HB 160 cont. - CSSSHB 165

geographical areas of the State and to different types and configurations of aircraft.

LOCALLY AVAILABLE

3. Components of the training system should be accessible to pilots in the community in which they are located. This would avoid, as much as possible, pilots spending time away from their primary job to attend training in a distant geographic location.

PRACTICAL

4. The requirement for training system components for localized on-job-site training could be met by using transportable training devices and interactive audio-visual and print media. These programs should contain instructional components tailored to geographic area and aircraft types.

EVALUATION

5. Instructional programs would be designed to teach specific decision-making skills and the operational procedures to be performed on the basis of such decisions. Evaluation of student performance must be made by qualified, certified airmen with extensive experience in the given geographical area using structured evaluation methods.

DECISION MAKING SKILLS THEN APPLICATION

6. The training system should be capable of allowing the airmen to first learn the necessary discriminations and decision-making capabilities, and then apply these skills in a simulated or operational environment. Non-transportable training devices could be required for operational training.

TRAINING CENTERS

7. Area training centers should be established for specific geographic regions. These training centers could be co-located with existing Community College facilities. The training system would thus permit the learning of needed decision-making skills and operational procedures through transportable media, and evaluation of student performance by designated airmen for localized job-site training. Support and administration for this training would be provided by the area training center.

CHAPTER III

METHOD AND DELIVERABLES

This chapter describes the process which the Foundation proposes to use to transform the results of their report, Definition of Alaskan Aviation Training Requirements, into usable lesson plans and a sample audio-visual training program lesson.

The Foundation will assign persons with expertise in Alaskan aviation needs and experience in development of aviation training programs to work with Alaskan aviation Subject Matter Experts (SME's) for the duration of the contract resulting from this proposal. The Alaskan Aviation Safety Foundation will identify suitable SME's for each type of lesson.

The Foundation will contract with these SME's for a period of time sufficient to convert their unique knowledge into the content of the lesson plan. One to two weeks per SME will be required. Several elements will assist in the success of this process. First, appropriate lesson plan formats have been identified. Lesson plan formats will be presented to the Foundation Board for approval. The approved formats will be the basis for the information gathered from the SME's. Second, the research team has and will continue to use the recommended operational techniques previously identified

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

CHAPTER III

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by experienced Alaskan aviators in the study. These techniques can be evaluated for efficacy and validated during the development of the lesson plans.

The validated list of techniques will become the "Trigger" which can serve to remind the SME of as many techniques as possible. In the development of some lessons, it is anticipated that several SME's will be required. Where SME's cannot agree on techniques or appropriate procedures for a lesson, the training developers will look to the Foundation Board for guidance or will include alternative methods in the lesson plans. Provisions will be made in each plan for the experienced Alaskan aviator designated to teach the courses from these lesson plans to provide specific information appropriate to the geographical area in which the learner will be operating.

One or two lessons will be selected for development into an audio-visual format. The lesson, which should take approximately 30-40 minutes, may include slide/tapes or video tapes or similar media. It may, for example, train pilots in a subject such as flying through a pass, landing on a beach, checking weather in Alaska or a similar subject. This sample program will demonstrate the use of various media therefore, the cost of this product may not be representative of each training lesson. The sample program will become the standard for transforming all of the lesson plans into

various representative media formats during Phase III of the development of a total training system for Alaskan aviators.

At this time, it appears that the completed lesson plans should number about 25. These would be clustered into the following units:

- Weather in Alaska
- Adverse Weather Flying Techniques
- Takeoff and Landing Techniques for Special Surfaces
- Navigation and Piloting Techniques
- Mountain and Pass Flying
- Area Specific Flying Techniques
- Fuel Management and Handling Techniques
- Cold Weather Operating Techniques
- Hazardous Materials in Alaska
- Survival Training
- Management Training Plans

In addition, a lesson will be developed which will prepare experienced Alaskan pilots and operators to use the plans developed in this project to teach others.

CHAPTER IV

FUTURE PHASES

At the conclusion of the effort described in this proposal, the citizens of the State of Alaska will have a usable product which can have a significant effect on aviation safety in the State. However, although the production of a set of lesson plans is useful and desirable, they do not represent a Total Training System. The lesson plans are a second, but necessary, step in the continuing process of providing safer aviation activities in Alaska through improved training.

The next step is to professionally prepare all of the lessons in an audio-visual, computer assisted and satellite transmittable aviation training program. Even though some Alaskan opinion leaders would prefer that the automated audio-visual programs be produced this year, we believe it is better to prepare the lesson plans and let experienced Alaskan aviators validate their effectiveness before committing the resources to automate them. Then, the Alaska Aviation Safety Foundation can define and build the training media required to produce the best trained arctic pilots possible. Therefore, the Foundation is proposing that each step be taken sequentially and proven before committing to a total training system. This approach will result in the ultimate goal of maximum safety through a "Total Training System" that effectively meets the Alaskan aviation training requirements.

National Transportation Safety Board

Washington, D.C. 20594

January 4, 1983

Office of the Chairman

DUE BY:
IN 1/20/83

Mr. Lance Wells
Executive Director
Alaska Air Carriers Association
Box 6469
Anchorage, Alaska 99502

Dear Mr. Wells:

As a result of its special study 1/ of air taxi safety in Alaska, the National Transportation Safety Board recommended on September 25, 1980, that the Alaska Air Carriers Association, "Extend its safety program to reiterate the hazards of air taxi operations in Alaska and to overcome, in particular, the 'bush pilot syndrome'" (A-80-105). The Safety Board later classified the recommendation "Closed-Acceptable Action" as a result of your organization's efforts in launching the Alaska Aviation Safety Foundation to promote a safer air transportation environment in Alaska.

The concerns which prompted the Safety Board to conduct the special study of Alaska air taxi operators in 1980 reappeared during a recent investigation. On May 16, 1982, a Gifford Aviation, Inc., deHavilland DHC-6, operated as Wein Air Alaska Flight 517 under the provisions of 14 CFR Part 135, crashed at Hooper Bay, Alaska. 2/ The investigation revealed a casual attitude on the part of the pilots regarding adherence to weight and balance regulations and operating procedures which led to the airplane operating with a center of gravity considerably aft of the published limit. Additionally, the investigation revealed poor maintenance practices regarding the condition of seatbelts in the accident airplane as well as two other DHC-6's operated by Gifford Aviation, Inc. These unsafe practices were precisely the same type noted during the Safety Board's special study and which generated the Safety Board's earlier recommendation to your organization.

Our staff has recently reviewed the "Final Report on Definition of Alaskan Aviation Training Requirements" prepared by American Airlines Training Corporation under the auspices of the Alaska Aviation Safety Foundation. The Safety Board is pleased with the program's content, objectives, and goals and urges its early implementation as soon as funds become available.

Respectfully yours,

Patricia A. Goldman for

Jim Burnett
Chairman

1/ Special Study--"Air Taxi Safety in Alaska" (NTSB-AAS-80-3).
2/ For more detailed information, read Aircraft Accident Report--"Gifford Aviation, Inc., deHavilland DHC-6, N103AQ, Hooper Bay, Alaska, May 16, 1982" (NTSB-AAR-82-14).

EXHIBIT A

Introduced: 2/4/83
Referred: Health, Education &
Social Services and Finance

Funding Information
General Fund $753,000
Other Funds -0-
$753,000

BY HURLBERT, BETTISWORTH, MCBRIDE, MALONE AND HERRMANN

IN THE HOUSE

HOUSE BILL NO. 160

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Education for development of a training program for Alaska aviation; and providing for an effective date."

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

* Section 1. The sum of $753,000 is appropriated from the general fund to the Department of Education for development of a training program for Alaska aviation.

* Sec. 2. The unexpended and unobligated portion of the appropriation made by this Act lapses into the general fund June 30, 1984.

* Sec. 3. This Act takes effect July 1, 1983.

COMMITTEE REPORT

HOUSE

(11) FURTHER:

3/9/83 Date: 3-31-83

Mr. Speaker:

The Committee on FINANCE has had HB 161

An Act establishing a defeasance fund in the Department of Revenue for the purpose of retiring state general obligation debt; transferring a portion of the income of the Alaska permanent fund to the defeasance fund; and providing for an effective date.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [X] New Fiscal Note [ ] Zero Fiscal Note Attached

[X] reports it back without recommendation individual

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Terry Ward

Steve Marsh

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Ann Kedinger (No Rec)

CHAIRMAN

H 60

Introduced: 2/4/83
Referred: State Affairs and Finance

IN THE HOUSE BY WARD AND LISKA

HOUSE BILL NO. 161

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a defeasance fund in the Department of Revenue for the purpose of retiring state general obligation debt; transferring a portion of the income of the Alaska permanent fund to the defeasance fund; and providing for an effective date."

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

* Section 1. The defeasance fund is established in the Department of Revenue for the purpose of retiring state general obligation debt incurred before May 2, 1978. The commissioner of revenue shall administer the defeasance fund and shall use money in the fund to retire state general obligation debt as that debt matures and becomes due. The commissioner of revenue may invest money in the defeasance fund in investments authorized for the Alaska permanent fund under AS 37.13.120.

* Sec. 2. Notwithstanding AS 37.13.145 and AS 43.23.045(b), on July 1, 1983, $377,500,000 shall be transferred from the Alaska permanent fund net income, as defined in AS 37.13.140, for the state fiscal year ending June 30, 1983, to the defeasance fund established by sec. 1 of this Act. If there is a balance of Alaska permanent fund net income remaining for the state fiscal year ending June 30, 1983 after the transfer required by this section, that balance shall be transferred to the principal of the Alaska permanent fund for reinvestment. If there is insufficient net income of the Alaska permanent fund to make the transfer required by this section in full, the balance of the transfer shall be made on July 1, 1984.

* Sec. 3. The defeasance fund established by sec. 1 of this Act

terminates on July 1, 2001. Money or other assets remaining in the defeasance fund on July 1, 2001 shall lapse into the general fund.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c).

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 161
Title: Establish a defeasance fund.
Sponsor: Ward
Requestor: House Finance

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected: Debt Service
BRU, Program of Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	100.0					
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
Debt Service		(60,539)	(58,371)	(57,708)	(54,766)	(53,044)
TOTAL OPERATING	100.0					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	100.0					
FEDERAL FUNDS						
OTHER (Specify Source) From PF Int.		-363,000	-14,500			
to Defeasance Fund		+363,000	+14,500			

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Cathy Poe Phone: 465-2350
Division: Treasury Division - Revenue Date: 3/29/83

Approved by Commissioner: Date: 3/30/83
Department: Revenue

Distribution:
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Copy to Department (for Governor introduced bills)
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Copy to Requestor (if different from Sponsor)

3/8/83

IV. Analysis for HB 161

The $100,000 is for financial advising and legal fees related to establishment of the fund. The $377,500,000 is a transfer of monies from the Permanent Fund earnings account to the Defeasance Fund. This transfer is made over two fiscal years. Once the Fund has been established, the G.O. bond debt of $593,000,000 (as of 6/30/83) can be deducted from the State's books. The Defeasance Fund would reduce the appropriation to the State debt service by $60,539,000 in FY 84, $58,371,000 in FY 85, $57,708,000 in FY 86, $54,766,000 in FY 87, and $53,044,000 in FY 88.

Creation of this Fund would eliminate the Permanent Fund dividend, inflation proofing, and undistributed accounts for FY 83.

The following individuals are expected to testify on HB 161:

Jerry Ward, prime sponsor

Commissioner Bob Heath, Department of Revenue

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 161
Title: Establish a defeasance fund.
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OPERATING						
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200 TRAVEL						
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500 EQUIPMENT						
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700 GRANTS, CLAIMS, ETC						
Debt Service		(60,539)	(58,371	(57,708)	(54,766	(53,044)
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CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	100.0					
FEDERAL FUNDS						
OTHER (Specify Source) From PF Int.		-363,000	-14,500			
to Defeasance Fund		+363,000	+14,500			

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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Approved by Commissioner: Date: 3/30/83
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Creation of this Fund would eliminate the Permanent Fund dividend, inflation proofing, and undistributed accounts for FY 83.

FEB 21 1983

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 161 Date on Bill: 2/4/83
Title: "An act establishing a defeasance fund in the Dept. of Rev.
Sponsor: Ward & Liska
Requestor: House State Affairs Committee

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital		From P.F.		
Operating	$100.000	-363.0 mill.	-14.5 mill.	
Total	$100,000	To Def. Fund		
		+363.0 mill.	+14.5 mill.	

b. Revenues:

Revenue	

2. Source of funds to offset fiscal impact of bill:

Permanent Fund Earnings

3. Assumptions:

The $100,000 is for Financial Advising and legal fees related to establishment of the fund. The $377,000,000 is a transfer of monies from the Permanent Fund earnings account to the Defeasance Fund. This transfer is made over two fiscal years. Once the Fund has been established, the G.O. bond debt of $654,000,000 before May of 1978 can be deducted from the State's books. The Defeasance Fund would reduce the appropriation to the State debt service by $60,539,000 in FY 84, $58,371,000 in FY 85, and 57,708,000 in FY 86.

Creation of this Fund would eliminate the Permanent Fund dividend, inflation proofing, and undistributed accounts for FY 83.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: _____ Phone: _____
Division: _____ Date: _____

Approved by Commissioner: Joseph K Donohue for Robert Heath Date: 2/20/83
Department: Revenue

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/15/83

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

November 30, 1982

Gerald L. Wilkerson, C.P.A.
Legislative Auditor
Legislative Audit Division
Legislative Affairs Agency
Pouch W
Juneau, Alaska 99811

Honorable Carole J. Burger
Commissioner
Department of Administration
Pouch C
Juneau, Alaska 99811

Re: The dedicated funds prohibition applied to various funds and accounts. Our Files No. J66-785-81 and J66-649-80

Dear Mr. Wilkerson and Commissioner Burger:

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

certain appropriations and funds by the Alaska Power Authority. 1/

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

We should point out that the advice given in this opinion could have a significant effect upon the state budget. This results from the recent adoption of Article IX, section 16 of the Alaska Constitution (the spending limit). Under the reasoning of this opinion, it may be that income earned by a loan fund or public enterprise must be appropriated to that fund or

---

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

enterprise if that income is to be retained by it. If the Alaska Supreme Court adopts that reasoning, the necessity for these appropriations would have to be considered by the administration and the legislature in developing a state budget which conformed to the spending limit. This concern would also become important if independent authorities for operation of entities like the State Ferry System or the Alaska Railroad were to be considered.

I. THE PURPOSE OF THE PROHIBITION

Article IX, Section 7 provides:

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

There are essentially two views of the meaning of this provision. Under the first interpretation the dedicated funds prohibition would require that every dollar received by the state be deposited and remain unrestricted in the general fund until it is withdrawn pursuant to an appropriation authorizing the expenditure of a specific dollar amount for a specific pur-

pose (absent a contrary federal requirement or a statutory dedication which existed prior to ratification of the Constitution). This is known as the strict interpretation view.

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

An argument can certainly be made that this is the proper interpretation of the dedicated funds prohibition. As set out in 1975 Op. Atty. Gen. No. 9 at 2 (Alaska May 2, 1974), "Section 7 of Article IX had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes [i.e., 'earmarking'] and (2) to prevent the creation of new special funds separate from the general fund." The rationale underlying each of these two purposes is "that the widespread existence of dedicated revenues lodged in special funds deprives

both the governor and the legislature of 'any real control over the finances of the state.'" Id. at 3 (citation omitted). Requiring all monies received by the state to be deposited into the general fund clearly would satisfy both interrelated purposes of the prohibition. The strict interpretation view of the dedication prohibition would preclude the use of public monies to establish a standing or revolving loan fund or any other program which would be self-sustaining. 2/

However, a second approach in interpreting the meaning of Article IX, section 7 is also very plausible. Under this view, the dedication prohibition is not to be construed to require a blanket prohibition of self-sustaining programs set up by the legislature. As noted in 1975 Op. Atty. Gen. No. 9 at 6-8 (Alaska, May 2, 1975), the constitutional framers substituted the phrase "[t]he proceeds of any state tax or license" for the phrase "[a]ll public revenues" to avoid having to state a number of intended exceptions to the prohibition on dedicated funds. Examples of these exceptions were pointed out in a January 4, 1956, 3/ memorandum by the Public Administration Service (PAS) to

---

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

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

the Constitutional Convention: "pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units." 4/

Some of 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.

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.

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.

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.

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).

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

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

A question of the proper application of the dedicated funds prohibition arises when money is appropriated to a revolving loan fund or other special reserve fund or account. Revolving loan funds provide for the return to the fund of repayments by borrowers of the principal (and frequently the interest on that principal) 6/ which was loaned to them from the fund so that new loans can be made on a continuing basis. Special reserve funds involve essentially the setting aside of money for certain specified future needs or conditions which may or may not occur. 7/ When this is done, it might be argued that the legislature has made an impermissible dedication with respect to the future use of the money placed in those funds and accounts.

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

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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.

lature may prefer to establish by general law a continuing loan program and finance it through a one-time appropriation or to reserve money in a special fund or account for future use for limited purposes. A strong argument can be made that money once appropriated, regardless of the mechanism utilized, loses its character as revenue for the purpose of the dedicated funds prohibition because the purpose of the prohibition, i.e., that the legislature retain control over state revenues, has been satisfied.

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

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

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.

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.

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.

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.

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/

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

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

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.

Although each fund provides for a dedication of state revenue, we believe that they are permissible under the implied exception theory discussed earlier at pp. 5 and 6. It is our opinion that there is an implied exception to the

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

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

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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 the purposes of the airports, the purpose of providing funds to acquire, construct and install necessary additions and improvements to and extensions of and facilities for the airports and all of their facilities, and the purpose of providing funds to pay any and all other costs relating to the ownership, use and operation of the airports.

violate Article IX, section 7 unless it either existed prior to ratification of our Constitution or is required by federal law. 12/

3. Continuing Debt Service Appropriation (AS 37.15-.012)

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

4. Rural Electrification Revolving Loan Fund (AS 44-.83.361)

This fund received an initial appropriation from which the Alaska Power Authority is authorized to make loans. Principal and interest

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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.

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.

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/

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

E. Other Miscellaneous Dedications

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

2. Rainy day account. AS 37.05 179 creates a reserve fund to which money is appropriated and authorizes it to be spent for certain necessary emergency operating expenses at some future time. It is our opinion that this practice is permissible under the theory discussed above beginning at p. 12 that money once it is appropriated loses its character as revenue for purposes of the dedicated funds prohibition. A contrary view would severely restrict flexibility in state budgeting and accounting, and we doubt that such a view would be adopted by the courts.

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

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

Sincerely,

Wilson L. Condon
Attorney General

WLC:jf

cc: Ron Lehr, Director
Division of Budget and Management

Jay Hogan, Director
Division of Legislative Finance
Legislative Affairs Agency

MAR 1 1 1983

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M March 11, 1983

SUBJECT: Department of Revenue position on HB 161

TO: Representative Jerry Ward

FROM: Billy G. Berrier
Director
Division of Legal Services

You have asked our comments on the following question raised by the Department of Revenue concerning HB 161:

> "In regard to the bill itself, the Department of Revenue sees possible legal problems. HB 161 is a temporary bill in that it attempts to take the earnings of the Permanent Fund for one year to create the defeasance fund. No attempt is made to repeal the current law governing the use of Permanent Fund income.
>
> "The question must be addressed by law as to whether a temporary bill can override substantive law."

and on the rest of the paper.

The department appears to be confused. There can be no serious question that an amendment to law may have a less than indefinite duration. The duration of a law has no effect on its status as law for the period in which it is effective. It is possible that semantic confusion over the terms "temporary" and "permanent" has led to an unconscious hierarchal ranking which has no basis in law. Considering the terminology used it is more likely the confusion arises from the inability to amend substantive law in an appropriation bill. That arises from the constitutional requirement that appropriation bills must be confined to appropriations not from a distinction between temporary and permanent law.

The question is not whether temporary law can override permanent law, it is whether laws may be amended for a specific

period. The answer is clearly that they may and frequently are.

Therefore, of course, no attempt is made to repeal the current law governing the use of the permanent fund income. There is no intent to repeal these statutes, the intent is to amend them in a particular manner for a defined period. That is what the bill expressly does.

The department also questions whether the bill creates a constitutionally prohibited dedicated fund.

The question of dedicated funds arises only if the constitutional prohibition against dedicated funds is considered absolute. An argument can be made that the prohibition is absolute. This argument is set out well in a November 30, 1982, Opinion of the Attorney General commencing on page 3 (a copy of the opinion is enclosed). You will note however, that the Attorney General rejects that argument based on the reasoning set out in the opinion. I agree with that conclusion and in my opinion our Supreme Court has accepted that there are implied exceptions. In State v. Alex, 646 P.2d 203, our Court discussed dedicated funds and stated:

> Under the original, all-inclusive prohibition of the dedication of "all revenues," there is no doubt that it was intended to prohibit any and all dedications. The committee intended it to prohibit not only the dedication of taxes, but also such revenue as the proceeds from the sale of state lands. See 3 Alaska Const. Conv. Proceed. 2317-19. The committee's spokesman stated that the purpose of the proposed amendment was to allow for the setting up of certain special funds, such as sinking funds for the repayment of bonds, but to prohibit the earmarking of any special tax to that sinking fund. 4 Alaska Const. Conv. Proceed. 2363. Thus, the change 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. 1975 Alaska Op. Atty. Gen. No. 9 at 10 (May 12). (Emphasis added)

This appears to be the only legal question raised in the position paper. The position that creation of a defeasance fund will restrict the amount of money available for appropriation by future legislatures, while clearly correct, seems not to be a legal point but merely a factual

observation that once money is spent it is no longer available for spending.

BGB:ljb
1/035

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

March 7, 1983

The Honorable Mitchell E. Abood
Chairman, House State Affairs Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HB 161

Dear Mr. Chairman:

Enclosed you will find the Department of Revenue's response to questions asked at the February 28, 1983 meeting of the House State Affairs Committee pertaining to HB 161. I hope this information is what your seek. If you would like any further information, please let me know.

Sincerely,

Robert D. Heath
Commissioner of Revenue

RDH:mll
Enclosure

4-D2LH

POSITION PAPER ON HOUSE BILL 161

"An act establishing a defeasance fund in the Department of Revenue for the purpose of retiring State general obligation debt; transferring a portion of the income of the Alaska Permanent Fund to the defeasance fund and providing for an effective date."

This paper will explain certain aspects of a defeasance fund, highlight the issues surrounding its creation and present the position of the Department of Revenue.

A defeasance fund is a trust account which would be set up with an independent third party trustee such as a national bank. This account would be used to purchase a portfolio of securities whose maturities and cash flow income would correspond to the principal and interest payments of the G.O. bonds which are being defeased. Once the fund is established, the debt service on these bonds would not need to be appropriated from the General Fund.[1] A schedule of the yearly debt service on the pre-1978 bonds is attached. The reason the total appropriation is lower than the balance due on the G.O. bonds is because of the difference in interest rates which can presently be earned and the coupon rates of the bonds.

The bill refers to G.O. debt issued before May 2, 1978. The reason is that in 1978 the Internal Revenue Service issued a ruling limiting the amount of interest which can be earned on defeasance funds to the rate paid on the bonds. Thus, defeasance on bonds issued after 1978 offer little financial benefit.

In regard to the bill itself, the Department of Revenue sees possible legal problems. HB 161 is a temporary bill in that it attempts to take the earnings of the Permanent Fund for one year to create the defeasance fund. No attempt is made to repeal the current law governing the use of Permanent Fund income.

[1] Debt service is now an automatic appropriation (AS 37.15.012 by § 1 Ch. 100, SLA 1981).

The question must be addressed by law as to whether a temporary bill can override substantive law.

Another legal question deals with interest earned on the defeasance fund. The interest would go back into the fund by nature of the defeasance which could be viewed as a dedication of funds. Alaska's constitution prohibits dedication of funds. (Alaska Constitution Article IX, Section 7)

In analyzing the financial feasibility of the bill, the rate of interest paid on the G.O. bonds (see schedule attached) and the current rate of interest on investments must be compared. A majority of the bonds are below 6% interest and today's market will pay 8 1/2% to 10% interest depending on the type of security. Thus, there is little financial reason to pay off this low interest debt sooner than the current schedule specifies.

Also, to create this defeasance fund will restrict future legislative sessions' funding because once the fund is established, these monies are no longer available for appropriation.

Another problem connected with showing a surplus of funds is our national image. We are concerned that people in the "lower 48" may feel Alaska is not sharing its wealth with the nation. (Per letter dated February 3, 1983 to Representative Abood on this subject.)

8.4 Extra quick

The last point we wish to make concerns the status of future bonding issues. If the State of Alaska has the surplus funds to set up a defeasance fund, the IRS may view any future bond issues (at least for 18 months) as arbitrage bonds and declare them taxable. This would increase the interest rate considerably and could cost the State more money in interest payments.

For the reasons stated herein and in view of the Governor's policy concerning the use of Permanent Fund income, the Department of Revenue opposes HB 161. Our recommendation would be to continue paying the bonds on their established schedule.

Attachment

OUTSTANDING BALANCE ON PRE-MAY, 1978 G.O. BONDS
JUNE 30, 1983

Bond Title	Rate of Interest	Principal	Interest	Total
Univ. of Ak. Housing Bonds, 1958, Series A	3.00%	$ 310,000	$ 28,350	$ 338,350
Ferries & Roads Bonds, 1961, Series A	3.82	6,130,000	1,115,870	7,245,870
"Composite 1/8/64 Sale", Series L	3.56	565,000	20,340	585,340
1964, Series B (1967 Issue)	3.75	7,277,000	1,741,932	9,018,932
1964, Series C (1967 Issue)	3.75	1,156,000	630,152	1,786,152
1967, First Series	4.50	9,190,000	2,316,125	11,506,125
1967, Second Series	4.90	8,550,000	2,222,270	10,772,270
1968, Series A	5.19	5,375,000	861,475	6,236,475
1968, Series B	5.24	4,250,000	672,657	4,922,657
1969, Series A	5.74	3,575,000	748,175	4,323,175
1969, Series D (1966 Univ. of Ak.)	3.00	1,380,000	380,100	1,760,100
1970, Series C	5.88	3,100,000	280,535	3,380,535
1971, Series A	5.07	10,285,000	2,924,680	13,209,680
1971, Series B	6.04	14,520,000	7,478,400	21,998,400
1971, Series C	6.04	2,950,000	1,509,000	4,459,000
1971, Series D	6.00	850,000	411,000	1,261,000
1972, Series A	5.24	15,800,000	5,958,000	21,758,000
1972, Series B	5.16	19,600,000	7,979,525	27,579,525
1973, Series A	5.12	15,000,000	5,890,500	20,890,500
1973, Series B	5.11	18,500,000	7,696,500	26,196,500
1973, Series C	5.80	26,500,000	13,319,375	39,819,375
1974, Series A	6.86	26,100,000	15,078,000	41,178,000
1975, Series A	5.99	33,200,000	16,552,100	49,752,100
1975, Series B	6.53	37,000,000	20,191,750	57,191,750
1975, Series C	6.86	32,250,000	16,298,075	48,548,075
1976, Series A	5.87	25,000,000	7,733,750	32,733,750
1976, Series B	5.80	25,000,000	7,672,500	32,672,500
1977, Series A	5.08	27,500,000	8,406,250	35,906,250
1977, Series B	4.51	24,000,000	3,283,000	27,283,000
1978, Series A (4/1/78)	4.87%	25,000,000	3,650,000	28,650,000
		$429,913,000	$163,050,386	$592,963,386

DEBT SERVICE ON OUTSTANDING G.O. BONDS BY YEAR

Years Ended June 30	Principal	Interest	Total	Debt Service on pre 5/78 Bonds
1984	$100,175,000	$63,240,329	$163,415,329	$60,539,165
1985	100,060,000	56,149,274	156,209,274	58,370,860
1986	101,465,000	49,119,762	150,584,762	57,707,763
1987	100,580,000	42,229,846	142,809,846	54,769,221
1988	100,885,000	35,449,255	136,334,255	53,044,505
1989	95,927,000	28,547,971	124,474,971	46,006,721
1990	87,760,000	22,063,090	109,823,090	40,131,590
1991	69,699,000	15,870,180	85,569,180	38,947,430
1992	48,349,000	10,523,425	58,872,425	38,152,425
1993	43,563,000	7,396,987	50,959,987	31,719,987
1994	20,598,000	5,219,975	25,817,975	25,817,975
1995	19,096,000	3,987,625	23,083,625	23,083,625
1996	18,610,000	2,864,412	21,474,412	21,474,412
1997	14,865,000	1,800,418	16,665,418	16,665,419
1998	13,380,000	1,008,193	14,388,193	14,388,194
1999	8,640,000	368,931	9,008,931	9,008,931
2000	2,531,000	69,081	2,600,081	2,600,081
June 30, 1983	$946,183,000	$345,908,754	$1,292,091,754	$592,428,304

3-17-83 AOR

Alaska State Legislature
House of Representatives

P.O. BOX 2716
ANCHORAGE, ALASKA 99510
(907) 276-4506

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4939

REPRESENTATIVE JERRY WARD
DISTRICT 13

MEMBER FINANCE COMMITTEE
CHAIRMAN OF SUBCOMMITTEE ON
COMMERCE & ECONOMIC DEVELOPMENT
CHAIRMAN OF SUBCOMMITTEE ON LABOR
MEMBER OF SUBCOMMITTEE ON STATE LOANS

March 14, 1983

The Honorable Al Adams
Chairman, House Finance Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: House Bill 161

Dear Mr. Chairman:

I would like to take this opportunity to respond to points raised by the Department of Revenue in their position paper regarding HB 161.

In reply to questions raised concerning the temporary nature of this bill and concerning the issue of dedicated funds, I enclose a copy of comments of Billy G. Berrier, Director, Division of Legal Services, Legislative Affairs Agency. I feel that his comments and the copy of the opinion from the Attorney General adequately address the legal questions raised.

The Department finds a problem in the fact that once the fund is established these monies are no longer available for appropriation. Since this bill affects only this years Permanent Fund income and that income will not be available to future legislatures no matter where it is appropriated this year, I fail to see the problem.

The Department also chooses to view this bill as showing a surplus of funds which will add to the "lower 48" misconception of Alaska. I view this bill as having the opposite effect of showing that the State is willing to adopt a conservative financial policy by arranging for payment of debts.

I appreciate this opportunity to support passage of this bill.

Yours very truly,

Jerry Ward

Jerry Ward
State Representative

Introduced: 2/4/83
Referred: State Affairs and
Finance

IN THE HOUSE BY WARD AND LISKA

HOUSE BILL NO. 161

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a defeasance fund in the Department of Revenue for the purpose of retiring state general obligation debt; transferring a portion of the income of the Alaska permanent fund to the defeasance fund; and providing for an effective date."

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

* Section 1. The defeasance fund is established in the Department of Revenue for the purpose of retiring state general obligation debt incurred before May 2, 1978. The commissioner of revenue shall administer the defeasance fund and shall use money in the fund to retire state general obligation debt as that debt matures and becomes due. The commissioner of revenue may invest money in the defeasance fund in investments authorized for the Alaska permanent fund under AS 37.13.120.

* Sec. 2. Notwithstanding AS 37.13.145 and AS 43.23.045(b), on July 1, 1983, $377,500,000 shall be transferred from the Alaska permanent fund net income, as defined in AS 37.13.140, for the state fiscal year ending June 30, 1983, to the defeasance fund established by sec. 1 of this Act. If there is a balance of Alaska permanent fund net income remaining for the state fiscal year ending June 30, 1983 after the transfer required by this section, that balance shall be transferred to the principal of the Alaska permanent fund for reinvestment. If there is insufficient net income of the Alaska permanent fund to make the transfer required by this section in full, the balance of the transfer shall be made on July 1, 1984.

* Sec. 3. The defeasance fund established by sec. 1 of this Act

terminates on July 1, 2001. Money or other assets remaining in the defeasance fund on July 1, 2001 shall lapse into the general fund.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

COMMITTEE REPORT
SENATE

FURTHER:

5/20/83

Date: 6/16/83

Mr. President:

The Committee on FINANCE has had CS SSHB 165(SA) am

Relating to the Public Offices Commissions.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[✓] replace with CS for CS For SSHB 165(Fin) [✓] same title [ ] new title

and recommends Do Pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note
@ FN 3/4/83

[ ] reports it back without recommendation

[ ] referred to the ______________ Committee

MEMBERS SIGNING
DO PASS

[illegible signatures]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[illegible] (No Rec.)

[signature]
CHAIRMAN
Do Pass

HB 165

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 165 Date on Bill: 02/04/83
Title: "An Act relating to reports to the Public Offices Commission"
Sponsor: Uehling, Barnes, Bussell, Cowdery, Furnace, Ward and Herrmann
Requestor:

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating								
Total			0	0	0	0		

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor.

Prepared By: Theda S. Pittman Theda S. Pittman /sjw Phone:
Division: Alaska Public Offices Commission Date: March 4, 1983

Approved by Commissioner: Lisa Rudd Rebecca Brandt for the Commissioner Date: March 4, 1983
Department: Administration

5. Distribution:
Original to Legislative Finance
Copy to OMB
Copy to Sponsor
Copy to Requestor

2/8/83

Bradley
5/23/83

Original sponsors: Uehling, Barnes,
Bussell, et al

IN THE HOUSE BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 165 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Public Offices Commission."

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

* Section 1. AS 15.13.040(a) is amended to read:

(a) Each candidate shall make a full report, upon a form prescribed by the commission, listing the date and amount of all expenditures made by the candidate, the total amount of all contributions, including all funds contributed by the candidate [HIMSELF], and for all contributions in excess of $250 [$100] in the aggregate a year, the name, address, principal occupation, and employer of the contributor and the date and amount contributed by each contributor. The report shall be filed in accordance with AS 15.13.110 and shall be certified as correct under AS 15.13.060(a) [BY THE CANDIDATE OR CAMPAIGN TREASURER].

* Sec. 2. AS 15.13.040(b) is repealed and reenacted to read:

(b) Each group shall make a full report, upon a form prescribed by the commission, listing the date and amount of all expenditures made by the group, the total amount of all contributions, and for all contributions in excess of $250 in the aggregate a year, the name, address, principal occupation, and employer of the contributor and the date and amount contributed by each contributor. The report shall be filed in accordance with AS 15.13.110 and shall be certified as correct under AS 15.13.060(a).

* Sec. 3. AS 15.13.040(d) is amended to read:

(d) Every individual or [,] person and every [OR] group that is

not required to register under AS 15.13.050 [MAKING A CONTRIBUTION OR EXPENDITURE] shall make a full report, upon a form prescribed by the commission, of the following contributions or expenditures:

(1) any contribution of cash, goods or services valued at more than $250 [$100] a year to any group or candidate; or

(2) any independent expenditure [WHATSOEVER] for advertising in newspapers, on radio or on television [;] or [,] for the publication, distribution or circulation of brochures, flyers, or other campaign material for or against any candidate, [OR] ballot proposition or question.

* Sec. 4. AS 15.13.040 is amended by adding a new subsection to read:

(g) As used in this section, an "independent expenditure" is a disbursement of funds made to support or oppose the election of a candidate or the passage of a ballot proposition or question not made with the cooperation, consent, or at the request of a candidate, a campaign committee or controlled group of a candidate, or a group that is supporting or opposing the candidate or ballot proposition or question for which the funds are disbursed.

* Sec. 5. AS 15.13.060(a) is amended to read:

Sec. 15.13.060. CAMPAIGN OFFICERS [TREASURERS]. (a) Each candidate may and each group shall appoint a campaign chairman. Each candidate may and each group shall appoint a campaign treasurer. The candidate, the campaign chairman or the campaign treasurer of a candidate, and the campaign chairman or the campaign treasurer of a group may certify [WHO IS RESPONSIBLE FOR RECEIVING, HOLDING, AND DISBURSING ALL CONTRIBUTIONS AND EXPENDITURES, AND FOR FILING] all reports and statements required by law. The campaign chairman and the campaign treasurer may be the same individual. A candidate who does not appoint a campaign chairman is the campaign chairman. A candidate who

does not appoint a campaign treasurer is the campaign treasurer. [A CANDIDATE MAY BE A CAMPAIGN TREASURER.]

* Sec. 6. AS 15.13.060(b) is amended to read:

(b) Each group shall file the name and the address of its campaign chairman and its campaign treasurer with the commission at the time it registers with the commission under AS 15.13.050.

* Sec. 7. AS 15.13.060(c) is repealed and reenacted to read:

(c) An individual may not act as either a campaign chairman or a campaign treasurer of a candidate for state or for municipal office until the candidate has filed the name and the address of the campaign chairman or the campaign treasurer with the commission.

* Sec. 8. AS 15.13.060(d) is amended to read:

(d) In the case of the death, resignation or removal of a campaign chairman or a campaign treasurer of a group, the group [CANDIDATE] shall appoint a successor as soon as practicable and file the [HIS] name and address with the commission within 48 hours of the appointment. [THE CANDIDATE IS DISQUALIFIED WHEN HE HAS BEEN FOUND TO HAVE BEEN IN WILFUL VIOLATION OF THIS SUBSECTION].

* Sec. 9. AS 15.13.060(e) is amended to read:

(e) A campaign treasurer may appoint as many deputy campaign treasurers as the campaign treasurer [HE] considers necessary. The campaign treasurer [CANDIDATE] shall file the names and addresses of the deputy campaign treasurers with the commission.

* Sec. 10. AS 15.13.060(f) is amended to read:

(f) A [THE] candidate is responsible for the performance of the campaign chairman and of the [HIS] campaign treasurer and a campaign treasurer of a candidate or of a group is responsible for the performance of the deputy campaign treasurers [, AND ANY DEFAULT OR VIOLATION BY THE TREASURER ALSO SHALL BE CONSIDERED A DEFAULT OR VIOLATION

BY THE CANDIDATE IF HE KNEW OR HAD REASON TO KNOW OF THE DEFAULT OR VIOLATION].

* Sec. 11. AS 15.13.060 is amended by adding a new subsection to read:

(g) Contributions to a candidate may be received and expenditures of a candidate may be made only by the candidate, the campaign chairman, the campaign treasurer, or a deputy campaign treasurer of the candidate. Contributions to a group may be received and expenditures of a group may be made only by the campaign chairman, campaign treasurer, or a deputy campaign treasurer of the group.

* Sec. 12. AS 15.13.070(b) is amended to read:

(b) No contribution over $250 [$100] may be made in cash or by cash payment and it may not be accepted by or on behalf of a candidate.

* Sec. 13. AS 15.13.070(c) is amended to read:

(c) No expenditures over $250 [$100] may be made in cash or by cash payment unless a written receipt is obtained and filed with the commission.

* Sec. 14. AS 15.13.110(a) is amended to read:

(a) Each candidate and group shall make a full report in accordance with AS 15.13.040 during the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report, or, if a first report, all contributions received and expenditures made before three days before the due date of the report. The report shall be certified under AS 15.13.-060(a) and filed at the following times:

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) 10 [TEN] days after the election; and

(4) 15 days after the end [DECEMBER 31] of each year for expenditures and contributions received which were not reported that year.

* Sec. 15. AS 15.13.110(b) is amended to read:

(b) Each contribution [OR EXPENDITURE] which exceeds $500 [$250] and which is received [MADE] within nine days [ONE WEEK] of the election shall be reported to the commission by date, amount, and contributor [OR RECIPIENT] within 48 [24] hours of receipt [OR EXPENDITURE] by a campaign officer described in AS 15.13.060(a) [THE CANDIDATE OR CAMPAIGN TREASURER].

* Sec. 16. AS 15.13.110(c) is amended to read:

(c) The reports of a campaign officer described in AS 15.13.060(a) [CANDIDATES] shall be filed with the commission's central office. All reports required by this chapter shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

* Sec. 17. AS 39.50.030 is amended by adding a new subsection to read:

(d) A public official, a candidate for state elective office, or a candidate for elective municipal office who is licensed under AS 08.36, AS 08.42, AS 08.64, AS 08.80, or AS 08.98 is not required to report the names of patients or clients of the public official or candidate or the names of patients or clients of an entity that is a source of income to the public official or candidate.

* Sec. 18. AS 39.50.200(a)(1) is amended to read:

(1) "public official" means a judicial officer, a member of the legislature, the fiscal analyst of the legislative finance

division, the legislative auditor of the legislative audit division, the executive director of the Legislative Affairs Agency and the directors of the divisions within the Legislative Affairs Agency, the governor, the lieutenant governor, a person hired or appointed as the head or deputy head of, or director of a division within, a department in the executive branch, an assistant to the governor, chairman or member of a state commission or board, and each appointed or elected municipal officer;

* Sec. 19. AS 15.13.040(c) and AS 15.13.070(f) and (g) are repealed.

Offered: 4/7/83
Referred: Judiciary

Original sponsors: Uehling, Barnes, Bussell, et al

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 165 (State Affairs) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Public Offices Commission."

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

* Section 1. AS 15.13.040(a) is amended to read:

(a) Each candidate shall make a full report, upon a form prescribed by the commission, listing the date and amount of all expenditures made by the candidate, the total amount of all contributions, including all funds contributed by the candidate [HIMSELF], and for all contributions in excess of <u>$250</u> [$100] in the aggregate a year, the name, address,[PRINCIPAL OCCUPATION, AND EMPLOYER OF THE CONTRIBUTOR] and the date and amount contributed by each contributor. The report shall be filed in accordance with AS 15.13.110 and shall be certified <u>as</u> correct <u>under AS 15.13.060(a)</u> [BY THE CANDIDATE OR CAMPAIGN TREASURER].

* Sec. 2. AS 15.13.040(b) is repealed and reenacted to read:

(b) Each group shall make a full report, upon a form prescribed by the commission, listing the date and amount of all expenditures made by the group, the total amount of all contributions, and for all contributions in excess of $250 in the aggregate a year, the name, address, and the date and amount contributed by each contributor. The report shall be filed in accordance with AS 15.13.110 and shall be certified as correct under AS 15.13.060(a).

* Sec. 3. AS 15.13.040(d) is amended to read:

(d) Every individual <u>or</u> [,] person <u>and every</u> [OR] group <u>that is not required to register under AS 15.13.050</u> [MAKING A CONTRIBUTION OR

EXPENDITURE] shall make a full report, upon a form prescribed by the commission, of the following contributions or expenditures:

(1) any contribution of cash, goods or services valued at more than $250 [$100] a year to any group or candidate; or

(2) any independent expenditure [WHATSOEVER] for advertising in newspapers, on radio or on television [;] or [,] for the publication, distribution or circulation of brochures, flyers, or other campaign material for or against any candidate, [OR] ballot proposition or question.

* Sec. 4. AS 15.13.040 is amended by adding a new subsection to read:

(g) As used in this section, an "independent expenditure" is a disbursement of funds made to support or oppose the election of a candidate or the passage of a ballot proposition or question not made with the cooperation, consent, or at the request of a candidate, a campaign committee or controlled group of a candidate, or a group that is supporting or opposing the candidate or ballot proposition or question for which the funds are disbursed.

* Sec. 5. AS 15.13.060(a) is amended to read:

Sec. 15.13.060. CAMPAIGN OFFICERS [TREASURERS]. (a) Each candidate may and each group shall appoint a campaign chairman. Each candidate may and each group shall appoint a campaign treasurer. The candidate, the campaign chairman or the campaign treasurer of a candidate, and the campaign chairman or the campaign treasurer of a group may certify [WHO IS RESPONSIBLE FOR RECEIVING, HOLDING, AND DISBURSING ALL CONTRIBUTIONS AND EXPENDITURES, AND FOR FILING] all reports and statements required by law. The campaign chairman and the campaign treasurer may be the same individual. A candidate who does not appoint a campaign chairman is the campaign chairman. A candidate who does not appoint a campaign treasurer is the campaign treasurer. [A

CANDIDATE MAY BE A CAMPAIGN TREASURER.]

* Sec. 6. AS 15.13.060(b) is amended to read:

(b) Each group shall file the name and the address of its campaign chairman and its campaign treasurer with the commission at the time it registers with the commission under AS 15.13.050.

* Sec. 7. AS 15.13.060(c) is repealed and reenacted to read:

(c) An individual may not act as either a campaign chairman or a campaign treasurer of a candidate for state or for municipal office until the candidate has filed the name and the address of the campaign chairman or the campaign treasurer with the commission.

* Sec. 8. AS 15.13.060(d) is amended to read:

(d) In the case of the death, resignation or removal of a campaign chairman or a campaign treasurer of a group, the group [CANDIDATE] shall appoint a successor as soon as practicable and file the [HIS] name and address with the commission within 48 hours of the appointment. [THE CANDIDATE IS DISQUALIFIED WHEN HE HAS BEEN FOUND TO HAVE BEEN IN WILFUL VIOLATION OF THIS SUBSECTION].

* Sec. 9. AS 15.13.060(e) is amended to read:

(e) A campaign treasurer may appoint as many deputy campaign treasurers as the campaign treasurer [HE] considers necessary. The campaign treasurer [CANDIDATE] shall file the names and addresses of the deputy campaign treasurers with the commission.

* Sec. 10. AS 15.13.060(f) is amended to read:

(f) A [THE] candidate is responsible for the performance of the campaign chairman and of the [HIS] campaign treasurer and a campaign treasurer of a candidate or of a group is responsible for the performance of the deputy campaign treasurers [, AND ANY DEFAULT OR VIOLATION BY THE TREASURER ALSO SHALL BE CONSIDERED A DEFAULT OR VIOLATION BY THE CANDIDATE IF HE KNEW OR HAD REASON TO KNOW OF THE DEFAULT OR

VIOLATION].

* Sec. 11. AS 15.13.060 is amended by adding a new subsection to read:

(g) Contributions to a candidate may be received and expenditures of a candidate may be made only by the candidate, the campaign chairman, the campaign treasurer, or a deputy campaign treasurer of the candidate. Contributions to a group may be received and expenditures of a group may be made only by the campaign chairman, campaign treasurer, or a deputy campaign treasurer of the group.

* Sec. 12. AS 15.13.070(b) is amended to read:

(b) No contribution over $250 [$100] may be made in cash or by cash payment and it may not be accepted by or on behalf of a candidate.

* Sec. 13. AS 15.13.070(c) is amended to read:

(c) No expenditures over $250 [$100] may be made in cash or by cash payment unless a written receipt is obtained and filed with the commission.

* Sec. 14. AS 15.13.110(a) is amended to read:

(a) Each candidate and group shall make a full report in accordance with AS 15.13.040 during the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report, or, if a first report, all contributions received and expenditures made before three days before the due date of the report. The report shall be certified under AS 15.13.-060(a) and filed at the following times:

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) 10 [TEN] days after the election; and

(4) 15 days after the end [DECEMBER 31] of each year for expenditures and contributions received which were not reported that year.

* Sec. 15. AS 15.13.110(b) is amended to read:

(b) Each contribution [OR EXPENDITURE] which exceeds $500 [$250] and which is received [MADE] within nine days [ONE WEEK] of the election shall be reported to the commission by date, amount, and contributor [OR RECIPIENT] within 48 [24] hours of receipt [OR EXPENDITURE] by a campaign officer described in AS 15.13.060(a) [THE CANDIDATE OR CAMPAIGN TREASURER].

* Sec. 16. AS 15.13.110(c) is amended to read:

(c) The reports of a campaign officer described in AS 15.13.060(a) [CANDIDATES] shall be filed with the commission's central office. All reports required by this chapter shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

* Sec. 17. AS 15.13.040(c) and AS 15.13.070(f) and (g) are repealed.

STATE OF ALASKA
THE LEGISLATURE

COPY

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M May 5, 1983

SUBJECT: Public Offices Commission
(CSSSHB 165 (State Affairs) am)

TO: Representative Rick Uehling

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, I must advise you that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill; the bill itself is the best statement of its contents. For a full explanation of any point, please consult the bill itself; if you would like an interpretation of the bill as it may apply to a particular set of circumstances, please address a specific request to this office.

The substantive provisions of the bill amend three sections of AS 15.13: sec. 40 (which requires certain contributions and expenditures to be reported), sec. 60 (which deals with responsibilities of campaign officers), and sec. 110 (which deals with with the timing of certain reports). The amendments to sec. 70 contained in the bill are essentially conforming amendments, conforming the provisions of sec. 70 to the changes made in sec. 40.

Section 1 amends AS 15.13.040(a). It requires the reporting of contributions in excess of $250 (in place of the former $100). The requirement that the "principal occupation and employer of the contributor" be identified is repealed. In place of the former requirement that the report be certified "by the candidate or campaign treasurer" the amendment requires that the report be certified "under AS 15.-13.060(a)"; this latter section is discussed below.

Section 2 repeals and reenacts AS 15.13.040(b); as written it incorporates sec. 40(c) which is repealed in sec. 17. Sec. 40(c) was repealed as a separate subsection to make the provisions of (b) (as rewritten) parallel to sec. 40(a). For your information, the two subsections now read as follows:

> (b) Each group shall make a full report upon a form prescribed by the commission, listing
>
> (1) the name and address of each officer and director;
>
> (2) the aggregate amount of all contributions made to it; and, for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and
>
> (3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.
>
> (c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

The existing requirements of sec. 40(b)(1): that a group provide the name and address of each officer and director -- is deleted because sec. 60(a) as amended requires the identification of the group's campaign chairman and campaign treasurer. Consistently with the floor amendment to sec. 40(a), the requirement that the "principal occupation and employer of contributor" in sec. 40(b)(2) is repealed. The provisions of sec. 40(b) (group responsibilities) are then parallel to sec. 40(a) (candidate responsibilities).

As suggested, sec. 40(c) is repealed in sec. 17.

Section 3 amends AS 15.13.040(d). The amendment to sec. 40(d) is intended to address a problem that has concerned the commission since its establishment but which the law did not address. That problem relates to the fact that two different kinds of groups exist. An "ad hoc" group, formed only for the purposes of a particular campaign or for the support of a particular candidate is the first kind of

group and sec. 50 governs the activities of this group. The second kind of group is exemplified by the League of Women Voters, a preexisting organization that is not organized for political campaign purposes but that engages to some extent in a campaign. The latter kind of organization is the kind described in the new phrase: a "group that is not required to register under AS 15.13.050"; that kind of group is required only to report the particular kind of campaign activity specified in sec. 40(d)(1) or (2). The latter kind of group is analogous to the individual making the same kinds of contributions or expenditures; identical report are required from each.

Section 4 adds a new subsection (g) to AS 15.13.040. The concept of an "independent expenditure" was introduced in sec. 40(d)(2); the term is defined in sec. 40(g) and I believe the definition should be clear. The activity of the second kind of "group" described in the comments to sec. 40(d) insofar as the commission is concerned will usually be an "independent expenditure."

Section 5 amends AS 15.13.060(a). It recaptions the section as "CAMPAIGN OFFICERS" in place of "CAMPAIGN TREASURERS." Under existing law, I believe that the only reference to a campaign chairman is located in AS 15.13.090, "IDENTIFICATION OF COMMUNICATIONS." Though that section imposes responsibilities on a campaign chairman, existing law does not require the appointment of a campaign chairman or require the identification of a campaign chairman to the commission.

The amendments provide that a candidate may appoint a campaign chairman and a campaign treasurer; if a candidate fails to make the appointments, the candidate "is" the campaign chairman or campaign treasurer, as appropriate, or both. A group (that is required to register under AS 15.13.050) shall appoint both a campaign chairman and campaign treasurer.

A campaign chairman and a campaign treasurer (of either a candidate or of a group) may be the same individual.

The amendment to sec. 60(a) makes clear that the "candidate, the campaign chairman or campaign treasurer of a candidate, and the campaign chairman and the campaign treasurer of a group" may certify all reports and statements required by law; by inference, no one else may.

Section 6 amends AS 15.13.060(b). The provision provides that each group (that is required to report under AS 15.-13.050) shall file the name and the address of the campaign chairman and the campaign treasurer with the commission when it registers. (Sec. 60(a) provides that one individual may fill both positions.)

Section 7 repeals and reenacts AS 15.13.060(c). It provides that an individual may not act as campaign chairman or campaign treasurer of a candidate for state or local office until the candidate has filed the name and address with the commission; the language as changed simplifies the existing provision which provides:

> (c) Each candidate for state office shall file the name and address of the campaign treasurer with the commission, or submit, in writing, the name and address of the campaign treasurer to the director for filing with the commission, no later than 15 days after the date of filing the declaration of candidacy or the nominating petition. Each candidate for municipal office shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing the declaration of candidacy or the nominating petition. If the candidate does not designate a campaign treasurer, the candidate is the campaign treasurer.

Section 8 amends AS 15.13.060(d). The section makes several changes to the existing provision. It acknowledges that the office of campaign chairman exists. It implicitly acknowledges that only a group must have officers; if the appointed officers of a candidate resign or are otherwise removed, the candidate assumes the responsibilities until new appointments are made. And it usefully deletes the sentence

> The candidate is disqualified when he has been found to have been in wilful violation of this subsection.

Section 9 amends AS 15.13.060(e). It permits, as under existing law, the campaign treasurer to appoint as many deputy campaign treasurers as the campaign treasurer considers necessary. But it changes the existing law that requires the candidate to advise the commission of the appointments; the amendment puts the burden of advice to the commission on appointments on the person exercising the position of campaign treasurer.

Section 10 amends AS 15.13.060(f). Nothing except a few dangling phrases remain from existing law; as amended the section provides that (1) a candidate is responsible for the performance of the campaign chairman and the campaign treasurer; and (2) the campaign treasurer of a candidate or of a group is responsible for the performance of deputy campaign treasurers. The complicated and essentially unenforceable bit about defaults and violations and "knew or has reason to know" is repealed.

Section 11 adds a new AS 15.13.060(g). It is quite clear; its purpose is to make clear who can (and cannot) do the acts that are critical to the role of the commission.

Sections 12 and 13 amend AS 15.13.070(b) and (c). The changes make the provisions of the law consistent with the changes made in AS 15.13.040(a) and (b).

Section 14 amends AS 15.13.110(a). The first change provides that the reports filed under this section will be certified under sec. 60(a).

The time that a report is to be filed under this section is changed in one instance: In place of the former December 31 report (which was supposed to include information through the date of the report), the amendment requires that the report be filed "15 days after the end of the year" for expenditures and contributions not reported that year. A more orderly reporting system should result.

Section 15 amends AS 15.13.110(b). It deletes the concept of "expenditures" from the section; as I understand the commission's position, the section does not really apply to expenditures.

It changes three thresholds for the special reports required for the "larger" contributions made immediately before an election -- (1) it will apply to contributions that exceed $500 (in place of the former $250); (2) that are made within nine days of the election (in place of the former one week; and (3) it will require the report to the commission within 48 hours from receipt of the contribution (in place of the former 24 hours). It also changes the reporting officers to acknowledge the changes made in sec. 60(a).

Section 16 amends AS 15.13.110(c). The change acknowledges the changes made in sec. 60(a).

Section 17 repeals AS 15.13.040(c) [which is set out above] as well as repealing AS 15.13.070(f) and (g). The latter provisions have been a dead letter since enactment because of a U.S. Supreme Court decision. For your information they provide:

> (f) The total amount of expenditures made by a candidate and by all groups operating under his control may not exceed (1) 40 cents times the total population of the state according to the latest United States census figures, or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs, if the candidacy is for governor or lieutenant governor, of which amount no more than 50 per cent may be spent in a primary election campaign and no more than 50 per cent in the general election campaign; (2) $1 times the total population of the geographical area of the constituency according to the latest United States census figures, or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs, divided by the number of seats in the senate district if the candidacy is for the state senate; (3) $1 times the total population of the geographical area of the constituency according to the latest United States census figures, or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs, divided by the number of seats in the house district if the candidacy is for the state house of representatives. The expenditure limitations in this section include expenditures for both a primary and a general election campaign, or for a special election.
>
> (g) Each general election year the commission shall adjust the campaign expenditure limitations for each category of (f) of this section to reflect cost-of-living changes as determined and published by the Bureau of Labor Statistics of the United States Department of Labor.

No effective date provision is added; it will take effect 90 days after approval by the governor or 90 days after it becomes law without the approval of the governor.

If I may be of further assistance, please advise.

RAB:ljb
17/033

CSSSHB 165(SA) am
POSITION PAPER

CSSSHB 165(SA) am raises the reporting threshold (from $100 to $250) for disclosure of contributors' names to ease reporting burdens without sacrificing the intent of disclosure. It also clarifies the roles of campaign chairman, treasurer, and deputy treasurer, as well as the nature of an independent expenditure. Language on expenditure limitations similar to that which has been determined to be unconstitutional by a U.S. Supreme Court decision is repealed.

As amended on the floor of the House, the bill has one major defect -- the floor amendment which deleted (for candidates only) the requirement to disclose a contributor's occupation and employer -- which is destrctive to the purpose of disclosure as discussed on attachment A. Restoration of that requirement on page 1, line 14 is requested. The requirement is an effort for the group or candidate's campaign, but it is one which can be reasonably complied with as indicated by the guidelines -- especially in light of the change in the threshold from $100 to $250.

The Commission actively supported the $250 threshold in 1982 in recognition of the fact that campaign disclosure reporting must strike a realistic balance between the public's right to information and the reporting burden on candidates and groups. In supporting the revision to $250, the Commission noted both the ever-increasing average size of campaigns and the broad spread of campaign size. On the state level, (see attachment B), there's a very even distribution of campaigns in the upper middle range. On the municipal level, the bulk of the candidates spend next to nothing and those who spend minimum amounts rely on their own personal funds.

Recently the Commission reviewed its proposal for the $250 threshold relative to municipal campaigns. An individual in Fairbanks and one in Ketchikan expressed the concern that $100 is still a significant contribution on the municipal level and asked whether the proposal could be modified to provide a $100 threshold on the municipal level and a $250 threshold on the state level. In looking at municipal campaign levels in 1982, 380 candidates received a total of $475,000; of that amount an estimated $50,000 was in contributions between $100 and $250. With the exception of the 4-5 largest municipalities (in which the controversial campaigns are spending money at levels equivalent to House campaigns), overall spending is so modest, and the confusion inherent in having two different levels sufficient, that the Commission continues to support one threshold of $250 for all campaigns.

Department of Administration

_____
Commissioner Date

Alaska Public Offices Commission

_____
Executive Director Date