HB 196

<target><bill>HB 196</bill><subject>HB 196</subject><comm>HENE26</comm></target>

Alaska Legislature
House Special Committee on Energy

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House Bill 196: Alternative Energy Revolving Loan Fund

SPONSOR'S INTENT

HB 196 amends the Alternative Energy Revolving Loan Fund in order to provide another tool for Alaskans to use in battling volatile fuel costs.

This fund was established in 1978 to make loans of up to $30,000 to individual Alaskans for energy production through small-scale wind, hydroelectric, solar-voltaic, and other alternative systems.

In 1990, the program was mothballed with an amendment that swept any unexpended and unobligated cash in the fund into the general fund at the end of every fiscal year. Lacking annual appropriations from the Legislature, the program has been essentially dormant.

HB 196 eliminates the "sweep" provision, replacing it with a requirement that principal and interest payments and other income earned by the fund stay in the fund. This means that should the Alternative Energy Revolving Loan Fund be capitalized, it will grow.

The bill also will allow sources in addition to appropriations from the Legislature to capitalize the fund. These can include gifts, bequests, or contributions.

Other aspects of the legislation update the loan fund to reflect current policies in the Division of Investments. These include matters concerning collateral and the sale or transfer of mortgages.

The bill also acknowledges the recent development of clean-burning, high-efficiency wood pellet stoves, adding them to a listing of systems permitted for loans under the program in the Definitions section.

We in Alaska must use every means at our disposal to find permanent solutions to high energy costs. Some of those solutions call for large-scale energy projects requiring many years to develop. But we should not discount the cumulative potential of smaller-scale efforts. HB 196 will enable many individual Alaskans to make lasting investments that will help bring their energy costs to acceptable levels soon.

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Sectional Analysis
House Bill 196: Alternative Energy Revolving Loan Fund

Section 1

Adds language allowing a variety of capitalization sources for the Alternative Energy Revolving Loan Fund.

Also stipulates that principal and interest payments and other income on loans or investments in the fund become part of the fund.

Section 2

Adds a new subsection that requires a loan be secured on the real property to be improved and on a first lien on the improvements financed under the loan fund.

States that the interest rate will be set between 5% and 8%, declares how the specific rate will be calculated in relation to the bank prime rate, and describes the length of time that rate remains in effect.

Section 3

Adds high efficiency wood pellet stoves to the program's definitions of "alternative energy system."

Section 4

Repeals the sweep provision from the current revolving loan fund statute; Repeals the current loan rates, which are 5% for the first $15,000 and 15% for sums above that amount; and Repeals the transfers or sales of mortgages and notes.

Section 5

Sets an immediate effective date.

Prepared by the House Special Committee on Energy. *Bill Version: 26-LS0754\R*

26-LS0754\R.1
Kane
3/31/09

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE EDGMON

TO: HB 196

Page 1, line 12:

Delete "first"

2727

AMENDMENT 2

OFFERED IN THE HOUSE BY REPRESENTATIVE EDGMON

TO: HB 196

Page 1, following line 9:

Insert a new bill section to read:

"* **Sec. 2.** AS 45.88.020(a) is amended to read:

(a) The department may

(1) make loans for the purchase, construction, and installation of alternative energy systems **that are located in the state**;

(2) adopt regulations necessary to carry out the provisions of AS 45.88.010 - 45.88.090, including regulations to establish reasonable fees for services provided and charges for collecting the fees;

(3) collect the fees and collection charges established under this subsection."

Renumber the following bill sections accordingly.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 196
() Publish Date:

Identifier (file name): HB196-CED-INV-03-26-09
Dept. Affected: DCCED
Title: An act relating to the alternative energy revolving loan fund; and providing for an effective date.
RDU: Investments
Component: Investments
Sponsor: House Special Committee on Energy
Requester: House Special Committee on Energy
Component Number: 383

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (Specify Type--Do not abbreviate)						0.0	
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*
This bill proposes several changes to the Alternative Energy Revolving Loan Fund.

This fund was created in 1978 and was active until FY87 when the Legislature removed funding. In 1990, the Legislature inserted language into the statute that required all cash remaining in the fund at the end of each fiscal year be transferred to the General Fund.

The changes included in this bill would allow the program to receive funding and retain repayments, as well as other earnings generated by the fund. The bill also adds collateral requirements, amends the interest rate to be charged on loans made under the program, and amends the types of systems that qualify to include high efficiency wood pellet stoves.
(Continued below.)

Prepared by: Greg Winegar — Phone 465-2510
Division: Division of Investments, Dept of Commerce, Community, & Econ. Dev. — Date/Time 3/26/09 -4:00pm
Approved by: Emil Notti,.Commissioner — Date 3/26/2009
Department of Commerce, Community and Economic Development

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB 196

ANALYSIS CONTINUATION

Because this fund would need to be capitalized prior to new loans being made, no additional operating expenditures are requested. If the fund is capitalized and the demand for these loans becomes significant, additional operating expenditures may be requested in the future from the earnings of the loan fund.

LEGISLATIVE RESEARCH SERVICES

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March 25, 2009

Memorandum

TO: Representative Bryce Edgmon
FROM: Patricia Young, Manager
RE: Amendments to the Alternative Energy Revolving Loan Fund
LRS Report 09.211

You asked about statutory changes to the alternative energy revolving loan fund established in AS § 45.88.010. Specifically, you asked about the rational for and the point at which the legislature added the following subsection:

> (c) On June 30 of each fiscal year the unexpended and unobligated cash balance of the fund that is attributable to loans owned by the fund lapses into the general fund.

The language was absent from the statutory provisions relating to the fund until the enactment of SCS CSHB 85 (Rls) am S which became chapter 36 SLA 1990. House Bill 85 was introduced at the request of Governor Steve Cowper to standardize accounting practices in a wide range of state agencies that collected program receipts. The act incorporated a similar requirement into the statutory provisions of a number of programs. The substance of Governor Cowper's transmittal letter, dated January 13, 1989, reads as follows:

> Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that makes changes in existing law to clarify the status of and accounting for money received for goods and services provided by state agencies.
>
> The purpose of the bill is the same as that of ch. 138, SLA 1986: namely, to expressly authorize setting and receiving fees and other charges by state agencies for the performance of functions prescribed by law. As with ch. 138, SLA 1986, this bill includes provisions requiring separate accounting for these program receipts and provisions suggesting legislative appropriation to the respective programs that produced the receipts. This bill attempts to include the amendments that ch. 138, SLA 1986 missed, and it removes an ambiguity in that Act's amendment of AS 37.10.050(a), making certain that fee regulations meet the same standards as those prescribed by the Alaska Administrative Procedure Act for other regulations.
>
> Perhaps the most significant provisions of this bill are in secs. 1 and 132. Section 1 defines "program receipts" as "fees, charges, income earned on assets, and other state money received by a state agency in connection with the performance of its functions" and identifies those receipts that are not general fund program receipts.
>
> Section 132 is a "grandfather clause" that protects from any unintentional invalidation fees charged by agencies under regulations that were adopted before July 1, 1987, notwithstanding the 1986 amendments of AS 37.10.050(a) which took effect July 1, 1987.
>
> The remaining sections of the bill either (1) expressly authorize the assessment of fees or the provision of services already impliedly authorized by existing law; or (2) prescribe a method of accounting for and using money generated by state programs.
>
> This bill has an immediate effective date, to achieve consistency with ch. 138, SLA 1986's amendments as soon as possible.
>
> **The amendments set out in this bill will make clear the permissible handling of program receipts. Although my Administration believes that the most appropriate use of program receipts is for the expenses**

> **of the activities that earned them, it is within the legislature's discretion to determine the purpose for which those program receipts may be spent. The power of the legislature to appropriate program receipts is no different from its power to appropriate other money in the general fund.**[1]

Although the wording in the original version of the bill was not exactly as it now appears, the concept was intact. The sectional analysis that accompanied the governor's transmittal letter described the provisions relating to the alternative energy revolving loan fund (AS § 45.88.010 – AS § 45.88.090) as follows:

> Enables the Department (1) to establish loan servicing fees and set them by regulation, and (2) to use money in the Alternative Energy Loan Fund to carry out administration of the fund. Requires the Department to deposit all fee and collection charges in the general fund to be treated as general fund program receipts.[2]

Through the same act, similar, standardized language was included in the statutes related to a number of other fund programs. The 1990 act added similar language to the Alaska World War II veteran's revolving fund, the mining loan fund, the child care facility revolving loan fund, the residential energy conservation fund, the historical district revolving loan fund, and the rural electrification revolving loan fund.

In a 1982 opinion, the attorney general discussed the issue of the dedicated funds clause in the state constitution. The opinion specifically addressed the applicability of the dedicated funds clause to interest income that is returned to specific funds. The attorney general acknowledged that there were arguments to be made on both sides of the question but noted as follows:

> A difficulty that arises from the view that the dedicated funds prohibition is not applicable to interest or investment income on separate funds is that it permits steadily increasing amounts of money to be received and used by state departments and agencies without legislative control through the annual budget process. This is precisely the problem posed by the dedication of revenue sources which the drafters sought to avoid. For this reason, while we are not certain about the likely outcome, we doubt that a blanket exception for derivative income would be approved by the courts.[3]

As you may know, prior to around 1993, committee minutes may be relatively sparse. Our review of minutes associated with HB 85 reveal no discussion of the alternative energy revolving loan fund—or any other particular loan or other state program. We believe it likely that the inclusion of the language—requiring that unexpended and unobligated money that is attributable to loans owned by the fund lapses into the general fund on June 30th of each fiscal year—was related to the constitutional prohibition against the dedication of funds (Article IX, Section 7), the need for clear fiscal accounting, and an interest in retaining control of state revenue through the process of annual appropriations.[4]

We hope this is helpful. Please let us know if you have questions or need additional information.

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[1] *House Journal, 16th Legislature*, January 13, 1989, p. 90; emphasis added.

[2] *House Journal Supplement*, No. 2, January 13, 1989, p. 12.

[3] Opinion of the Alaska Attorney General, November 30, 1982. We include a copy of this opinion as Attachment A.

[4] Attachment B includes pages from Gordon Harrison's *Alaska's Constitution: A Citizen's Guide*, 4th Edition that are pertinent to the dedicated of funds prohibition.

Chapter 45.88. ENERGY LOAN AND GRANT PROGRAMS

Article 01. ALTERNATIVE ENERGY REVOLVING LOAN FUND

Sec. 45.88.010. Fund established.

(a) There is established in the Department of Commerce, Community, and Economic Development the alternative energy revolving loan fund to carry out the purposes of AS 45.88.010 - 45.88.090. Loans made under AS 45.88.010 - 45.88.090 are to be used to develop means of energy production utilizing energy sources other than fossil or nuclear fuel, including, but not limited to, windmills, water and solar energy devices.

(b) Money in the fund may be used by the legislature to make appropriations for costs of administering AS 45.88.010 - 45.88.090.

(c) On June 30 of each fiscal year the unexpended and unobligated cash balance of the fund that is attributable to loans owned by the fund lapses into the general fund.

(d) Notwithstanding any other provision in AS 45.88.010 - 45.88.090, a multifuel heating system that uses the combination of wood or fossil fuel for fuel does qualify under this loan fund.

Sec. 45.88.015. Special account established.

(a) There is established, as a special account within the revolving loan fund established under AS 45.88.010, the foreclosure expense account. This account is established as a reserve from fund equity.

(b) The commissioner of commerce, community, and economic development may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans made under AS 45.88.020 or to defray expenses incurred during foreclosure proceedings after a default by an obligor.

Sec. 45.88.020. Powers and duties of the department in administering the fund.

(a) The department may

(1) make loans for the purchase, construction, and installation of alternative energy systems;

(2) adopt regulations necessary to carry out the provisions of AS 45.88.010 - 45.88.090, including regulations to establish reasonable fees for services provided and charges for collecting the fees;

(3) collect the fees and collection charges established under this subsection.

(b) The department shall develop eligibility standards for loans made under AS 45.88.010 - 45.88.090 and adopt guidelines for the determination of loan terms.

(c) The department may not make a loan under AS 45.88.010 - 45.88.090 to a person who has a past due child support obligation established by court order or by the child support services agency under AS 25.27.160 - 25.27.220 at the time of application.

Sec. 45.88.030. Loan terms.

(a) A loan for the development of an alternative energy system under AS 45.88.010 - 45.88.090 may not exceed $30,000.

(b) The duration for repayment of the loan may not exceed 20 years.

(c) Loans made under AS 45.88.010 - 45.88.090 may be used to finance the cost of purchase, construction, and installation of an alternative energy system or "centralized multifuel heating systems" which is likely to result in energy conservation or energy cost savings.

(d) All principal and interest payments, and money chargeable to principal or interest that is collected through liquidation by foreclosure or other process on loans made under AS 45.88.010 - 45.88.090, shall be paid into the alternative energy revolving loan fund.

(e) The rate of interest for a loan for an alternative energy system is five percent for the first $15,000 of the loan and 15 percent for the amount of the loan that exceeds $15,000.

Sec. 45.88.040. Sale or transfer of mortgages and notes.

(a) The commissioner may sell or transfer at par value or at a premium or discount to any bank or other private purchaser for cash or other consideration the mortgages and notes held by the Department of Commerce, Community, and Economic Development as security for loans made under AS 45.88.010 - 45.88.090.

(b) [Repealed by Sec. 14 ch 122 SLA 1980].

Alaska Division of Investments
Department of Commerce, Community, and Economic Development

Program Funding Summary
Alternative Energy Revolving Loan Fund

Transfers to the AERLF:		
Appropriation from General Fund	14,345.0	
Appropriation from Residential Energy Revolving Loan Fund	1,000.0	
Appropriation from Fisherman's Mortgage Loan Fund	1,000.0	
Appropriation from Small Business Revolving Loan Fund	1,700.0	
Total Transfers to AERLF		18,045.0
Transfers from the AERLF:		
Transfer to General Fund	-18,775.9	
Transfer to Veterans, Tourism, Fisheries Enhancement Loan Programs	-914.6	
Total Transfers to General Fund and Other Programs	-19,690.5	
Operating Budget Transfers from 1987 to 2004	-4,570.3	
Total Transfers from the AERLF		-24,260.8
Net AERLF Transfers:		-6,215.8

Prepared by Division of Investments
AE Historical 3-25-09 clj

Alaska Division of Investments
Department of Commerce, Community, and Economic Development

Alternative Energy Revolving Loan Fund

Principal, Interest, and Revenues

	Principal	Interest	Other Revenues
FY 90	785.0	390.8	11.3
FY 91	904.3	347.4	14.0
FY 92	815.2	308.4	25.0
FY 93	988.0	261.0	51.4
FY 94	673.0	198.1	33.9
FY 95	641.0	157.5	13.9
FY 96	515.7	123.4	13.8
FY 97	507.8	105.9	12.0
FY 98	444.0	90.6	21.7
FY 99	337.1	58.5	20.5
FY 00	285.7	38.6	20.4
FY 01	193.6	25.8	7.2
FY 02	167.8	15.3	2.8
FY 03	90.5	6.6	0.6
FY 04	42.2	3.5	20.9
FY 05	18.5	1.0	4.5
FY 06	3.5	4.0	1.2
FY 07	0.6	0.0	63.8
FY 08	0.6	0.0	4.7
Total	7,414.1	2,136.4	343.6

Information for repayments received between FY80 through FY89 is not available at this time.

Revenues include: Late Fees, Judgment Interest, Uncollectible Amounts Recovered & Gain on Loans

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Alaska Division of Investments
Department of Commerce, Community, and Economic Development

Alternative Energy Revolving Loan Fund - 21619
Historical Loan Demand

Fiscal Year	Number of Loans Committed	Dollar Amount	Average Loan Amount
1980	1	10.0	10.0
1981	440	2,243.3	5.1
1982	1,172	5,392.3	4.6
1983	503	4,591.8	9.1
1984	392	3,509.5	9.0
1985	258	2,042.4	7.9
1986	168	1,421.6	8.5
1987	10	88.8	8.9
1988	0	0.0	0.0
1989	0	0.0	0.0
Total	2,944	19,299.7	

Term not to exceed 20 years. Actual average term 11 years.

Prepared by Alaska Division of Investments
AE Historical 3-25-09 clj

Alaska Division of Investments
Department of Commerce, Community, and Economic Development

Alternative Energy Revolving Loan Fund - 21619
Historical Paid Off Loan

Fiscal Year	Number of Loans Paid Off	Dollar Amount
FY88	123	294.8
FY89	122	386.6
FY90	92	247.0
FY91	110	398.7
FY92	147	326.1
FY93	130	543.4
FY94	112	432.9
FY95	69	329.5
FY96	44	159.9
FY97	54	204.9
FY98	70	242.2
FY99	47	125.4
FY00	49	109.4
FY01	61	50.6
FY02	47	62.8
FY03	34	32.4
FY04	25	9.6
FY05	10	8.1
FY06	7	0.5
Total	1353	3964.8

As of 3-25-09 there is one remaining AE loan.

Prepared by Alaska Division of Investments
AE Historical 3-25-09 clj

Alaska Division of Investments
Department of Commerce, Community, and Economic Development

Alternative Energy Revolving Loan Fund

	Outstanding Number of Loans	Outstanding Principal Balance	Delinquency	Default
1980	1	10.0		
1981				
1982		3,935.0		
1983	1,726	7,852.2		
1984	1,868	10,806.0		
1985	1,891	11,871.9	11.1%	0.4%
1986	1,792	11,646.5	3.3%	2.9%
1987	1,483	10,156.9	5.1%	4.6%
1988	1,358	9,244.9	3.4%	7.5%
1989	1,188	8,050.0	4.2%	5.0%
1990	1,082	7,189.6	4.4%	6.1%
1991	966	6,236.2	11.1%	6.1%
1992	800	5,270.2	3.8%	5.6%
1993	651	4,175.2	2.5%	4.7%
1994	535	3,305.8	4.1%	3.2%
1995	461	2,626.7	2.9%	2.8%
1996	414	2,143.5	5.7%	3.7%
1997	361	1,646.0	3.1%	4.9%
1998	291	1,153.2	1.5%	2.5%
1999	244	8,210.0	7.3%	3.2%
2000	195	540.6	9.2%	2.4%
2001	134	347.0	11.5%	1.9%
2002	83	181.2	21.0%	2.4%
2003	45	78.5	19.3%	2.4%
2004	18	29.8	45.1%	0.0%
2005	8	11.3	0.0%	0.0%
2006	1	7.7	0.0%	0.0%
2007	1	7.1	0.0%	0.0%
2008	1	6.6	0.0%	0.0%
2009	1	6.1	0.0%	0.0%

2009 information is as of March 19, 2009

Prepared by Alaska Division of Investments
AE Historical 3-25-09 clj

Alaska Division of Investments
Loan Program Funding Summary for Alternative Energy
(In Thousands of Dollars)

Session Laws of Alaska ~ Funding Source Citation	Transfers to GF & Other Programs	Transfers to AE Fund	Operating Budget Funding	Line Total
Established		SLA 1978 Ch 29 d 1		[redacted]
SLA 80 CH. 120 Sec 6		600.0		600.0
RP 08-81- 292X (JV 81-2436)		1,000.0		1,000.0
RP 08-81- 486X (JV 81-13626)		1,700.0		1,700.0
SLA 81CH. 82 Sec 13		500.0		500.0
SLA 81 CH. 90 Sec 36		3,750.0		3,750.0
SLA 81 CH. 90 Sec 37		1,250.0		1,250.0
RP 08-81- 664X (JV 82-0062)	(914.6)			(914.6)
SLA 82 CH. 141 Sec 257 Repealed CH. 90 Sec 37 SLA 81	(1,250.0)			(1,250.0)
SLA 82 CH. 114 Sec 5		4,000.0		4,000.0
RP 08-82- 634X (JV 82-5378)		1,000.0		1,000.0
SLA 83 CH. 107 Sec 22		2,400.0		2,400.0
SLA 84 CH. 171 Sec 306		1,000.0		1,000.0
SLA 85 CH. 98 Sec 20		845.0		845.0
SLA 86 CH. 130 Sec 427	(1,809.0)			(1,809.0)
SLA 86 CH. 129 Sec 16	(2,000.0)			(2,000.0)
SLA 86 CH. 129 Sec 17	(64.0)			(64.0)
SLA 86 CH. 129 Sec 23 FY 87 operating budget			(494.5)	(494.5)
SLA 87 CH. 95 Sec 17	(5,504.2)			(5,504.2)
SLA 87 CH. 95 Sec 26 FY 88 Operating Budget			(251.4)	(251.4)
SLA 88 CH. 154 Sec 15	(610.8)			(610.8)
SLA 88 CH. 154 Sec 29 FY 89 Operating Budget			(340.6)	(340.6)
SLA 88 CH. 173 Sec 2 Supplemental to FY 88 Operating Budget			(23.5)	(23.5)
SLA 89 CH. 87 Sec 1 (a) Supplemental to FY 89 Operating Budget			(8.8)	(8.8)
SLA 89 CH. 116 Sec 15	(727.6)			(727.6)
SLA 89 CH. 116 Sec 29 FY 90 Operating Budget			(357.1)	(357.1)
SLA 90, CH. 45, Sec. 3(a), 9(a) &11(a) Supplemental to FY 90 Operating Budget			(2.6)	(2.6)
SLA 90, CH. 45, Sec. 3(a), 9(a) &11(a) Supplemental to FY 91 Operating Budget			(7.1)	(7.1)
SLA 90, CH. 209, Sec. 18	(908.1)			(908.1)
SLA 90, CH. 209, Sec. 37 FY 91 Operating Budget			(357.1)	(357.1)
FY90 Fiscal Year End Trans to GF	(1,090.9)			(1,090.9)
SLA 91, CH. 73, Sec. 40 FY 92 Operating Budget			(363.5)	(363.5)
SLA 91, CH. 96, Sec. 119 FY 91 COLA Supplemental			(4.3)	(4.3)
FY91 Fiscal Year End Trans to GF	0.0			0.0
SLA 92, CH. 136, Sec. 44 FY 93 Operating Budget			(430.6)	(430.6)
FY92 Fiscal Year End Trans to GF	(804.2)			(804.2)
SLA 93, CH. 65, Sec. 40 FY 94 Operating Budget			(347.3)	(347.3)
FY93 Fiscal Year End Trans to GF	(867.7)			(867.7)
SLA 94, FSS CH. 3, Sec. 42 FY 95 Operating Budget			(290.5)	(290.5)
FY90 Lapsed Funds			171.2	171.2
FY94 Fiscal Year End Trans to GF	(712.4)			(712.4)
FY 95 Fiscal Year End Trans to GF	(509.4)			(509.4)
SLA 95, CH. 94, Sec. 47 pg 28 & 48 96 Operating Budget			(276.2)	(276.2)
FY 96 Fiscal Year End Trans to GF	(399.0)			(399.0)
SLA 96, CH. 117, Sec. 30 FY 97 Operating Budget			(277.5)	(277.5)
FY 97 Fiscal Year End Trans to GF	(330.0)			(330.0)
SLA 97, CH. 98, Sec. 39 & 41 FY 98 Operating Budget			(147.2)	(147.2)

Session Laws of Alaska ~ Funding Source Citation	Transfers to GF & Other Programs	Transfers to AE Fund	Operating Budget Funding	Line Total
SLA 97, CH. 100, Sec. 59 FY 98 Operating Budget salary adjust			(2.3)	(2.3)
FY 98 Fiscal Year End Trans to GF	(397.3)			(397.3)
SLA 98, CH. 137, Sec. 33 FY 99 Operating Budget			(148.6)	(148.6)
SLA 99, CH. 84, Sec. 42, 43 & 45 FY 00 Operating Budget			(148.7)	(148.7)
SLA 99, CH. 137, Sec. 21 FY 99 Operating Budget salary adjust			(0.5)	(0.5)
FY 99 Fiscal Year End Trans to GF	(260.5)			(260.5)
FY 00 Fiscal Year End Trans to GF	(194.4)			(194.4)
FY00 Lapsed Funds			0.0	0.0
SLA 00, CSHB 3001, Sec.1 FY 01 Operating Budget Salary adjust			(3.0)	(3.0)
SLA 00, CH. 133, Sec. 3 FY 01 Operating Budget			(148.7)	(148.7)
FY 01 Fiscal Year End Trans to GF	(75.6)			(75.6)
FY01 Lapsed Funds				0.0
SLA 01, CH. 60, Sec. 3 FY 02 Operating Budget			(151.7)	(151.7)
FY 02 Fiscal Year End Trans to GF	(34.1)			(34.1)
SLA 02, CH. 94, Sec. 2 FY03 DCED/ADI Operating Budget			(141.2)	(141.2)
SSSLA 02, CH. 1, Sec. 2 FY03 Capital Budget Loan Servicing Program			(7.8)	(7.8)
FY 03 Fiscal Year End Trans to GF	(0.7)			(0.7)
FY03 Lapsed Funds			52.7	52.7
SLA 03, CH. 83, Sec. 3 FY04 DCED/ADI Operating Budget			(143.8)	(143.8)
FY 04 Fiscal Year End Trans to GF	(5.0)			(5.0)
FY04 Lapsed Funds			81.9	81.9
FY 05 Fiscal Year End Trans to GF	(28.7)			(28.7)
FY 06 Fiscal Year End Trans to GF	(48.9)			(48.9)
FY 07 Fiscal Year End Trans to GF	(63.5)			(63.5)
FY 08 Fiscal Year End Trans to GF	(80.0)			(80.0)
Totals	(19,690.5)	**18,045.0**	(4,570.3)	(6,215.8)

ALASKA MUNICIPAL LEAGUE
Alaska Conference of Mayors

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March 31, 2009

House Energy Committee
State Capitol Building
Juneau, Alaska 99811

RE: HB 196 – Alternative Energy Revolving Loan Fund

Dear Representative Millett and Edgmon,

The Alaska Municipal League would like to offer support for HB 196. This bill would serve as another tool to those communities who are continuing to face high fuel costs.

We feel it is an excellent idea to eliminate the "sweep" provision. This certainly shows a commitment by the State Legislature to not only continue the fund, but to realize financial growth.

We also are very much in favor of expanding the list of systems permitted for loans under this program, to include wood pellet stoves.

Energy has been one of the major issues keeping municipalities from thriving. Cost, distance, quantity of scale, etc. are hurdles that hamper communities from providing affordable, consistent, reliable energy its residents. Every tool that we can find should be left as an option.

Thank you for the opportunity to comment on this bill. We urge passage.

Sincerely,

Kathie Wasserman

Kathie Wasserman
Executive Director

Attachment A

Opinion of the Alaska Attorney General, November 30, 1982

1982 Alaska Op. Atty. Gen. No. 13, 1982 WL 43799 (Alaska A.G.)

Office of the Attorney General
State of Alaska

File No. J-66-785-81
File No. J-66-649-80

November 30, 1982

The dedicated funds prohibition applied to various funds and accounts.

Gerald L. Wilkerson, C.P.A.
Legislative Auditor

Honorable Carole J. Burger
Commissioner

Dear Mr. Wilkerson and Commissioner Burger:

You have both asked for a broad review of the application of the constitutional dedicated funds prohibition to various state funds and accounts. Alaska Const. art. IX, § 7. Because of the factual complexities presented by the various funds, accounts, and appropriations and because of the paucity of judicial precedent, we are not able to advise you with absolute certainty regarding the constitutionality of state practices. However, some of the issues raised by your request may be resolved in litigation which is now pending concerning the administration of certain appropriations and funds by the Alaska Power Authority. [FN1]

In response to your request, we have identified and analyzed several categories of funds, accounts, and transactions which raise dedication questions. Our approach in dealing with these questions will be to first discuss the purpose and meaning of the dedication prohibition. We will then focus on the implications of a recent Alaska Supreme Court case that deals specifically with the dedicated funds prohibition. Next we will consider the probable legal status of several general categories of funds, accounts, and appropriations which raise dedication questions. Lastly, we will consider the dedication prohibition in reference to specific funds and appropriations.

We should point out that the advice given in this opinion could have a significant effect upon the state budget. This results from the recent adoption of [illegible] (the spending limit). Under the reasoning of this opinion, it may be that income earned by a loan fund or public enterprise must be appropriated to that fund or enterprise if that income is to be retained by it. If the Alaska Supreme Court adopts that reasoning, the necessity for these appropriations would have to be considered by the administration and the legislature in developing a state budget which conformed to the spending limit. This concern would also become important if independent authorities for operation of entities like the State Ferry System or the Alaska Railroad were to be considered.

I. THE PURPOSE OF THE PROHIBITION

[illegible] provides:

DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose.

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except as provided in section 15 of this article [establishing the Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

*2 There are essentially two views of the meaning of this provision . Under the first interpretation the dedicated funds prohibition would require that every dollar received by the state be deposited and remain unrestricted in the general fund until it is withdrawn pursuant to an appropriation authorizing the expenditure of a specific dollar amount for a specific purpose (absent a contrary federal requirement or a statutory dedication which existed prior to ratification of the Constitution). This is known as the strict interpretation view.

Under the strict view, the phrase 'proceeds of any state tax or license' would encompass every dollar paid to the state (or to a public corporation or authority established by the state) for whatever purpose. State loan repayments (both principal and interest), enterprise receipts (e.g., airport lease revenues, parking garage receipts, etc.), program receipts (e.g., Ferry System ticket sales, University of Alaska tuition receipts, etc.), as well as all other revenues (e.g., taxes, natural resource revenues such as royalties, etc.), would be required to be deposited in the state treasury and retained there until the expenditure is authorized by appropriation of a specific dollar amount.

An argument can certainly be made that this is the proper interpretation of the dedicated funds prohibition. As set out in 1975 Op. Atty. Gen. No. 9 at 2 (Alaska May 2, 1974), 'Section 7 of Article IX had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes [i.e., 'earmarking'] and (2) to prevent the creation of new special funds separate from the general fund.' The rationale underlying each of these two purposes is 'that the widespread existence of dedicated revenues lodged in special funds deprives both the governor and the legislature of 'any real control over the finances of the state.'" Id. at 3 (citation omitted). Requiring all monies received by the state to be deposited into the general fund clearly would satisfy both interrelated purposes of the prohibition. The strict interpretation view of the dedication prohibition would preclude the use of public monies to establish a standing or revolving loan fund or any other program which would be self-sustaining. [FN2]

However, a second approach in interpreting the meaning of Article IX, section 7 is also very plausible. Under this view, the dedication prohibition is not to be construed to require a blanket prohibition of self-sustaining programs set up by the legislature. An noted in 1975 Op. Atty. Gen. No. 9 at 6-8 (Alaska, May 2, 1975), the constitutional framers substituted the phrase '[t]he proceeds of any state tax or license' for the phrase '[a]ll public revenues' to avoid having to state a number of intended exceptions to the prohibition on dedicated funds. Examples of these exceptions were pointed out in a January 4, 1956, [FN3] memorandum by the Public Administration Service (PAS) to the Constitutional Convention: 'pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units.' [FN4]

*3 Some of those examples were specifically mentioned by the court in State v. Alex, 646 P.2d 203 (Alaska 1982), which held that the phrase 'proceeds of any state tax or license' was to be broadly construed to include all sources of public revenues. The court noted that the drafters intended to permit the establishment of certain special funds, (e.g., sinking funds for the repayment of bonds), but to prohibit the earmarking of any special tax to such a fund. Alex, supra at 210. The court did not elaborate on the application of the dedicated funds prohibition in these situations.

II MEANING OF THE PHRASE 'PROCEEDS OF ANY STATE TAX OR LICENSE'

There has been continuing controversy over the proper construction of the phrase 'proceeds of any state tax or license.' In a number of earlier opinions, this office concluded that the dedicated fund prohibition did not reach all public revenues but, under its plain language, only the actual 'proceeds of any state tax or license.' See 1969 Op. Atty. Gen. Nos. 3 (Alaska, April 4, 1969) and 5 (Alaska, April 15, 1969); and 1959 Op. Atty. Gen. No. 7 (Alaska, March 11, 1959). This conclusion also was reached by the Division of Legal Services in the Legislative Affairs Agency. See September 1, 1977 memorandum from Bill G. Berrier, Director, to Subcommittee on Alaska Renewable Resources Development Fund of Alaska Permanent Fund (House).

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Those opinions all concluded that the prohibition did not reach revenues derived from the disposal of state-owned natural resources. Given this conclusion, it followed that the legislature was free to dedicate all or a certain portion of such revenues to specific purposes. An example of this is found in AS 37.11.020, which requires that not less than five percent of state mineral lease receipts be deposited in the Alaska Renewable Resources Development Fund. (This statutory dedication was the subject of Mr. Berrier's September 1, 1977, memorandum).

On the other hand, 1975 Op. Atty. Gen. No. 9 at 24 (Alaska, May 2, 1975) reached the opposite conclusion:

> Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words 'proceeds of any tax or license' are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.
>
> Accordingly, it is our conclusion that the dedication of any source of Public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

(Emphasis added.)

In State v. Alex, 646 P.2d at 210, the Alaska Supreme Court adopted the position set out in 1975 Op. Atty. Gen. No. 9 (Alaska, May 2, 1975). [FN5] It now is clear that the term 'proceeds of any state tax or license' is to be construed broadly to reach all public revenues, including public revenues from the development of state-owned natural resources, and not just the proceeds of taxes and license fees.

*4 After the decision in Alex we can now reach some definite conclusions regarding some of the funds and accounts you have asked us to review. The answers to other questions, however, are not as clear.

III. IMPLICATIONS OF THE ALEX DECISION

There is no question that the dedicated funds prohibition in Article IX, section 7 flatly prohibits the legislature from dedicating future unrestricted general revenues to any particular purpose unless the dedication is required for participation in a federal program or the dedication existed before ratification of the Constitution. Alex, supra at 208-210. This confirms the view expressed in our April 1, 1981 memorandum opinion to the legislative auditor that the requirement in AS 37.11.020 that not less than five percent of state mineral revenues be placed in the Alaska renewable resources development fund is unconstitutional. This would be true of any statutory requirement that a specified percentage of revenues derived from the development of state-owned resources be deposited in a fund or earmarked for a particular purpose.

The Alex decision, however, does not provide answers to a number of additional questions. For example, does the dedicated funds prohibition apply (1) to money received through the sale of bonds (either general obligation bonds of the state or revenue bonds of a public corporation); (2) to receipts from operation of facilities constructed with bond proceeds; or (3) to interest or investment income earned on money appropriated for a specific purpose? In short, are there any exceptions to the prohibition beyond those expressly set out in the Constitution? The section immediately following discusses this question.

IV. POSSIBLE EXCEPTIONS TO THE DEDICATED FUND PROHIBITION

A. Implied Exceptions.

An early draft of what is now Article IX, section 7 (but which was at that time numbered section 8) read as follows: 'All public revenues shall be deposited in the state treasury . . .' Subsequent to this early draft, the Committee on Finance and Taxation of the Constitutional Convention requested comments from the Public Administration Service on this wording. The PAS responded with the January 4, 1956 memorandum in which it warned that a strict interpretation of [illegible] (then section 8) would prohibit the segregation of state money without regard to the source. The PAS then suggested that certain exceptions be identified in [illegible]. These exceptions included pension contribu-

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tions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units.

After considering the PAS memorandum, the committee deleted the phrase 'all public revenues shall be deposited . . .' and substituted the phrase 'The proceeds of any state tax or license . . .'. 3 Alaska Const. Conv. Proceed. at 2361. The record of the committee debate makes it clear that the purpose of this change was to meet the problems raised by the PAS in its January 4 memorandum. See 1975 Op. Atty. Gen. No. 9 at 8 (Alaska, May 2, 1975).

*5 Given this drafting history, a very good case can be made that the present language of Article IX, section 7 must be read to include certain implied exceptions, such as those that are set out in the January 4 PSA memorandum, i.e., pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units. We believe this implied exception approach is the better interpretation of the dedicated fund prohibition and would be adopted by the Alaska Supreme Court if the question is presented to it.

B. Dedication of Money to Specific Purposes on a Continuing Basis When Appropriated

A question of the proper application of the dedicated funds prohibition arises when money is appropriated to a revolving loan fund or other special reserve fund or account. Revolving loan funds provide for the return to the fund of repayments by borrowers of the principal (and frequently the interest on that principal) [FN6] which was loaned to them from the fund so that new loans can be made on a continuing basis. Special reserve funds involve essentially the setting aside of money for certain specified future needs or conditions which may or may not occur. [FN7] When this is done, it might be argued that the legislature has made an impermissible dedication with respect to the future use of the money placed in those funds and accounts.

We believe the better view is that the dedication prohibition does not apply to money once appropriated by the legislature, regardless of whether the appropriation contemplates that the money will be expended. Usually appropriations authorize money to be spent . In other cases, however, the legislature may prefer to establish by general law a continuing loan program and finance it through a one-time appropriation or to reserve money in a special fund or account for future use for limited purposes. A strong argument can be made that money one appropriated, regardless of the mechanism utilized, loses its character as revenue for the purpose of the dedicated funds prohibition because the purpose of the prohibition, i.e., that the legislature retain control over state revenues, has been satisfied.

Under this reasoning there would be no unlawful dedication involved in the return to a revolving loan fund of principal payments on loans. The initial appropriation would suffice to authorize the use of that money for other loans until the legislature reappropriates the unobligated assets of the fund or abolishes the fund.

Support for this position is found in the Alaska Supreme Court's analysis in the Alex case. In Alex, the court took note of the drafting change of Article IX, section 7 referred to earlier. This change, said the court, 'did not seek to exempt some sources of revenue from the prohibition, but was intended instead to allow necessary dedication of funds once they were received and placed in the general fund.' State v. Alex, supra at 210.

*6 The Alaska Supreme Court has thus recognized that the dedication prohibition of Article IX, section 7 does not operate to prohibit all dedications whatever their nature. Rather, the court seems to be saying that Article IX, section 7 must be read to allow certain necessary dedications of money by the legislature after that money is received and placed in the state treasury (i.e., general fund). This analysis by the Supreme Court gives support to the argument that the dedication prohibition does not apply to money once it has been lawfully appropriated from the general fund and that the legislature can, without violating Article IX, section 7, create 'necessary dedications' out of that money.

C. Income Generated by Specific Funds or Accounts

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A question separate from that just discussed arises concerning the application of the dedicated fund prohibition to the interest or other income earned by money appropriated to revolving funds and other funds and accounts. Is that derivative income revenue which, under the prohibition, must be deposited in the general fund, or may it accrue directly to the fund or account which 'earned' it, increasing the amount of money in that fund or account which may be spent without further appropriation?

We are advised by the Department of Administration that the National Committee on Governmental Accounting has defined a fund to be:

> A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

Municipal Finance Officers Association of the United States and Canada, 'Governmental Accounting, Auditing, and Financial Reporting,' 1980, Appendix B.

From the point of view of generally accepted accounting principles, then, income generated by a fund accrues to that fund unless a transfer is authorized. Economic theory also leads to that result, arguing that the interest or investment income on a particular fund is simply an increase in the value of the fund which offsets inflation and reflects the gradual growth of our economy. Under either approach, such derivative income ought not to be considered revenue subject to the dedicated funds prohibition.

Derivative income such as interest and investment income is not a traditional source of public revenue. It is generated by public revenue which has been received and appropriated and would not be generated if the legislature had simply spent the money rather than appropriated it to a separate fund. Thus, a statutory dedication of the interest or investment income of a separate fund would not impair the ability of future legislatures to control the spending of general revenues. Rather, it would create a new pool of resources to be used under the statutory guidelines applicable to a particular fund until a future legislature amended or repealed those guidelines . There is no indication in the minutes of the Constitutional Convention that the drafters considered the treatment of separate funds which are endowed in this manner.

*7 A difficulty that arises from the view that the dedicated funds prohibition is not applicable to interest or investment income on separate funds is that it permits steadily increasing amounts of money to be received and used by state departments and agencies without legislative control through the annual budget process. This is precisely the problem posed by the dedication of revenue sources which the drafters sought to avoid. For this reason, while we are not certain about the likely outcome, we doubt that a blanket exception for derivative income would be approved by the courts.

After all, the Alaska Constitution was not written for accountants and economic theorists. Although not expressly addressed by them, the framers were very much aware of the boom-bust cycle of Alaska's economy. In fact, a driving force behind statehood was the desire of Alaskans themselves to be able to manage the income derived from those brief periods-as Prudhoe Bay bears witness-when the state may receive enormous sums of money which are then immediately available for expenditure or placement, by appropriation, into a variety of funds and accounts for various permissible purposes. Depending on the number and size of those funds and accounts, the interest earned on the money placed in them could itself be substantial and would almost certainly be of a magnitude which is far greater than that likely envisioned by the National Committee on Government Accounting in the above-quoted standard. Moreover, the significance of that interest income in properly managing the state's budget leads us to the conclusion that our framers would have considered it to be within the dedicated fund prohibition. As we have indicated, however, the answer to this question is not free from doubt. Consequently, until the question is ruled on by the courts, we will defend legislative action dedicating, by general law, derivative income to the funds which 'earned' them.

In the absence of valid general law dedications of derivative income, we believe there would still be a way to maintain legislative control over revenues through the budgetary process while achieving the efficient accounting organization

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provided by separate funds. This would be if the legislature appropriated to the separate fund for a fixed period the amount of interest or investment income received by that fund. Since each legislature has implicit budgetary authority for a maximum period of only two years, this practice would not impair the ability of future legislatures to dispose of those derivative revenues. Under this line of reasoning, the interest on a loan fund or other separate fund is public revenue which must be transferred to the treasury, unless the fund is authorized by appropriation to retain it for a specific period. Although it may be possible to argue in favor of a longer period, our recommendation is that these appropriations of derivative income to the fund which 'earns' them be made annually, for each fiscal year.

D. Appropriations Stated in General Terms, Rather than Specific Amounts.

*8 The annual budget has traditionally included certain appropriations not stated in specific dollar amounts but rather in terms of money to be received from certain sources during the fiscal year. Such an appropriation, for example, would authorize the risk management division of the Department of Administration to spend the anticipated proceeds from any insurance settlement or judgment arising from the damage or loss of state property. [FN8] This practice ensures effective legislative control over state finances while, at the same time, it provides for budgeting flexibility which is especially useful for programs like risk management, the needs of which are necessarily unpredictable.

We have consistently advised that an appropriation is valid if it states a public purpose, has a source, states or implies a time period, and states an amount which is ascertainable by reference to specified information. Under this view a 'revolving' loan fund could be established and operated, even if both principal and interest payments on loans are considered to be revenues which may not be dedicated, as long as there is an annual appropriation to the fund of all principal and interest payments received by the fund during the fiscal year. The fund would continue to revolve as long as it was included in the budget.

The practice of appropriating to a separate fund an amount to be ascertained by reference to receipts from a specified source during a definite period accommodates the need and desire of each legislature for budgetary flexibility without impairing the ability of future legislatures to control and dispose of public revenues. In fact, since the legislature maintains control of the appropriation by means of the budget, it could be argued that this practice does not even create a dedication in the first place since a true dedication must function to take control away from the legislature. If legislative control is present, then a dedication does not exist.

We do not think that this practice violates the dedication prohibition.

V. APPLICATION OF DEDICATION PROHIBITION TO SPECIFIC FUNDS, ACCOUNTS AND APPROPRIATIONS

We have identified the following categories of funds, accounts, and appropriations which raise dedicated funds questions.

A. Allocation of a revenue source by statute to a fund or account from which it may be withdrawn only for limited purposes by appropriation.

1. Tobacco Tax (School) Fund (AS 43.50.140). This fund existed before ratification of the Alaska Constitution and is therefore authorized to continue under Article IX, section 7. This tax and dedication have not been changed, but the legislature has imposed an additional tax on cigarettes which is deposited in the general fund. Although we have issued several opinions on the subject, there has been no judicial review, and it remains unclear to what extent the legislature may change the dedication or the underlying revenue source within the limit of 'continuing' the dedication. [FN9]

*9 2. Fish and Game Fund (AS 16.05.100 et seq.). The dedication of proceeds of fishing and hunting licenses to the operation of a Department of Fish and Game is required by federal law for participation in federal programs and is therefore authorized by Article IX, section 7. See 16 U.S.C. 669. However, as discussed earlier, it is not clear whether a dedication of interest earned on investments in a fund such as that made by AS 16.05.100 is constitutional.

3. Reserves for Capital Outlay (AS [illegible] and Energy Facilities Development (AS 37.05.158). By statute

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there is allocated to each of these accounts a fixed percentage of annual receipts from minerals on state land. Both of these funds appear to be unconstitutional dedications to the extent that they restrict the purpose for which money may be spent. We are informed that the Department of Administration has recorded the amounts to be allocated to each account but has not retained that money for expenditures related to capital outlay or energy facilities development. We also understand that the legislature has not made any appropriations from these two accounts. We suggest that AS 37.05 .157 and AS 37.05.158 be repealed.

4. Renewable Resources Fund (AS 37.11.010-090). As we advised in our 1975 Attorney General Opinion No. 9, this statutory dedication is unconstitutional. We understand that the Department of Administration has followed our advice and has disregarded AS 37.11.010-090. We suggest that these statutes be repealed.

B. Allocation by Statute of Revenue to a Fund or Account From Which it may be Spent or Used Without Further Appropriation.

1. Public Employees Retirement System Fund (AS 39.35)

This fund receives money from employees and employers who participate in the system. State employer contributions are paid to the fund monthly. AS 39.35.280. State employee contributions are statutorily required to be withheld from wages and transferred to the funds. AS 39.39.170. Participating political subdivisions make similar contributions on behalf of their employees. Benefits are paid to members of the retirement systems according to statute AS 39 .35.370 et seq. Expenses of administering the system are also paid from the fund but are specifically required by statute to be included in the annual operating budget. AS 39.35.100(b)(4). The Teacher's Retirement System is accounted for in the same manner.

Although this is clearly a dedication of money received by the state, we believe that it is permissible under the implied exception theory discussed earlier. It is our opinion that there is an implied exception to the dedicated funds prohibition for pension fund contributions. [FN10]

2. International Airport Funds (AS 37.15.420, 430, 440)

The fund established under AS 37.15.420 contains money received from the sale of general obligation bonds for airport improvements and other grants or money provided for the same purpose for which the bonds were authorized. The fund established under AS 37.15.430 contains revenues received by the state from ownership and operation of its airports. The fund established under AS 37.15.440 contains interest earned on money in the section 420 fund and revenues transferred from the section 430 fund for the purpose of redeeming airport revenue bonds.

*10 Although each fund provides for a dedication of state revenue, we believe that they are permissible under the implied exception theory discussed earlier at pp. 5 and 6. It is our opinion that there is an implied exception to the dedicated funds prohibition for revenue derived from bond issues and for revenue derived from facilities constructed with bond proceeds, at least to the extent that it is necessary to satisfy the debt obligation or maintain the facility so that it continues to generate revenues for that purpose. To the extent that revenues are dedicated for purposes which are not related to satisfying the debt or maintaining the facility [FN], we believe that dedication would violate Article IX, section 7 unless it either existed prior to ratification of our Constitution or is required by federal law. [FN]

3. Continuing Debt Service Appropriation ( )

This statute purports to create a continuing annual appropriation from the general fund of the amount necessary to pay debt service on all outstanding general obligation bonds. This may be a dedication of revenues for a specific purpose. [FN] Even if it is, it is our opinion that there would be an implied exception to the dedicated fund prohibition for bond obligations.

4. Rural Electrification Revolving Loan Fund (AS 44.83.361)

This fund received an initial appropriation from which the Alaska Power Authority is authorized to make loans. Principal and interest payments on loans made from the fund are required by law to return to the fund. As we pointed out above, at n. 1, the questions of whether the principal and or interest payments are revenues which may

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not be dedicated in this manner is now a matter in litigation in a suit filed by the Trustees for Alaska. We will be defending the legislature's action in making both those dedications. In doing so, we will present in more detail a number of the arguments discussed above in support of the legislature's action. In addition, we will discuss the presumption of constitutionality of statutes and the deference due to the administrative and legislative interpretation of the dedicated funds prohibition. As indicated above, we believe that the return of principal payments to a loan fund does not offend the Constitution and that the return of interest payments to the loan fund may be permissible. However, we cannot predict with certainty the position that the court will adopt.

C. Appropriation of an amount from a specific revenue source (e .g., program receipts).

From time to time the legislature, by means of an annual operating budget appropriation, authorizes an agency to spend money that is generated out of one of the agency's programs. The appropriation also sets an upper limit on the amount that can be spent. Although program receipts are clearly state revenues which may not be dedicated, the practice of identifying program receipts as an appropriation source does not in any way limit legislative control over the expenditure of revenues because the legislature maintains control of the appropriation by means of the budget. Therefore, we believe that this practice is not affected by the dedicated funds prohibition.

D. Appropriation of an amount which is ascertainable only by reference to specified information.

***11** Appropriations are regularly made to the risk management division, Department of Administration, of all proceeds during a fiscal year from claims, settlements or judgments arising from damage to or loss of state property. As pointed out above, at 18, this permits the state to repair or replace damaged property without specific appropriations, which would probably be either more or less than the actual property damage in any fiscal year.

The only difference between this and a typical appropriation is in the determination of the amount appropriated. When a fixed amount is appropriated, obligations incurred against it may be honored as long as there is cash available in the treasury. When an appropriation is made for an amount to be received from a certain source during a specific period, obligations may be honored only if a sufficient amount of money has been received from that source and there is cash available in the treasury. However, the amount of the appropriation remains determinable. Consequently, it is our opinion that these kinds of appropriations do not violate the dedicated fund prohibition. [FN14]

E. Other Miscellaneous Dedications

1. Appropriations to the Permanent Fund. Since the Constitution (Article IX, Section 15) specifically authorizes dedications to the Permanent Fund of 'at least' 25 percent of certain revenues, we believe any additional dedication to the fund by statute [FN15] or by appropriation is also permissible.

2. Rainy day account. As 37.05.179 creates a reserve fund to which money is appropriated and authorizes it to be spent for certain necessary emergency operating expenses at some future time. It is our opinion that this practice is permissible under the theory discussed above beginning at p. 12 that money once it is appropriated loses its character as revenue for purposes of the dedicated funds prohibition. A contrary view would severely restrict flexibility in state budgeting and accounting, and we doubt that such a view would be adopted by the courts.

We hope you find this analysis helpful in determining the nature o the problems presented by the dedicated fund prohibition and the various statutory programs which may or may not run afoul of it. We expect to be able to advise you with greater certainty on some of these questions at the conclusion of the pending litigation described above.

Sincerly,
Wilson L. Condon
Attorney General

[The legal issues in this litigation are the validity of the deposit of interest and principal payments on loans in a revolving loan fund and of the appropriation to the Power Development Fund of interest to be received on specific

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amounts appropriated to that fund (§ 1 ch. 90, SLA 1981 as reenacted by § 69 ch. 69 SLA, 1981 and amended by § 236 ch. 141, SLA 1982.). Trustees for Alaska, et al. v. State of Alaska and Alaska Power Authority, No. 3AN-492-82 Civ. (Alaska Super., Jan. 21, 1982)

[FN2] Of course, even under the strict view, there would be some kinds of monies received by the state which it could not, for independent legal reasons, deposit into the general fund. These monies would include trust funds, restricted gifts, and funds subject to restrictions by contract.

[FN3] The actual date shown on the memorandum is 'January 4, 1955'. However, considering the timing of the constitutional convention, this was certainly a typographical error.

[FN4] The Public Administration Service prepared a publication entitled 'Alaska Statehood Commission, Constitutional Studies (1955)' at the request of the Alaska Territorial Legislature for use at the constitutional convention. Ch 108 SLA 1949. This publication collected research papers on other state constitutions. Copies were mailed to all delegates, and it was often referred to in the convention proceedings. Alaska Statehood Committee, 'Handbook for Delegates to the Alaska Constitutional Convention' 4 (1955). Referred to in State v. Alex, 646 P.2d 203, 209 n. 5 (Alaska 1982). The memorandum of January 4, 1956 contained comments by the PAS on the proposed draft of the Finance and Taxation article. Constitutional Convention Finance Committee minutes, Jan. 13, 1956.

[FN5] Alex involved a challenge by commercial fishermen to the collection by a private aquaculture association of a special assessment authorized by statute and imposed on the sale of salmon. The court held that the statute improperly delegated the legislature's taxing authority, and that the assessment constituted 'proceeds of a state tax or license' within the meaning of Article IX, section 7. State v. Alex, 646 P.2d at 210, 213.

[FN6] We discuss the dedication of interest earned by revolving loan funds and other separate funds and accounts in the next portion of this opinion which begins below at p. 14.

[FN7] The 'Rainy Day Account,' AS 37.05.179, is an example of such an account.

[FN8] See, for example, Sec. 7 ch. 113, SLA 1978 which provides:

Amounts equivalent to the amounts to be received in settlement of insurance claims for property losses are appropriated from the general fund to the affected agency for the purpose of replacing the facility or service lost as a result of the incident giving rise to the insurance claim.

Under this language, the state could undertake immediate repair or reconstruction of a school, maintenance facility, or other property damaged by fire or other cause covered by insurance without having to wait for actual settlement and payment by the insurer.

[FN9] See Atty. Gen. Op. Nos. 7, 9, and 14; inf. memo (Alaska, March 10, 1966); Atty. Gen. Op. No. 22 (Alaska, June 2, 1978); inf. memo (June 30, 1981).

[FN10] The constitutional provision for state employee retirement systems supports such an implied exception. Alaska Constitution, Article XII, section 7.

[FN11] AS 37.15.430(a) authorizes use of funds dedicated to the International Airport Revenue Fund for six purposes providing, in pertinent part, as follows:

The money in the revenue fund shall only be used for the purpose of paying or securing the payment of the principal of and interest on the bonds and of and on any other revenue bonds issued by authorization of the legislature to provide

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funds to acquire, equip, construct and install additions and improvements to, and extensions of and facilities for, the airports and to be payable out of the revenue fund, the purpose of paying the normal and necessary costs of maintaining and operating the airports and all of the improvements and facilities of them, the purpose of paying the costs of renewals, replacements and extraordinary repairs to the airports and all of the improvements and facilities of them, the purpose of redeeming before their fixed maturies any and all revenue bonds issued for for the purposes of the airports, the purpose of providing funds to acquire, construct and install necessary additions and improvements to and extensions of and facilities for the airports and all of their facilities, and the purpose of providing funds to pay any and all other costs relating to the ownership, use and operation of the airports.

[FN12] A dedication of airport revenues did exist prior to ratification. § 32-3A-15 ACLA 1949. However, it was repealed in 1968 by § 2 ch. 14, SLA 1968. On the other hand, it may be that 49 U.S.C. § 1718, adopted in 1970 and amended in 1982 by Section 511 of the Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-760, would be interpreted to require dedication of all airport revenues to construction, maintenance and operation of airports.

[FN13] Our uncertainty on this point arises from the fact that the statute does not purport to dedicate a particular revenue source .

[FN14] The pending litigation discussed earlier (Trustees for Alaska v. State, supra) also includes a claim that an appropriation to the Alaska Power Authority of the interest to be received on money separately appropriated to the Power Development Fund violates the dedicated funds prohibition. § 1 ch. 90, SLA 1980, as reenacted by § 69 ch. 92, SLA 1981 and amended by § 236 ch. 141, SLA 1982. The questioned appropriation does not state a specific time period during which the interest is to be accrued. Consideration by the court of this particular question might not occur since, by informal memo dated April 19, 1982, we advised the Treasury Division of the Department of Revenue that the interest must be returned to the general fund because of a specific statutory requirement, AS 44.83.388(b). We are informed that no interest has accrued to the Power Development Fund.

[FN15] In 1980, the legislature increased the percentage dedication applicable to most new mineral leases to 50 percent. AS 37.13.010(a)(2).

1982 Alaska Op. Atty. Gen. No. 13, 1982 WL 43799 (Alaska A.G.)
END OF DOCUMENT

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Attachment B

(Excerpt) from Gordon Harrison's *Alaska's Constitution: A Citizen's Guide*, 4th Edition, pp. 149-151.

> such finding is arbitrary and without any reasonable basis in fact *(DeArmond v. Alaska State Development Corporation,* 376 P.2d 717, 1962).

The Alaska Supreme Court has yet to find a legislative determination of public purpose arbitrary and without any basis in fact. It has upheld the use of revenue bonds by a public corporation and general obligation bonds of a municipality for industrial development purposes *(DeArmond;* and *Wright v. City of Palmer,* 468 P.2d 326, 1970). It has upheld the use of revenue bonds by a public corporation to purchase home mortgages *(Walker v. Alaska State Mortgage Association,* 416 P.2d 245, 1966). It has upheld state grants to homeowners to pay off the mortgages of property lost in the 1964 earthquake *(Suber v. Alaska State Bond Committee,* 414 P.2d 546, 1966). In *Suber* the court said: "It is not essential that the entire community or any particular number of persons should benefit from remedial legislation in order that a public purpose be served. The purpose of the Program is no less public because its benefits may be limited by circumstances to a comparatively small part of the public." The court found no violation of this section by the Anchorage municipal telephone utility competing with private vendors of telephone equipment *(Comtec, Incorporated v. Municipality of Anchorage,* 710 P.2d 1004, 1985).

A complex issue related to the public purpose safeguard of this section of the constitution concerns the activities of incumbent elected public officials in their quest for reelection. A governor running for reelection, for example, is vulnerable to the allegation that official travel and public appearances are campaign-related and not *bona fide* public business. The courts in Alaska have not been confronted with such a suit, and court decisions elsewhere give little encouragement to those contemplating one.

Section 7. Dedicated Funds

> **The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.**

Convention delegates prohibited the dedication, or "earmarking," of funds for specific purposes so that the legislature would not tie its own hands in providing for the public needs of the day. The commentary on this section by the constitutional convention committee that drafted it included this observation:

> Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest the denial of it to another is

> difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state.

The phrase "as provided in Section 15 of this article" in the second sentence was added by an amendment in 1976 to allow creation of the Alaska Permanent Fund (see Section 15). Two exceptions to the prohibition against earmarking were allowed by the convention delegates. One exception is a dedicated fund that was already in existence, such as the school fund of AS 43.50.140, which receives proceeds from the tobacco tax for use of school repair and construction. The other exception allows new earmarking when it is required by federal law to participate in a federal program. This is the case with the Fish and Game Fund of AS 16.05.100, to which sport hunting and fishing license fees are dedicated.

A statutory dedication of revenue may not seem too serious because future legislatures are not bound by it. But a statutory dedication is likely to be self-perpetuating. A governor's veto might block a future legislature's effort to repeal the dedication. The flow of money into and out of the fund may be "off-budget" and shielded from annual review by the finance committees. And the dedication fosters the development of a constituency that benefits from the dedication and resists changes to it.

How comprehensive did the convention delegates mean to be with this prohibition against dedicated funds when they adopted the phrase "proceeds of any state tax or license" in the first sentence? Did they mean all state revenue, or did they want to exclude from the prohibition against dedication those state revenues that are not derived from a tax or license? The question became important when Alaska began to receive substantial income from oil lease bonuses and royalties, which are not proceeds from a tax or license. An opinion of the attorney general of an early administration said that oil lease royalty income was outside the prohibition against earmarking in this section. A later opinion reversed this interpretation and held that the historical record of the convention made it clear that the delegates intended to bar the dedication of all state revenues, whether or not they derive strictly from a tax or license (1975 Opinion Attorney General No. 9, May 2). Consequently, a constitutional amendment was required to create the Alaska Permanent Fund.

The courts have not ruled on the matter, but it is generally understood that the authors of the constitution intended certain exceptions to the prohibition against dedicated revenues, such as pension contributions, proceeds from bond issues, revolving fund receipts and sinking fund receipts (1982 Informal Opinion Attorney General, November 30). Indeed, beyond these practical exceptions to the prohibition on the dedication of revenue, it must be noted that such dedications have a legitimate role in state financial management, despite the public policy problems that caused them to be prohibited in the Alaska Constitution. Dedication allows the benefits of a public program to be directly linked to those who pay for them. Revenues are dedicated in Alaska today in a manner that makes the practice constitutionally acceptable, namely that the pertinent statutes say that the legislature "may" appropriate the money for its designated purpose. It is understood that the legislature will do so, and

failure to do so will abrogate a political agreement. An example of this practice is the fisheries enhancement tax levied under AS 43.76.010. This is a tax on salmon fishermen intended to support salmon hatcheries. The tax receipts are deposited to the general fund, and "the legislature may make appropriations to the Department of Community and Economic Development for the purpose of providing financing to qualified [regional aquaculture] associations" (AS 43.76.025).

Enterprise funds are also examples of de facto dedication of revenues, such as the Marine Highway System Fund, which directs receipts from the sale of tickets on the ferry system to the support of that system. The constitutionality of this fund was challenged in court and upheld because the language of its authorizing statutes is permissive and does not restrict the authority of the legislature to appropriate money from the fund (although parts of the act creating this fund that restricted the authority of the executive branch to request appropriations from the fund were found to violate the prohibition of this section; see *Sonneman v. Hickel*, 836 P.2d 936, 1992).

Section 8. State Debt

> **No state debt shall be contracted unless authorized by law for capital improvements or unless authorized by law for housing loans for veterans, and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.**

Limitations on the ability of states to incur debt are a common feature of fiscal articles of state constitutions. They are the consequence of well-publicized defaults by some of the older states on bonds issued for overly ambitious public works projects and of scandals arising from corrupt public construction and financing schemes. Some constitutional limitations restrict general debt to specific purposes (only road construction, for example); some limit the amount of debt that may be issued by establishing a ceiling on total allowable annual debt payments (usually expressed as maximum percentage of general fund revenue); some require a supermajority vote of the legislature to contract debt; and others require a referendum for the electorate to approve state indebtedness. The Territorial Organic Act of 1912 originally prohibited the territory of Alaska and its municipalities from acquiring any kind of debt without congressional approval, but this strictures was removed in 1935.

In 1982 a constitutional amendment was ratified that inserted "or unless authorized by law for housing loans for veterans." This allowed the state to incur tax-exempt general obligation debt for veterans' housing loans. The amendment was a response to a 1980 federal law that prevented states or public corporations such as the Alaska Housing Finance Corporation from selling housing bonds in the tax-exempt market, but allowed an exception for general obligation bonds for veterans' housing.