HB

203

<TARGET><BILL>HB 203</BILL><SUBJECT>HB 203</SUBJECT><COMM>HFIN27</COMM></TARGET>

HOUSE COMMITTEE REPORT

(11)
Date Referred to Committee: March 23, 2011 **FURTHER REFERRALS:**

Date of Committee Action: 4/1/11

The FINANCE Committee considered: **HB 203**

HOUSE BILL NO. 203
"An Act establishing and relating to the in-state gas pipeline fund; and providing for an effective date."
HB 203-IN-STATE NATURAL GAS PIPELINE FUND

Recommends it be replaced with [ ] HCS *or* [√] CS for HB 203 **(** FIN **)**
***For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*______ [ ] Same Title [√] New Title**

[ ] attach amendments
[ ] add new referral to ___________Committee
[ ] Letter of Intent__________Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES
*FN# is assigned by Chief Clerk's Office

*FN#	List by Dept(s):	Fiscal	Indet.	Zero
	REV			√

PREVIOUS FISCAL NOTES

FN#	List by Dept(s):	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Anna Fairclough	FAIRCLOUGH	✓			
[signature]	GUTTENBERG	✓			
[signature]	Gara			✓	
Tammie Wilson	T. Wilson	✓			
[signature]	Joule	✓			
[signature]	Hawker	*			
[signature]	COSTELLO	✓			
Bryce Edgmon	Edgmon	✓			
Chair: Bill Stoltze	Stoltze	✓			
Chair: Bill Thomas	Thomas	✓			

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number	
Bill Version	**HB203**
() Publish Date	

Identifier (file name):	HB203-DOR-AHFC-03-18-11	Dept. Affected	Revenue
Title	In-State Gas Development Fund	Appropriation	AK Housing Finance Corporation
		Allocation	AK Gasline Development Corp
Sponsor	Representative Chenault		
Requester	House Finance Committee	OMB Component Number	2986

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2012**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Commodities	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other (please identify)	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2011) cost 0.0

POSITIONS

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

Why this fiscal note differs from previous version (if initial version, please note as such)

initial version

Prepared by	Stacy Schubert, Director Government Relations & Public Affairs	Phone	907-301-4556
Division	Alaska Housing Finance Corporation	Date/Time	12:17 pm; 3/28/11
Approved by	Dan Fauske, CEO	Date	3/29/11; 12:52pm
	Alaska Housing Finance Corporation		

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 203

Analysis

No additional resources or staff are expected to execute the requirements of this bill; therefore, there is no anticipated fiscal impact to the corporation.

CS FOR HOUSE BILL NO. 203(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Johnson, Tammie Wilson, Fairclough, Costello, Neuman, Thompson

A BILL

FOR AN ACT ENTITLED

"An Act relating to the Alaska Gasline Development Corporation and establishing and relating to the in-state gas pipeline fund; and providing for an effective date."

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

* **Section 1.** AS 18.56.086 is amended by adding a new subsection to read:

(b) The in-state gas pipeline fund is established in the Alaska Gasline Development Corporation, a subsidiary created by the corporation in 2010 under (a) of this section, and consists of money appropriated to it. Unless otherwise provided in an appropriation act, money appropriated to the fund lapses to the general fund on the day this subsection is repealed. The Alaska Gasline Development Corporation shall manage and invest the fund to yield competitive market rates. The Alaska Gasline Development Corporation shall invest money in the fund in the same manner and on the same conditions as permitted for investment by the commissioner of revenue of funds belonging to the state or held in the treasury under AS 37.10.070 and as provided for fiduciaries of state funds under AS 37.10.071. Interest and other income received on money in the fund shall be accounted for separately and shall remain in the fund. The Alaska Gasline Development Corporation may use money from the fund for the planning, development, and construction of an in-state pipeline to transport North Slope natural gas.

* **Sec. 2.** AS 18.56.086(c) is repealed 90 days after the completion of construction of an in-state pipeline that transports North Slope natural gas.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

NOTICE. The executive director of the Alaska Housing Finance Corporation shall notify the revisor of statutes of the day that the construction described in sec. 2 of this Act is completed.

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

Adopted 4/1/11

27-LS0719\D
Kirsch
3/29/11

CS FOR HOUSE BILL NO. 203(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Johnson, Tammie Wilson, Fairclough, Costello, Neuman, Thompson

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Adopted 4/1/11

27-LS0719\D.1
Kirsch
3/31/11

#1

AMENDMENT by Rep Fairclough

OFFERED IN THE HOUSE

TO: CSHB 203(FIN)

Page 1, line 8, following "lapses":

Insert "to the general fund"

Page 2, line 1, following "and":

Delete "may be appropriated to"

Insert "shall remain in"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 31, 2011

SUBJECT: Dedication of interest income to the fund that generated the income (Work Order No. 27-LS0719\D.1)

TO: Representative Mike Chenault
Attn: Tom Wright

FROM: Lisa Moritz Kirsch
Legislative Counsel

I have made the amendments you requested. The attorney general opinion I mentioned on the phone is enclosed.[1] At page 5, the attorney general considered whether income of special or revolving funds constitutes public revenue that must be separately appropriated every year:

> . . . 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.

While acknowledging that any conclusion on this point is not free from doubt, still the attorney general declared further down on page 5 that the Department of Law would defend "legislative action dedicating by general law, derivative income to the funds which 'earned' them," presumably, including the use of that derivative income for the fund purposes. We are not sure that a court would agree. *See SEACC v. State*, 202 P.3d 1162 (Alaska 2009).

This attorney general opinion does provide support for the amendment you requested, removing the requirement that the interest income be appropriated.

LMK:plm
11-203.plm

Enclosures

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[1] Attorney General Opinion, File No. J-66-785-81 and File No. J-66-649-80 WL 43799 (November 30, 1982).

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.
**1* Gerald L. Wilkerson, C.P.A.
Legislative Auditor
Legislative Audit Division
Legislative Affairs Agency
Pouch W
Juneau, Alaska 99811
Honorable Carole J. Burger
Commissioner
Department of Administration
Pouch C
Juneau, Alaska 99811

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. [1]

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

We should point out that the advice given in this opinion could have a significant effect upon the state budget. This results from the recent adoption of Article IX, section 16 of the Alaska Constitution (the spending limit). Under the reasoning of this opinion, it may be that income earned by a loan fund or public enterprise must be appropriated to that fund or enterprise if that income is to be retained by it. If the Alaska Supreme Court adopts that reasoning, the necessity for these appropriations would have to be considered by the administration and the legislature in developing a state budget which conformed to the spending limit. This concern would also become important if independent authorities for operation of entities like the State Ferry System or the Alaska Railroad were to be considered.

I. THE PURPOSE OF THE PROHIBITION
Article IX, Section 7 provides:

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

*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. [2]

However, a second approach in interpreting the meaning of Article IX, section 7 is also very plausible. Under this view, the dedication prohibition is not to be construed to require a blanket prohibition of self-sustaining programs set up by the legislature. 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, [3] 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.' [4]

*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).

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).[5] It now is clear that the term 'proceeds of any state tax or license' is to be construed broadly to reach all public revenues, including public revenues from the development of state-owned natural resources, and not just the proceeds of taxes and license fees.

**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 section 7 (then section 8) would prohibit the segregation of state money without regard to the source. The PAS then suggested that certain exceptions be identified in section 7. These exceptions included pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts 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) [6] which was loaned to them from the fund so that new loans can be made on a continuing basis. Special reserve funds involve essentially the setting aside of money for certain specified future needs or conditions which may or may not occur. [7] When this is done, it might be argued that the legislature has made an impermissible dedication with respect to the future use of the money placed in those funds and accounts.

We believe the better view is that the dedication prohibition does not apply to money once appropriated by the legislature, regardless of whether the appropriation contemplates that the money will be expended. Usually appropriations authorize money to be spent . In other cases, however, the 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

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 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. [8] This practice ensures effective legislative control over state finances while, at the same time, it provides for budgeting flexibility which is especially useful for programs like risk management, the needs of which are necessarily unpredictable.

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

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. [9]

*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 16.05.110(5) is constitutional.

3. Reserves for Capital Outlay (AS 37.05.157) and Energy Facilities Development (AS 37.05.158). By statute there is allocated to each of these accounts a fixed percentage of annual receipts from minerals on state land. Both of these funds appear to be unconstitutional dedications to the extent that they restrict the purpose for which money may be spent. We are informed that the Department of Administration has recorded the amounts to be allocated to each account but has not retained that money for expenditures related to capital outlay or energy facilities development. We also understand that the legislature has not made any appropriations from these two accounts. We suggest that AS 37.05 .157 and AS 37.05.158 be repealed.

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

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. [10]

2. International Airport Funds (AS 37.15.420, 430, 440)
The fund established under AS 37.15.420 contains money received from the sale of general obligation bonds for airport improvements and other grants or money provided for the same purpose for which the bonds were authorized. The fund established under AS 37.15.430 contains revenues received by the state from ownership and operation of its airports. The fund established under AS 37.15.440 contains interest earned on money in the section 420 fund and revenues transferred from the section 430 fund for the purpose of redeeming airport revenue bonds.

*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 [11], 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. [12]

3. Continuing Debt Service Appropriation (AS 37.15.012)
This statute purports to create a continuing annual appropriation from the general fund of the amount necessary to pay debt service on all outstanding general obligation bonds. This may be a dedication of revenues for a specific purpose. [13] Even if it is, it is our opinion that there would be an implied exception to the dedicated fund prohibition for bond obligations.

4. Rural Electrification Revolving Loan Fund (AS 44.83.361)
This fund received an initial appropriation from which the Alaska Power Authority is authorized to make loans. Principal and interest payments on loans made from the fund are required by law to return to the fund. As we pointed out above, at n. 1, the questions of whether the principal and/or interest payments are revenues which may not be dedicated in this manner is now a matter in litigation in a suit filed by the Trustees for Alaska.

We will be defending the legislature's action in making both 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. [14]

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

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

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

1 The legal issues in this litigation are the validity of the deposit of interest and principal payments on loans in a revolving loan fund and of the appropriation to the Power Development Fund of interest to be received on specific amounts appropriated to that fund (§ 1 ch. 90, SLA 1981 as reenacted by § 69 ch. 69 SLA, 1981 and amended by § 236 ch. 141, SLA **1982**.). Trustees for Alaska, et al. v. State of Alaska and Alaska Power Authority, No. 3AN-492-82 Civ. (Alaska Super., Jan. 21, **1982**)

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

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

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

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

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

7 The 'Rainy Day Account,' AS 37.05.179, is an example of such an account.

8 See, for example, Sec. 7 ch. 113, SLA 1978 which provides:

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

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

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

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

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

The money in the revenue fund shall only be used for the purpose of paying or securing the payment of the principal of and interest on the bonds and of and on any other revenue bonds issued by authorization of the legislature to provide funds to acquire, equip, construct and install additions and improvements to, and extensions of and facilities for, the airports and to be payable out of the revenue fund, the purpose of paying the normal and necessary costs of maintaining and operating the airports and all of the improvements and facilities of them, the purpose of paying the costs of renewals, replacements and extraordinary repairs to the airports and all of the improvements and facilities of them, the purpose of redeeming before their fixed 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.

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

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

14 The pending litigation discussed earlier (Trustees for Alaska v. State, supra) also includes a claim that an appropriation to the Alaska Power Authority of the interest to be received on money separately appropriated to the Power Development Fund violates the dedicated funds prohibition. § 1 ch. 90, SLA 1980, as reenacted by § 69 ch. 92, SLA 1981 and amended by § 236 ch. 141, SLA

1982. The questioned appropriation does not state a specific time period during which the interest is to be accrued. Consideration by the court of this particular question might not occur since, by informal memo dated April 19, **1982**, we advised the Treasury Division of the Department of Revenue that the interest must be returned to the general fund because of a specific statutory requirement, AS 44.83.388(b). We are informed that no interest has accrued to the Power Development Fund.

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

End of Document

Alaska State Legislature
HOUSE FINANCE COMMITTEE
Agenda
1:30 PM

Friday, April 1, 2011

HB 127 –Crimes Involving Minors/Stalking/Info (introduce new CS)
CS WORK DRAFT 27-GH1840\I
HB 175 – Court Appearances: Arson, Infractions (introduce new CS)
HB 203-IN-STATE NATURAL GAS PIPELINE FUND
Amendment #1 Fairclough
CS WORKDRAFT 27-LS0719\D
Fiscal Note New REV 0

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT
SPEAKER OF THE HOUSE

SPONSOR STATEMENT
HOUSE BILL 203
"An Act establishing and relating to the in-state gas pipeline fund; and providing for an effective date."

House Bill 203 establishes an In-state Gas Pipeline Fund in the general fund to be managed and invested by the Alaska Housing Finance Corporation (AHFC). The Legislature may appropriate funds to the In-state Gas Pipeline Fund for the planning, development and construction of an in-state gas pipeline to transport natural gas from the North Slope for in-state natural gas needs.

Over the past few years, there have been a number of general fund appropriations for in-state gas pipeline development. These appropriations have gone to Departments of Natural Resources, Law and Revenue and the Governor's Office. I believe it is essential that one fund be established to alleviate the need for multiple appropriations and to make it easier to account for any expenditures that are made for in-state gas pipeline purposes. The establishment of the fund and separating it from other gasline projects brings clearer focus on the need to construct this all important in-state gas pipeline.

Through House Bill 369, which was passed last session, the Legislature authorized AHFC to create a subsidiary for the purpose of planning, developing and constructing an in-state gas pipeline. By placing the fund within AHFC, the control and development of this project would be maintained by AHFC and its subsidiary, the Alaska Gasline Development Corporation (AGDC).

Representative_Mike_Chenault@legis.state.ak.us

Sec. 01.10.070. Time statutes become law and take effect.

(a) All bills passed by the legislature become law upon the governor's signature or upon the governor's veto being overridden or, when the governor allows a bill to become law without signature, on the day after expiration of the period allowed for gubernatorial action by art. II, Sec. 17 of the Alaska Constitution. Acts become effective 90 days after becoming law, unless the legislature, by concurrence of two-thirds of the membership of each house, provides for another effective date.

(b) The actual effective date of an Act having no effective-date provision is determined by starting with the day after it is signed by the governor or the day after the governor's veto is overridden or the day after expiration of the period allowed for gubernatorial action by art. II, Sec. 17 of the Alaska Constitution, and counting 90 calendar days, the Act becoming effective at 12:01 a.m., Alaska Standard Time on the 90th day.

(c) The actual effective date and time of an Act having an immediate-effective-date provision is 12:01 a.m., Alaska Standard Time, on the day after it is signed by the governor or on the day after the governor's veto is overridden or on the day after expiration of the period allowed for gubernatorial action by art. II, Sec. 17 of the Alaska Constitution.

(d) An Act that specifies a definite effective date becomes effective at 12:01 a.m., Alaska Standard Time, on the date specified. However, if the specified definite effective date is on or before the day the governor signs the Act, the day the governor's veto is overridden, or the last day of the period allowed for gubernatorial action by art. II, sec. 17, Constitution of the State of Alaska, as applicable, the Act becomes effective at 12:01 a.m., Alaska Standard Time, on the day after the governor signs the Act, the governor's veto is overridden, or the period allowed for gubernatorial action by art. II, sec. 17, Constitution of the State of Alaska, expires, as applicable.

(e) When the governor allows a bill to become law without signature, the governor shall give written notice of that fact to the legislature. The date of this notice does not affect the date the bill becomes law or the date the Act takes effect.

(f) In this section

(1) "Act" means a bill which has become law;

(2) "bill" means a legislative document proposing an Act;

(3) "becomes effective" means becomes applicable; "effective date" does not mean date of enactment (or date of becoming law), although the two will coincide when a bill which has an immediate-effective-date provision is allowed to become law without the governor's signature;

(4) "becomes law" means is enacted; "enactment" occurs when any one of the following takes place:

(A) a bill which is passed by the legislature is signed by the governor;

(B) the period specified in art. II, Sec. 17 of the Alaska Constitution expires without gubernatorial action;

(C) the legislature overrides the governor's veto of a bill;

(5) "passed by the legislature" means that the required majority of each house of the legislature has taken final action in approving the same version of a bill.

History -

(Sec. 5 ch 62 SLA 1962; am Sec. 8 ch 126 SLA 1966; am Sec. 1 ch 115 SLA 1974; am Sec. 1 - 3 ch 6 SLA 1984; am Sec. 1 ch 20 SLA 2002)

Cross References -

For federal law concerning standard time, see 15 U.S.C. 260-267.

Decisions -

Applied in Atlantic Richfield Co. v. State, 705 P.2d 418 (Alaska 1985).

Stated in Rowe v. Burton, 884 F. Supp. 1372 (D. Alaska 1994).

Cited in North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534 (Alaska 1978); Fowler v. State, 70 P.3d 1106 (Alaska Ct. App. 2003); Allen v. Alaska Oil & Gas Conservation Comm'n, 147 P.3d 664 (Alaska 2006).

Article Notes -

Collateral References.- 73 Am. Jur. 2d, Statutes, Sec. 164 et seq.

82 C.J.S., Statutes, Sec. 548 et seq.

Sec. 37.10.070. Investment of residual money.

(a) The commissioner shall invest, as set out in AS 37.10.071, the money in the state treasury above an amount sufficient to meet immediate expenditure needs. In managing the invested assets, the commissioner shall

(1) consider the status of the assets and liabilities on both a current and a probable future basis;

(2) determine the appropriate investment objectives;

(3) establish investment policies to achieve the objectives; and

(4) act only in regard to the best financial interests of the state.

(b) The commissioner may invest on the basis of probable total rate of return without regard to the distinction between principal and income and without regard to the generation of income.

(c) In this section, "commissioner" means the commissioner of revenue.

History -

(Sec. 7-1-11 ACLA 1949; am Sec. 1 ch 140 SLA 1953; am Sec. 1 ch 206 SLA 1970; am Sec. 1, 2 ch 94 SLA 1971; am Sec. 1 ch 4 SLA 1980; am Sec. 6 ch 122 SLA 1980; am Sec. 19 ch 141 SLA 1988)

Cross References -

For duties of Legislative Budget and Audit Committee relating to state investment policy, see AS 24.20.206.

Sec. 37.10.071. Investment powers and duties.

(a) In making investments under this section, the fiduciary of a state fund shall

(1) act as official custodian of cash and investments by securing adequate and safe custodial facilities for them;

(2) receive all items of cash and investments;

(3) collect and deposit the principal of and income from owned or acquired investments;

(4) invest and reinvest the assets in accordance with this section;

(5) receive and spend appropriations to cover the cost of the exercise of duties under this section;

(6) exercise the powers of an owner with respect to the assets;

(7) perform all acts, not prohibited by this section, whether or not expressly authorized, that the fiduciary considers necessary or proper in administering the assets;

(8) maintain accounting records in accordance with generally accepted accounting principles;

(9) engage an independent certified public accountant to conduct an annual audit of the financial condition and investment transactions;

(10) enter into and enforce contracts or agreements considered necessary, convenient, or desirable for the investment purposes of this section; and

(11) when choosing to acquire or dispose of investments, secure competitive national or international market rates or prices, or the equivalence of those rates or prices in the judgment of the fiduciary.

(b) Under this section, the fiduciary of a state fund or the fiduciary's designee may

(1) delegate investment, custodial, or depository authority on a discretionary or nondiscretionary basis to officers or employees of the state or to independent firms, banks, financial institutions, or trust companies by designation through appointments, contracts, or letters of authority;

(2) acquire or dispose of investments either directly, indirectly, or through investment pools or trusts, by competitive or negotiated agreements, contracts, or auctions, in public or private markets;

(3) concentrate or diversify investments as the fiduciary considers appropriate to increase the probable total rate of return or to decrease the overall exposure to potentially adverse market value risks;

(4) protect the market value or the rate of return of the investments by entering into forward agreements to buy or sell assets at a future date as a hedge against existing held assets or as a precommitment of future cash flows;

(5) lend assets, under an agreement and for a fee, against deposited collateral of equivalent market value;

(6) borrow assets on a short-term basis, under an agreement and for a fee, against the deposit of collateral consisting of other assets in order to accommodate temporary cash or investment needs;

(7) hold investments in bearer or registered form in the name of the state, a fund, or nominees authorized by the fiduciary;

(8) utilize consultants, advisors, custodians, investment services, and legal counsel for assistance in investment matters on either a continuing or a limited-term basis and with or without compensation;

(9) declare records to be confidential and exempt from AS 40.25.110 and 40.25.120 if the records contain information that discloses the particulars of the business or the affairs of a private enterprise, investor, borrower, advisor, consultant, counsel, or manager.

(c) In exercising investment, custodial, or depository powers or duties under this section, the fiduciary of a state fund shall apply the prudent investor rule and exercise the fiduciary duty in the sole financial best interest of the fund entrusted to the fiduciary. Among beneficiaries of a fund, the fiduciaries shall treat beneficiaries with impartiality.

(d) In exercising investment, custodial, or depository powers or duties under this section, the fiduciary or the fiduciary's designee is liable for a breach of a duty that is assigned or delegated under this section, or under AS 14.40.255, 14.40.280(c), 14.40.400(b), AS 37.10.070, AS 37.14.110(c), 37.14.160, or 37.14.170. However, the fiduciary or the designee is not liable for a breach of a duty that has been delegated to another person if the delegation is prudent under the applicable standard of prudence set out in statute or if the duty is assigned by law to another person, except to the extent that the fiduciary or designee

(1) knowingly participates in, or knowingly undertakes to conceal, an act or omission of another person knowing that the act or omission is a breach of that person's duties under this chapter;

(2) by failure to comply with this section in the administration of specific responsibilities, enables another person to commit a breach of duty; or

(3) has knowledge of a breach of duty by another person, unless the fiduciary or designee makes reasonable efforts under the circumstances to remedy the breach.

(e) The state shall defend and indemnify the fiduciary or an officer or employee of the state against liability under (d) of this section to the extent that the alleged act or omission was performed in good faith and was prudent under the applicable standard of prudence.

(f) In this section, "fiduciary of a state fund" or "fiduciary" means

(1) the commissioner of revenue for investments under AS 37.10.070;

(2) with respect to the Alaska Retirement Management Board, for investments of the collective funds that it manages and administers,

(A) each trustee who serves on the board of trustees; and

(B) any other person who exercises control or authority with respect to management or disposition of assets for which the board is responsible or who gives investment advice to the board; or

(3) the person or body provided by law to manage the investments for investments not subject to AS 37.10.070.

History -

(Sec. 20 ch 141 SLA 1988; am Sec. 12 ch 31 SLA 1992; am Sec. 13 ch 9 SLA 1997; am Sec. 33 ch 32 SLA 1997; am Sec. 56, 57 ch 9 FSSLA 2005)

Revisors Notes -

In 2000, "AS 40.25.110 and 40.25.120" was substituted for "AS 09.25.110 and 09.25.120" to reflect the 2000 renumbering of AS 09.25.110 and 09.25.120.

Amendment Notes -

The 2005 amendment, effective July 28, 2005, deleted section references in subsection (d); and in paragraph (f)(2) substituted "Alaska Retirement Management Board" for "Alaska State Pension Investment Board" and "investments of the collective funds that it manages and administers" for "investments under or subject to AS 14.25.180".

Editors Notes -

Section 146, ch. 9, FSSLA 2005, makes the 2005 amendments to subsections (d) and (f) of this section retroactive to July 1, 2005.

Sec. 18.56.086. Creation of subsidiaries.
The corporation may create subsidiary corporations for the purpose of financing or facilitating the financing of school construction, facilities for the University of Alaska, facilities for ports and harbors, prepayment of all or a portion of a governmental employer's share of unfunded accrued actuarial liability of retirement systems, or other capital projects. A subsidiary corporation may also be created for the purpose of planning, constructing, and financing in-state natural gas pipeline projects or for the purpose of aiding in the planning, construction, and financing of in-state natural gas pipeline projects. A subsidiary corporation created under this section may be incorporated under AS 10.20.146 - 10.20.166. The corporation may transfer assets of the corporation to a subsidiary created under this section. A subsidiary created under this section may borrow money and issue bonds as evidence of that borrowing, and has all the powers of the corporation that the corporation grants to it. However, a subsidiary created for the purpose of financing or facilitating the financing of prepayment of a governmental employer's share of unfunded accrued actuarial liability of retirement systems may borrow money and issue bonds only if the state bond rating is the equivalent of AA- or better and subject to AS 37.15.903. A subsidiary corporation created for the purpose of planning, constructing, and financing in-state natural gas pipeline projects or for the purpose of aiding in the planning, construction, or financing of in-state natural gas pipeline projects is exempt from AS 36.30, including AS 36.30.015(d) and (f). Unless otherwise provided by the corporation, the debts, liabilities, and obligations of a subsidiary corporation created under this section are not the debts, liabilities, or obligations of the corporation.
History -
(Sec. 7 ch 130 SLA 2000; am Sec. 1 ch 7 SLA 2006; am Sec. 3 ch 35 SLA 2008; am Sec. 2 ch 7 SLA 2010)
Cross References -

For sale to AHFC of right to receive revenue from the settlement of Alaska v. Philip Morris, Inc., No. 1JU-97-915 Civ. (First Jud. Dist. at Juneau), and special bonding provisions for AHFC or a subsidiary created under this section, see Sec. 9 and 10, ch. 130, SLA 2000 in the 2000 Temporary and Special Acts, Sec. 3, ch. 96, SLA 2001 in the 2001 Temporary and Special Acts, and Sec. 1 and 2, ch. 35, SLA 2006 in the 2006 Temporary and Special Acts.
Amendment Notes -

The 2006 amendment, effective July 1, 2006, added "or other capital projects" at the end of the first sentence, and make a corresponding stylistic change.

The 2008 amendment, effective May 23, 2008, inserted "prepayment of all or a portion of a governmental employer's share of unfunded accrued actuarial liability of retirement systems" in the first sentence, and inserted the next-to-last sentence.

The 2010 amendment, effective April 27, 2010, added the second and seventh sentences.

Alaska Statutes Submitted by the Office of Speaker Chenault