

The question appropriating AHFC funds back to the General Fund must take into consideration the following:

1. The Corporation has "a legal existence independent and separate from the State."
2. By virtue of its separate legal status, the Corporation's debt does not represent an obligation of the State and therefore does not have to be approved by the voters.
3. The AHFC statutes have a specific provision for the return of assets to the State. AS 18. 56.020 states that "The corporation may not be terminated as long as it has bonds, notes or other obligation outstanding. Upon termination of the corporation, its rights and property pass to the state." If the Legislature can reappropriate assets of the corporation at any time, this statutory provision would be unnecessary.
4. All of the Corporation's debt has been issued with AHFC's general obligation supporting it. As such, existing holders of AHFC's obligations have claim to all of its resources, and the AHFC Board has contractual obligations and implicit obligations to protect and maintain those assets. Any positions or actions taken by the Corporation must take these existing responsibilities into consideration.
5. Each public offering of AHFC debt has included complete financial statements. These statements have treated legislative appropriations as having been complete when received.
6. Should the State treat the Corporation's assets as their own, a potential bondholder claim could arise that AHFC's debt should be treated as if it were that of the State.

Conclusion

The Corporation should support the concept of returning, on an annual basis, a portion of the financial support previously provided by the State. A State Repayment Plan has been drafted. An initial draft copy of the Repayment Plan is attached. The Corporation should take the position that this plan goes as far as possible to transfer excess earnings to the State without raising the complex financial and legal issues enumerated above.

The key elements which staff believes must be in any plan which transfers assets away from the Corporation are as follows:

1. The transfer of assets must be initiated by the Corporation.
2. The transfer must come from annual earnings, so that the financial condition of the Corporation is not weakened.
3. While the determination can be made based upon a specified formula, the AHFC Board must have the ability to take all pertinent factors into consideration prior to releasing assets.

In light of the substantial debt the Corporation has outstanding, the unresolved legal questions mentioned, and desire to maintain access to credit markets, the Board may want to consider requesting the sponsors of the bill to consider the State Repayment Plan adopted by the Corporation as an alternative to SB 163.

The projected resources of AHFC are in excess of that currently projected for existing programs. Consideration should be given, however, to the State's vast housing needs. The State must, under Federal law, establish a statewide housing policy or risk losing millions of dollars available to fund housing. Several bills have been introduced to facilitate the establishment of statewide housing policies. Additional programs and project financing will be identified to better provide safe, sanitary, decent and affordable housing to Alaskan residents.

Thomas C. Behan
March 21, 1991
Page 6

Retention of existing resources will enable the Corporation to play a major role in identifying and meeting those needs. The removal of existing AHFC resources beyond the level of annual earnings could preclude the Corporation from responding to these needs when identified.

Alaska Housing Finance Corporation
State Appropriation Repayment Plan

Draft of March 21, 1991

The Alaska Housing Finance Corporation has received appropriations from the State of Alaska over a number of years to establish and operate a variety of mortgage and mobile home loan lending programs. The following plan outlines a program for annual payments to the State representing a return of these appropriations.

The Corporation shall remit to the State of Alaska a Repayment Amount calculated as set forth below. Payment to the State is dependent upon all Repayment Conditions having been met. The payment to the State shall be made prior to November 30 of each year with the first payment occurring in 1991. The payment will be from the General Account of the Revolving Fund, established pursuant to AS 18.56.082.

The Corporation shall allocate its net income between "unrestricted" and "restricted." Net income shall be considered restricted if the Corporation could not have used the net income for general corporate purposes. Examples of restrictions include (i) net income of funds and accounts established in which the assets are pledged to the repayment of outstanding debt, and (ii) net income of funds established to cover losses on defaulted loans and mortgages. At the time of adoption of this plan, the net income of the Corporation Operating Account and the General Account of the Revolving Loan Fund would be considered unrestricted. The net income of all other funds and accounts would be considered restricted.

The Corporation's Board of Directors shall review the calculation of the Repayment Amount and make the required findings. The Board shall approve by resolution the specific amount of the payment to be made to the State each year.

The net income of the Corporation shall be determined as of each June 30. The net income shall be reflected in the Corporation's audited financial statements and shall be published with its Annual Report as required by AS 18.56.200(b).

Alaska Housing Finance Corporation
State Appropriation Repayment Plan
Draft of March 21, 1991

The Repayment Amount shall be the lesser of (a) 75 percent of unrestricted net income, or (b) 50 percent of total net income, reduced in each case by amounts the AHFC Board of Directors determines necessary to maintain compliance with existing financing agreements and as may be required to meet the Repayment Conditions.

The Repayment Conditions are positive determinations by the AHFC Board of Directors that:

- (1) the Corporation is not in default as to payments of any required amounts and that payment to the State is not expected to impair its ability to meet future financial requirements including the payment of principal, interest, and program costs associated with outstanding debt;
- (2) the payment will not cause the Corporation to be in default under the terms of any financial agreements or disable the Corporation from meeting any financial covenant including minimum asset maintenance requirements;
- (3) financial resources remaining after payment are determined adequate to meet anticipated program requirements through the fiscal year subsequent to that in which payment is being made;
- (4) neither the State nor any of its agencies, political subdivisions or instrumentalities is not in default as to payment of any amounts due pursuant to the terms of financial agreements with the Corporation; and
- (5) if the Corporation has unsecured general obligation debt outstanding, the payment will not result in the then existing credit ratings, if any, on such debt being reduced.

Adopted this _____ day of _____, 1991 by Alaska Housing
Finance Corporation Resolution no. 91-_____.

Alaska Housing Finance Corporation
Resolution no. 91-__

*Resolution Establishing a Plan for
Partial Repayment of State Appropriations*

BE IT RESOLVED by the Board of Directors of the Alaska Housing Finance Corporation as follows:

I. Findings:

(a) the State of Alaska has made a significant investment in Alaska Housing Finance Corporation through appropriations of cash and mortgage loans; and

(b) the Corporation expects to experience annual earnings in excess of that necessary to fund immediate program needs; and

(c) the Corporation further expects a portion of such excess earnings to be over and above that needed to be retained to maintain its financial viability, meet future debt service requirements, or comply with existing financial covenants; and

(d) there has been presented a State Appropriation Repayment Plan which provides for repayments to be made under certain circumstances.

II. Conclusion:

The attached State Appropriation Repayment Plan effectively meets the objectives of partial repayment and is hereby adopted.

III. Effective Date:

This resolution shall take effect immediately.

DATED THIS ____ day of _____, 1991.

Robert Mintz
Chairman of the Board

Attachments

c:\wp51\divrea\mkc

Alaska Housing Finance Corporation

Analysis of Proposed Dividend Policy Consideration of Affect on Prior Years (In Thousands)

Fiscal Period			Net Income				Maximum Dividend Amount
No. Months	Ending		Unrestricted		All Funds		
	Month	Year	Total	75%	Total	50%	
12	6	1980	35,688	26,916	34,342	17,171	17,171
12	6	1989	(4,001)	(3,001)	(124,049)	(62,025)	0
12	6	1988	16,317	12,238	(11,454)	(5,727)	0
12	6	1987	34,121	25,591	20,928	10,464	10,464
12	6	1986	41,297	30,973	41,835	20,918	20,918
12	6	1985	43,738	35,054	76,882	38,441	38,441
12	6	1984	37,905	28,429	74,774	37,387	37,387
12	6	1983	43,837	33,128	73,187	36,594	36,594
12	6	1982	60,577	45,433	95,193	47,597	47,597
7	6	1981	28,063	21,047	44,858	22,429	22,429
12	11	1980	14,156	10,602	26,913	12,957	12,957
Totals			<u>351,990</u>	<u>269,410</u>	<u>352,409</u>	<u>176,208</u>	<u>227,248</u>

Note: Unrestricted Net Income includes net income of the following:
 Corporation Operating Account, General Account of the Revolving Fund, and
 State Appropriated Loan Fund

Alaska Housing Finance Corporation

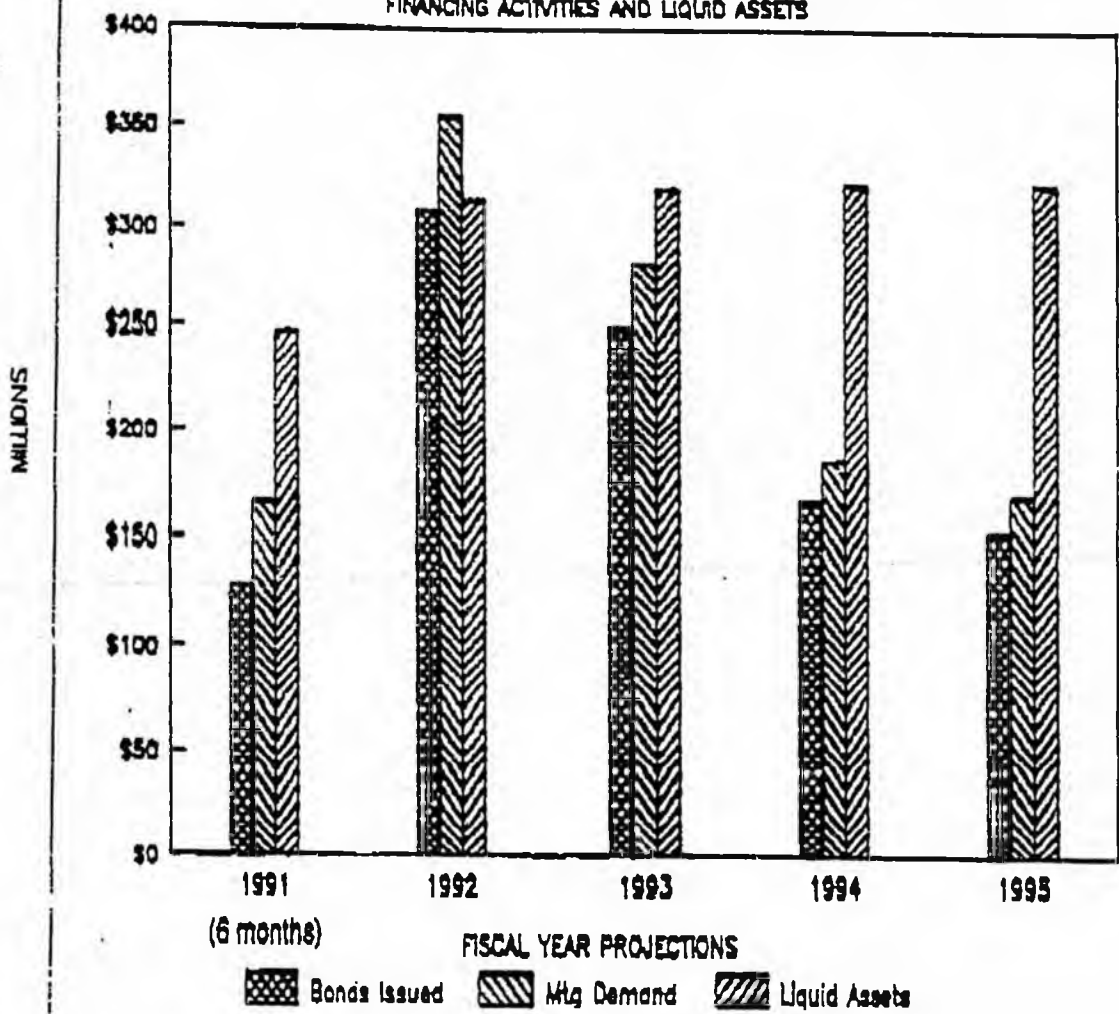
Residential Financing Related Activity

(Projected)

Prepared as of March 6, 1991

Beginning Balances: December 31, 1990

ALASKA HOUSING FINANCE CORPORATION
 FINANCING ACTIVITIES AND LIQUID ASSETS



Fiscal Year Ended June 30,	Bonds Issued	Estimated Mortgage Demand-all Programs	Related Subsidy Transfer	Net Liquid Assets End of FY
1991	130.00	185.00	27.79	247.00
1992	310.61	355.50	41.49	316.16
1993	249.67	282.68	32.97	321.98
1994	165.24	183.00	28.55	323.79
1995	152.72	168.00	25.23	323.91
	<u>1,009.24</u>	<u>1,152.18</u>	<u>153.63</u>	<u>N/A</u>

ALABAMA RESISTANCE CORPORATION
 FIVE YEAR FINANCIAL PLAN AS OF DECEMBER 31, 1990
 SUMMARY OF FIVE YEAR PLAN
 FY 1991 THROUGH 1995

The Corporation's net unrestricted assets as of December 31, 1990 are:

\$268,551,000

and as of June 30, 1995, the projected net unrestricted assets are:

\$323,905,000

The total increase of \$57,354,000 is summarized as follows:

	Inc (Decr) <u>(\$000)</u>
Subsidy for bond issuance	(153,625)
Collateral released from debt retirement	100,648
Long term investments maturing	96,783
Interest earnings on loans & investments	101,395
Interest on short-term borrowing	0
General & Administrative	(20,500)
Unreimbursed REO Expenses	(67,347)
Rounding	<u>0</u>
	<u>57,354</u>

The Corporation has forecasted debt retirement through FY 1995.
 Any release of collateral is assumed to be available for use as subsidy for subsequent bond issuance.

**AHFC Equity -- Corporation and Combined
December 31, 1990
(\$ Millions)**

Program	Retained Earnings	Contributed Capital	Total
Operating/General	\$409	\$140	\$549
Home Ownership Fund (HOF)	(39)	103	64
Insurance Fund	<u>(39)</u>	<u>64</u>	<u>25</u>
Corporation Totals	\$331	\$307	\$638
Bond Financed Programs	80	727	807
Combined Totals	\$411	\$1,034	\$1,445

AHFC Unrestricted Net Assets

December 31, 1990

(\$ Millions)

Total Unrestricted Net Assets		\$549
Less:		
Non-Liquid Assets		
Mortgage Loans	112	
Long-Term Investments	56	
REO	8	
		(178)
Net Due From Other Programs (98 x .30)		(29)
Unrestricted Net Liquid Assets (Before Debt Covenant Requirements)		<u>\$344</u>
Less:		
Restrictions on Assets and Equity (from Debt Covenant Requirements)		(150)
Total Unrestricted Net Liquid Assets		\$194

Net liquid assets includes \$171,000,000 of mortgage loans and mortgage backed securities warehoused pending funding into long-term bond issues.

**Change in Unrestricted Net Assets
For Five Year Period Ending December 31, 1995**

(\$ Millions)

Increases Over Five Years

Collateral Released From Retirement of Bonds	\$101
Interest Earnings on Loans and Investments	101
Maturing Long Term Investments	<u>97</u>
Subtotal of Increases	<u>\$299</u>

Reductions over Five Years

Interest Rate Subsidy	\$154
General & Administrative	21
Unreimbursed REO Expenses	<u>67</u>
Subtotal of Reductions	<u>\$242</u>

Total Five-Year Change in Unrestricted Assets	<u><u>\$57</u></u>
---	--------------------

Alaska Housing Finance Corporation

Financial Status Report

(\$'s in thousands)

December 31, 1990				
		Unrestricted Accounts	Restricted Accounts	Total
<u>Balance Sheet Data:</u>				
Assets		655,009	4,681,093	5,336,102
Liabilities		106,335	3,785,162	3,891,497
Total Fund Equity		548,674	895,931	1,444,605
Six Months Ended				
<u>Earnings Data:</u>				
<i>Income:</i>				
Interest and other		20,490	215,301	235,791
<i>Expenses:</i>				
Interest		1,178	163,311	164,489
Loan loss and REC related		10,359	(10,329)	30
All other		(457)	32,907	32,450
Total expenses		11,080	185,889	196,969
<i>Net Income</i>		9,410	29,412	38,822

AHFC Unrestricted Net Assets

December 31, 1990

(\$ Millions)

Total Unrestricted Net Assets		\$549
Less:		
Non-Liquid Assets		
Mortgage Loans	112	
Long-Term Investments	56	
REO	8	
		(176)
Net Due From Other Programs (98 x .30)		<u>(29)</u>
Unrestricted Net Liquid Assets (Before Debt Covenant Requirements)		<u>\$344</u>
Less:		
Restrictions on Assets and Equity (from Debt Covenant Requirements)		(150)
Total Unrestricted Net Liquid Assets		\$194

Mortgage and Loan Information

As of December 31, 1990

(\$'s in Millions)

	<u>Outstanding</u>		<u>Delinquency</u>	<u>Real Estate</u>
	<u>Number</u>	<u>\$ Amount</u>	<u>Rates</u>	<u>Owned</u>
Mortgage Loans	40,071	\$3,335	5.11%	1,729
Mobile Home Loans	<u>2,583</u>	<u>64</u>	<u>17.69%</u>	<u>202</u>
Total	<u>42,654</u>	<u>\$3,399</u>	<u>5.87%</u>	<u>1,931</u>

	<u>Foreclosures</u>	<u>Dispositions</u>		
		<u>Sold</u>	<u>Other</u>	<u>Total</u>
Mortgage Loans	1248	2010	799	2809
Mobile Home Loans	<u>177</u>	<u>476</u>	<u>34</u>	<u>510</u>
Total	<u>1,425</u>	<u>2,486</u>	<u>833</u>	<u>3,319</u>

Summary of Bonds Outstanding

As of and for the Year Ending

December 31, 1990

(\$'s in Thousands)

	Outstanding 12/31/90	1990 Financing Activity		Total Calendar Year 1990
		Issued During Calendar Year 1990	Remarketed Calendar Year 1990	
Taxable Bonds	\$1,698,819	\$200,000		\$200,000
Tax-Exempt Mortgage Bonds	1,357,774	425,604	50,000	475,604
Other Tax-Exempt Bonds	129,500	129,500		129,500
Tax-Exempt Veteran Bonds	378,605	35,000		35,000
	<u>\$3,562,698</u>	<u>\$790,104</u>	<u>\$50,000</u>	<u>\$840,104</u>

History of State Appropriations to AHFC

(\$ Millions)

Year	-- Revolving Fund --					Total State Funding
	General Purposes	Home Ownership Fund (HOF)	Rural Mortgage Purchase	Mobile Home Purchase	State Mortgage Insurance Fund	
FY 1979 and Prior			\$ 1		\$ 7	\$ 8
FY 1980					3	3
FY 1981	\$474	\$53	12	\$12	7	558
FY 1982	222	43				265
FY 1983	105	45				150
FY 1984	7	42				49
Total	\$808	\$183	\$13	\$12	\$17	\$1,033

AHFC Equity -- Corporation and Combined
June 30, 1989
(\$ Millions)

Program	Retained Earnings	Contributed Capital	Total
<i>Operating/General</i>	\$371	\$148	\$519
<i>Home Ownership Fund (HOF)</i>	(42)	103	61
<i>Insurance Fund</i>	<u>(44)</u>	<u>16</u>	<u>(28)</u>
Corporation Totals	\$285	\$267	\$552
<i>Bond Financed Programs</i>	53	766	819
Combined Totals	\$338	\$1,033	\$1,371

AHFC Unrestricted Net Assets
June 30, 1989
(\$ Millions)

Total Unrestricted Net Assets	\$519
Less:	
• Non-Liquid Assets	
- Mortgage Loans	119
- REO	<u>27</u>
	(146)
• Net Due From Other Programs (\$89 x .30)	<u>(27)</u>
Unrestricted Net Liquid Assets (Before Debt Covenant Requirements)	\$346
Less:	
• Restrictions on Assets and Equity (from Debt Covenant Requirements)	<u>(336)</u>
Total Unrestricted Net Liquid Assets	\$ 10

Change in Unrestricted Net ~~Assets~~ Assets
For Five Year Period Ending June 30, 1994
Baseline A
(\$ Millions)

<i>Increases Over Five Years</i>	
Collateral Released From Retirement of Bonds	\$80
Interest Earnings on Loans and Investments	215
Subtotal of Increases	\$295
 <i>Reductions Over Five Years</i>	
Interest Rate Subsidy	\$83
Overcollateralization of Bonds (a)	109
State Financed Loan Purchases	50
Interest on Short-Term Borrowings	60
Loan Losses and Net REO Losses	50
AHFC General and Administrative Expenses	50
Subtotal of Reductions	\$402
Total Five-Year Change in Unrestricted Assets	(\$107)

Assumptions

No subsidy on tax-exempt or veterans bond programs
 A 0.75 percent subsidy on taxable program
 A 2.5 percent subsidy on HOAP II program during FY 1989/90
 A 2.0 percent subsidy on HOAP III program during FY 1989/90 and 1990/91
 Total purchases of loans over five years as follows:

- Tax exempt \$300 million
- Tax exempt veterans \$150 million
- Taxable \$580 million
- HOAP \$100 million
- State financed \$30 million

Bonds are assumed overcollateralized by 2 percent for credit rating enhancement.
 Bond sales costs are 1.0 percent of bond sale (1.75 percent for Veterans bonds).
 Reserve accounts for taxable bonds equal 5 percent, and for HOAP bonds,
 10 percent. No reserve accounts assumed for tax-exempt or Veterans bonds.
 Annual interest expenses and earnings of Corporate and General accounts are
 assumed equal to 80 percent of the average of the previous five years.

(a) This line item also includes bond sales costs and reserve accounts.

A sign of AIDEA's present course is the Skagway Ore Terminal, a 1990 purchase funded by a \$25 million bond issue.

ADN, March 17, 91

Future tugs AIDEA purse strings

Agency still could subsidize loans or bankroll major development

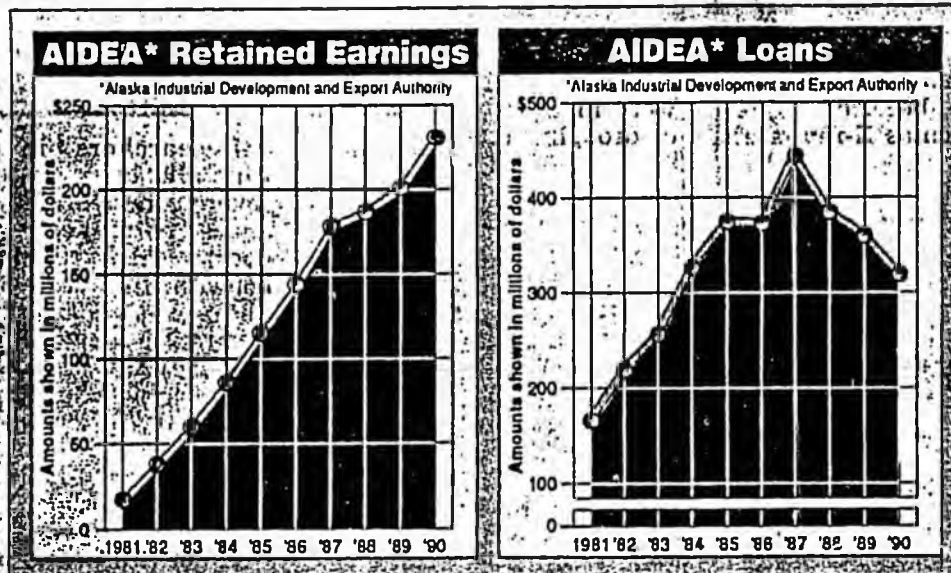
By HAL BERNTON
Daily News business reporter

From headquarters in a foreclosed Tudor Road office building, a cash-rich investment group is bankrolling and taking title to major Alaska industrial properties.

Its first acquisition was a northwest Alaska zinc ore port. Then came a southeast Alaska lead ore terminal. By year's end, it will own a new dock in the booming North Pacific fisheries. It hopes to build a 50-watt, coal-fired power plant in interior Alaska and also is eyeing construction of up to \$50 million worth of new Anchorage airplane maintenance hangars.

The group is neither some high-flying Outside investment group nor the shadowy subsidiary of a Japanese conglomerate. It is the Alaska Industrial Development and Export Authority, a 24-year-old creation of the state legislature.

AIDEA spent much of the past decade financing the building of strip malls, office buildings and other white-collar trappings of the Anchorage urban economy. In the late '80s — prodded by critics who



Source: University of Alaska Anchorage, Institute of Social and Economic Research

say the agency has strayed from its initial development charter — AIDEA began to focus on building Alaska's blue-collar economy.

"I'm a fan of industrial development, a junior Genghis Khan when it comes to mining," said Bert Wagnon, the agency's executive director

since 1982. "I would absolutely place our emphasis on resource development. The problem is identifying those projects that aren't financial boondoggles and have the ability to repay money."

Under Wagnon's tenure, the agency suffered a sharp upturn in bad

loans in 1987 as collapsing real-estate values caused a near-tripling of delinquent loans. But the agency still has managed to operate in the black for 10 years in a row and last year posted a near-record profit of \$29 million. It enters the new decade with \$331 million in cash and liquid investments.

AIDEA's bulging piggy bank also makes it a tempting target for a Hickel administration that came to power last December pledging to use state money to spur new development. Since then, collapsing oil prices have swept away anticipated budget surpluses, and AIDEA has emerged as one of the few state agencies with cash to bankroll development.

"I am intending to make it a central feature of the state role in stimulating ... economic development," said Glenn Olds, the state commerce commissioner and an AIDEA board member.

But there is still no consensus about just what AIDEA should be in the '90s.

Please see Page F-3, AIDEA

AIDEA: Different uses seen for agency's big bankroll

Continued from Page F-1

Bankers say they will continue to need the agency's help to provide financing for commercial real estate in a decade when other sources of long-term capital are drying up. Others, including Olds, say the agency should rapidly expand its industrial financing and consider a wide range of subsidy projects. And some say the agency should try to do both.

AIDEA was created in 1967 during the first Hickey administration as a bond-issuing agency to help finance construction of Kenai Peninsula liquefied natural gas plants.

But Marathon Oil and Phillips Petroleum got financing elsewhere. The agency was dormant until 1980, when the legislature roused it back to life with a \$180 million injection of assets.

At that time, banks wanted help with long-term lending in commercial real estate, and AIDEA cooperated with an avalanche of tax-exempt bond sales. Dozens of Anchorage strip malls and office buildings — including the agency's own Tudor Road building — were financed with AIDEA money. The building boom peaked in 1985, when AIDEA's loan portfolio totaled \$374 million.

The next year, a real estate market began to collapse. AIDEA took its first major step into industrial development with the \$177 million construction of a road and port for the Red Dog zinc mine, near Kotzebue.

As the agency moved into this industrial development, it also became an owner. It put up the money for a 52-mile road, dock and fuel storage complex, then built and took title to them. "We're the ones that own all the equipment. The crew quarters, the refueling facilities," Waggon said. The agency expects to get its money back by charging user fees to Comulco Ltd., Red Dog developer.

User fees — over 50 years — are expected to generate enough revenue to repay initial development costs plus 6.5 percent interest, at a minimum. But in a move sanctioned by the legislature, that interest rate is slightly below the 7.3 percent rate AIDEA pays the bond investors.

The agency's board — a mix of businessmen and state officials — has decided to move ahead with more industrial development based on the concept of AIDEA as "financier, builder and owner."

Total system and product quality control will be maintained and managed through training, distribution, service and registration programs. Manufacturers such as AT&T, Lennox, Texas-Instruments and Westinghouse have contracted to make product changes for Smart home applications. Builders, contractors and installers will be specially trained and certified for installation and to ensure manufacturer warranties.

So what does this mean? The ultimate goal is to create a new kind of home. Until it becomes standard within the industry, it will be an extra cost. If it endures the test of time it may prove to be something we didn't know how we managed without it. I hope we won't need to ask the kids how to run the smart home terminal.

□ Clair Ramsey is a local associate broker specializing in residential real estate. His column appears every fourth Sunday.

"Red Dog set a pattern," Waggon said.

In July 1990, the authority purchased a Skagway lead-ore terminal for \$14 million and is improving both its environmental and handling systems in a \$13 million project scheduled to be completed this year. The agency plans to recoup all of its money through fees charged the mining companies that use the terminal.

AIDEA also this year is building and taking title to a city dock in Unalaska, which is the major staging point for a North Pacific fishing industry worth more than \$1 billion annually.

In years past, such basic infrastructure/projects often were funded by the state legislature. But AIDEA found another way to get the job done — working with the city government. It surveyed potential users and found there was enough demand to guarantee that, as AIDEA built, it could be repaid through long-term leases.

The \$7 million, 730-foot dock is scheduled to be completed late this year, and private companies plan to invest another \$7.5 million in improvements.

The agency also is considering spending up to \$50 million to build hangars at Anchorage International Airport for aircraft maintenance. "Federal Express, Alaska Airlines and other carriers would lease the hangars at rates high enough to cover AIDEA's costs, according to Waggon.

AIDEA's fourth industrial project would be a heavily subsidized coal-fired power plant that is one of its most controversial ventures. The \$193 million project is designed to demonstrate new technology for cleaner coal-burning power plants.

The project has received a \$93 million federal grant and the legislature has approved another \$25 million in funding. AIDEA has agreed to go into bond markets to raise \$40 million.

But the project proved more expensive than early estimates and is still \$35 million short of funding. Critics say it should never be built because it would flood the state with power it doesn't need and might replace cheaper — and cleaner — natural gas-generated power.

The project received a major setback this month when the Alaska Public Utilities Commission rejected a power sales agreement with the Golden Valley Electric Association

of Fairbanks because of the funding shortfall.

The Fairbanks utility could pay more for the power to help make up the shortfall. But that also would force up consumer power rates, and the commission might reject such a move.

"Healy's a marginal project. Right now there's a problem with the shortfall," Waggon said.

But some argue the agency is not moving fast enough to trigger new industrial development. The agency needs to worry less about the bottom line, they say, and consider a wide range of subsidy projects.

Some of the harshest criticism comes from a University of Alaska study commissioned by the AIDEA board. The study, released last December, says AIDEA should act more like the World Bank.

That bank is financed in part by grants from developed nations and offers some Third World, no-interest loans with an up-to-10-year initial grace period on principal payments.

"We believe AIDEA should continue to be a public corporation of the state of Alaska but that it should look and function like a development finance institution," wrote Musa Essayad and Dave Gordon, authors of the report.

AIDEA's charter said it can loan money only to projects that pay back all of the agency's financing costs in bond markets. But Essayad and Gordon said the state should step in with money to help worthy projects repay AIDEA loans.

Such recommendations are being given a real-world test with the recent request by a Seattle fishing company for a 2 percent, \$25 million loan. The money would finance construction of a \$14.6 million plant that makes imitation crab legs in Homer and a vessel to carry supplies up from Seattle and finished product to market.

Oceantrawl Inc. officials said the low-interest loan would offset the higher costs of building and operating the plant in Homer. The company has hired Tony Smith, a former state commerce commissioner and AIDEA chairman, to help persuade the legislature to approve such a loan.

"AIDEA should have the ability to accept less than the market rate of return if it gets other public sector benefits," Smith said.

Smith said the Oceantrawl plant would create 64 jobs and increase local and state tax revenue. He's

convinced that eventually Homer operating costs, as shipping lines developed to bring raw product directly from Unalaska, would be competitive with Seattle.

He also thinks AIDEA should offer low-interest loans to companies that agree to build roads and other basic utilities. Sebu Alaska, for example, might agree to take on the cost of extending roads to open the area known as Winter Creek.

Such policies will be up the legislature to decide. If the gate is thrown open to 2 percent loans, Waggon expects a lot of requests.

"What is the appetite for 2 percent money? My sense is it's infinite," he said. "And how many worthy people should be financed?"

Smith has at least a philosophical ally in Olds, who said he would favor subsidized loans to help launch new projects. He proposes waiving interest in the early years of a loan, and then restoring it to market rates during a later payback period.

But Alaska banks don't want to see all of AIDEA's loans go to big-ticket industrial projects. They are lobbying the legislature to help make it easier to keep their hands in the AIDEA till for commercial real estate loans.

Demand for such commercial lending is still very weak, said Bob Gray, president of National Bank of Alaska. But once it starts up again, state banks won't have much long-term money to offer, he said.

That's because new federal regulations restrict banks' long-term lending abilities. And pension funds, life insurance groups and big Outside commercial banks no longer are eager to invest in Anchorage real estate.

That makes AIDEA an important source of long-term money, Gray said. In a typical 20-year loan package, a bank will provide 20 percent of the money and AIDEA the other 80 percent.

But bank officials say it is difficult for them to lend any of their money for longer than 10 years when most of their assets are in short-term deposits. They have asked the legislature to approve a new type of loan participation in which all of the bank's money is paid off in the first 10 years.

"This isn't really a state problem. It's a national problem. A lot of the traditional long-term real estate lenders just aren't making loans," Gray said.