

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

CSHB 127 cont., HB 132, CSHB 132 274 B 74

MEMORANDUM

State of Alaska

TO: Jay Hogan, Director
Office of Management & Budget
Office of the Governor

DATE: November 17, 1986

FILE NO:

TELEPHONE NO:

465-3603

FROM:


Harold M. Brown
Attorney General

SUBJECT:

Request for appropriation to settle Southwest Region School District challenge to distribution of state aid to school districts

I. INTRODUCTION

The Alaska Department of Education (ADOE) has entered an agreement, contingent upon legislative appropriation of \$350,000, for settlement of a federal administrative appeal brought by Southwest Region School District (SWRSD) challenging the state's consideration of federal impact aid payments when it allocates state aid to local school districts. The agreement settles only SWRSD's challenge to the distribution of state aid to school districts for Alaska fiscal year 1985 (FY 85). Further challenges may be expected to the distribution of state aid for FY 86 and FY 87. This memorandum outlines the background of the challenge and the department's reasons for entering a settlement agreement. It is written as a request to you to include in the governor's funding requests to the legislature an appropriation of sufficient funds to implement the settlement agreement.

II. BACKGROUND

Under P.L. 81-874, as amended, the federal government provides financial assistance, commonly known as federal impact aid, to local school districts which are impacted by federal activities potentially affecting their ability to raise local revenues. The main such activity is federal ownership, and in Alaska, Indian ownership of property, such that the property is removed from the local tax base which would otherwise be available to support schools. The states are prohibited from considering the federal impact aid received by local districts in determining the amount of state aid allocated to them unless the state has in effect a school aid program which meets certain equalization criteria established by federal regulations. 20 U.S.C. § 240(d)(2).

If the U.S. Secretary of Education finally determines, after appropriate administrative procedures, that a state has

taken federal aid into consideration in violation of that prohibition, the Secretary must terminate all federal impact aid to that state, unless the state restores all state aid wrongfully denied to local agencies. This case involves a claim by SWRSD that Alaska has taken its impact aid funds into consideration in violation of that prohibition. If the district were to prevail, the state would need to restore possibly as much as \$27 million or more in state aid withheld from rural educational attendance areas (REAA's) in FY 85. In the attached settlement agreement, SWRSD has agreed to drop its claim in consideration of payment of \$350,000. Thus, \$350,000 in settlement may extinguish a potential liability many times greater.

Briefly, the state may not "consider" impact aid when allocating state aid unless it has "in effect a program of state aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local education agencies of that state" 20 U.S.C. § 240(d)(2)(A).

The term "equalize expenditures," as used in 20 U.S.C. § 240(d)(2) is defined in the attached regulations at 34 C.F.R. § 222.61(d)(2), § 222.62 and § 222.62(c) provides that, in order to "equalize expenditures," the state program must provide that "in determining the amount to be provided to each local agency in the State, the State will take into consideration the relative financial resources available to local educational agencies in that State for the program." 34 C.F.R. § 222.62(d) provides that the program must meet one of the following standards: a "disparity" standard, defined at 34 C.F.R. § 222.63; a "wealth neutrality" standard, defined at 34 C.F.R. § 222.64; or an "exceptional circumstances" standard, defined at 34 C.F.R. § 222.65. Either current year data, in this case FY 85 data, or prior year data, in this case FY 84 data, can be used to satisfy the tests, provided the state aid program did not change substantially between years.

A. Relative Financial Resources

SWRSD argues that the state did not consider the relative financial resources available to the local school districts in FY 85 because the interim funding mechanism for that year, ch. 127, SLA 1984, provided only for a flat dollar amount per student in each district, with no consideration of the local contribution or local ability to contribute by each district. The state contends that the dollar amounts in the above statute were arrived at by considering local contributions in the year before the foundation program was suspended, 1982. Although municipal

school districts were not required to make local contributions to education in 1982, most of them did. Moreover, the Supplemental Equalization Aid provided under AS 14.17.023, which was taken into consideration in setting the interim per student funding levels, was reduced by the amount of local contributions in FY 1982 or FY 1979, whichever was higher. In 1979, Alaska statutes required a local contribution from municipal districts, although not from REAA's. Thus, perhaps indirectly, local ability was considered by the state in setting FY 1985 aid levels.

B. Disparity Test

SWRSD contends that the state fails the disparity test set forth in 34 C.F.R. § 222.63 because, if area cost of living adjustments under former AS 14.17.051 are excluded from the basic need portion of foundation payments under 34 C.F.R. § 222.63(d)(1), so also should the area adjustments under the supplemental equalization aid program, former AS 14.17.023, be excluded. The state contends that such exclusion is not required because: (a) 34 C.F.R. § 222.63(d) speaks only to what revenues must be included in disparity calculations, and does not require exclusion of any revenues; and (b) 34 C.F.R. § 222.63(d)(1) only excepts cost differentials outside the equalized part of the state aid program, whereas we believe the supplemental equalization aid program is within the equalized part. If the cost differentials are excluded from the basic need portion, but not from the supplemental equalization aid portion, we believe the disparity standard is met.

Moreover, even if cost differentials must be excluded from supplemental equalization aid under 34 C.F.R. § 263(d)(1), we believe the disparity test is met if 34 C.F.R. § 263(d)(3) is interpreted to require inclusion not only of that portion of federal impact aid payments the state actually took into consideration in allocating state aid, but also that portion which the state could have taken into consideration but didn't. Although the U.S. Department of Education has apparently not so interpreted that regulation in the past, that seems to be the literal meaning of the words.

C. Wealth Neutrality Test

Although the state believes that at least 85 percent of total state and local revenues for FY 84 and FY 85 are "wealth neutral" as that term is defined in 34 C.F.R. § 222.64(b), both SWRSD and the federal government have questioned whether the "wealth neutrality" standard can be applied in a state such as Alaska without a required local tax effort. The rules of

application and the examples given in 34 C.F.R. § 222.64(c) seem to contemplate a required local mill levy.

D. "Exceptional Circumstances" Test

Even if Alaska did not qualify to take federal aid into account under the disparity or wealth neutrality tests, we believe the state would qualify under the "Exceptional Circumstances" test of 34 C.F.R. § 222.65. There is some doubt on that point, however, especially on the issue of whether Alaska has the requisite "systems and procedures for evaluating the degree to which the program is meeting its stated objectives" under 34 C.F.R. § 222.65(c)(5).

IV. DEPARTMENT OF EDUCATION'S RECOMMENDATION

Although both the Department of Education and the Department of Law believe that Alaska should ultimately prevail if we continue the litigation over FY 85 state aid, the magnitude of the loss if we fail to do so is quite large. We would either need to restore the monies withheld from REAAs in FY 85 under AS 14.17.021(b), or we would face termination of future impact aid payments to all districts in the state, and, perhaps, the impact aid payments the state receives directly. Such payments now total approximately \$60 million per year.

For the above reasons, because there is at least some possibility that SWRSB will prevail if the litigation continues, the Department of Education has entered a settlement agreement, contingent upon legislative appropriation of \$350,000 to end the district's challenge. The "window" has passed during which any other district could challenge the state's actions for FY 85, so a \$350,000 payment would extinguish a potential liability of as much as \$27 million. While the Department of Law believes we would eventually prevail if we continue this litigation, we believe the settlement agreement is reasonable and prudent.

Many of the same issues will be involved if the state is challenged in its treatment of federal impact aid for FY 86 and FY 87. Because any district may still challenge the state for those years, however, neither the Department of Education nor the Department of Law is recommending payment to SWRSB in settlement of those years at this time.

Please advise me if you have further questions regarding this matter. Unless I hear from you to the contrary, I will assume that you will make sure the appropriation requested by the Department of Education to settle this matter will be included in an appropriate appropriations bill.

HMB:TEW:jal
Enclosure

Original sponsor: Rules/Governor

Funding Information

General Fund	\$29,019,382
Other Funds	4,688,300
	<u>\$33,707,682</u>

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 127 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making supplemental appropriations for fiscal
7 year 1987 and prior fiscal years; and providing for
8 an effective date."

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

10 * Section 1. The sum of \$249,357 is appropriated from the general fund
11 to the Department of Revenue to pay claims for political campaign contribu-
12 tion credits payable under AS 43.20.013 that were filed on or before
13 June 30, 1986.

14 * Sec. 2. The sum of \$225,936 is appropriated from the general fund to
15 the Department of Revenue to pay claims for household and dependent care
16 credits (child care credits) payable under AS 43.20.013 that were filed on
17 or before June 30, 1986.

18 * Sec. 3. The sum of \$50,000 is appropriated from the general fund to
19 the Department of Revenue to compensate fish and game license vendors as
20 required under AS 16.05.390.

21 * Sec. 4. The sum of \$37,045 is appropriated from the general fund to
22 the Department of Revenue to pay the additional fiscal year 1986 sharing
23 required for the electric and telephone cooperative tax under AS 10.25.570.

24 * Sec. 5. The sum of \$212,000 is appropriated from the general fund to
25 the Department of Administration, longevity bonus program, for increased
26 longevity bonus participation.

27 * Sec. 6. The sum of \$484,100 is appropriated from the general fund to
28 the Department of Administration, public defender program, for additional
29 expenses of defending State v. John Peel.

1 * Sec. 7. The sum of \$305,800 is appropriated from the general fund to
2 the Department of Administration, Office of Public Advocacy, for costs
3 associated with increased caseload.

4 * Sec. 8. The sum of \$88,600 is appropriated from the general fund to
5 the Department of Administration, retirement and benefits program, for
6 costs associated with increased participation in the elected public offi-
7 cers retirement system.

8 * Sec. 9. The sum of \$180,029 is appropriated from the general fund to
9 the following agencies to pay miscellaneous claims and stale dated war-
10 rants:

11	Office of the Governor	\$ 4,072
12	Department of Administration	55,784
13	Department of Commerce and	
14	Economic Development	5,540
15	Department of Military and	
16	Veterans' Affairs	2,945
17	Department of Corrections	20,141
18	Department of Education	15,805
19	Department of Health and	
20	Social Services	19,023
21	Department of Public Safety	907
22	Department of Transportation and	
23	Public Facilities	42,598
24	Department of Fish and Game	13,214

25 * Sec. 10. The sum of \$1,141,600 is appropriated from the general fund
26 to the Department of Transportation and Public Facilities, Alaska Marine
27 Highway System, for the purpose of paying risk management costs.

28 * Sec. 11. The sum of \$1,778,000 is appropriated to the Department of
29 Health and Social Services to pay for costs associated with increased

1 caseloads in the aid to families with dependent children program, from the
2 following sources:

3	Federal Receipts	\$806,600
4	General Fund Match	439,000
5	Interagency Receipts	82,400
6	Child Support Enforcement	
7	Agency Receipts	450,000

8 * Sec. 12. The sum of \$511,400 is appropriated from the general fund to
9 the Department of Health and Social Services, adult public assistance
10 component, to pay for costs associated with increased caseloads in the aid
11 to disabled and the old age assistance programs.

12 * Sec. 13. The sum of \$675,500 is appropriated from the general fund to
13 the Department of Health and Social Services to pay for costs associated
14 with increased caseloads in the general relief assistance program.

15 * Sec. 14. The sum of \$231,600 is appropriated from the general fund to
16 the Department of Health and Social Services to pay for the increased
17 number of court-ordered autopsies in the post-mortem examination program.

18 * Sec. 15. The sum of \$178,000 is appropriated from the general fund to
19 the Department of Health and Social Services to pay for the shortfall of
20 third party and other federal receipts due to the lower patient count at
21 the Alaska Psychiatric Institute.

22 * Sec. 16. The sum of \$347,500 is appropriated from the general fund to
23 the Department of Health and Social Services for personal services and
24 medical costs associated with the operation of McLaughlin Youth Center.

25 * Sec. 17. The sum of \$306,900 is appropriated from the general fund to
26 the Department of Health and Social Services to pay for increased personal
27 services and support costs associated with on-going program operations and
28 opening the new wing at Fairbanks Youth Facility.

29 * Sec. 18. The sum of \$90,000 is appropriated from the general fund to

1 the Department of Health and Social Services to pay for community placement
2 in adult residential care programs for the chronically mentally ill.

3 * Sec. 19. The sum of \$5,896,400 is appropriated from the general fund
4 to the Alaska Power Authority for the settlement agreement entered into
5 between Harrison Western Corporation, d/b/a Susitna Constructors, and the
6 Alaska Power Authority based upon changes and increased costs associated
7 with construction of the Anchorage-Fairbanks Intertie.

8 * Sec. 20. The sum of \$90,000 is appropriated from the general fund to
9 the Department of Commerce and Economic Development, Office of Internation-
10 al Trade, to offset foreign office shortfalls arising from exchange rate
11 fluctuations.

12 * Sec. 21. The sum of \$239,000 is appropriated from the general fund to
13 the Department of Commerce and Economic Development for payments under the
14 fisheries enhancement tax receipt program.

15 * Sec. 22. The sum of \$390,000 is appropriated from the general fund to
16 the Department of Law for costs associated with Weiss v. State.

17 * Sec. 23. The sum of \$229,700 is appropriated from the general fund to
18 the Department of Law to pay judgments and claims against the state.

19 * Sec. 24. The sum of \$200,000 is appropriated from the general fund to
20 the Department of Law for the North Slope Borough investigations.

21 * Sec. 25. The sum of \$3,256,800 is appropriated from the general fund
22 to the Department of Natural Resources to pay for costs incurred in fire
23 suppression efforts during fiscal year 1987.

24 * Sec. 26. The sum of \$657,600 is appropriated from the general fund to
25 the Department of Natural Resources for the settlement agreement entered
26 into on July 14, 1986, between the state and Cook Inlet Region, Inc.
27 (CIRI), for rehabilitation of certain CIRI land.

28 * Sec. 27. The sum of \$95,000 is appropriated from program receipts in
29 the general fund (user fees) to the Department of Natural Resources for the

1 operation of recorders' offices for the fiscal year ending June 30, 1987.

2 * Sec. 28. The sum of \$1,124,000 is appropriated from the general fund
3 to the Department of Corrections to cover higher than anticipated major
4 medical costs for prisoners.

5 * Sec. 29. The sum of \$245,700 is appropriated from program receipts in
6 the general fund (care and treatment funds) to the Department of Correc-
7 tions, statewide programs, to pay additional costs of care for community
8 residential and restitution centers.

9 * Sec. 30. The sum of \$32,900 is appropriated from the general fund to
10 the Department of Military and Veterans' Affairs for the flood control
11 program for the fiscal year ending June 30, 1987.

12 * Sec. 31. The sum of \$81,800 is appropriated from the general fund to
13 the Office of the Governor for payment to the contingency fund.

14 * Sec. 32. The sum of \$2,500,000 is appropriated from the general fund
15 to the Department of Education to reimburse the pupil transportation pro-
16 gram for transfers made to the tuition students (\$2,300,000) and handi-
17 capped students (\$200,000) programs for the fiscal year ending June 30,
18 1987.

19 * Sec. 33. The sum of \$318,250 is appropriated from the general fund to
20 the Department of Education for payments under AS 14.17 for the multi-
21 handicapped programs for the fiscal year ending June 30, 1987.

22 * Sec. 34. The sum of \$350,000 is appropriated from the general fund to
23 the Department of Education for settlement of a December 3, 1986, federal
24 administrative appeal brought by the Southwest Region School District for
25 fiscal year 1987.

26 * Sec. 35. The sum of \$250,000 is appropriated from the general fund to
27 the Department of Administration to provide security guards, supervised and
28 administered by the Department of Public Safety, for the State Office
29 Building, the Alaska Office Building, the Dimond Courthouse, the Capitol,

1 the Community Building, and selected other state buildings in Juneau. It
2 is the intent of the legislature that the guards who provide security in
3 the Capitol during the legislative session shall be appointed as special
4 officers by the commissioner of public safety, shall have adequate prior
5 police experience or training, and shall be armed.

6 * Sec. 36. The sum of \$16,500 is appropriated from the general fund to
7 the Commission on Judicial Conduct to pay additional costs during the
8 fiscal year ending June 30, 1987.

9 * Sec. 37. The sum of \$460,000 is appropriated from the general fund to
10 the Department of Education for water and sewer system rehabilitation and
11 temporary classroom rental costs not covered by insurance, associated with
12 the Shageluk school fire.

13 * Sec. 38. The sum of \$240,200 is appropriated from the general fund to
14 the Department of Education, commission on postsecondary education, for
15 costs associated with the WICHE program.

16 * Sec. 39. The sum of \$5,885,365 is appropriated from the general fund
17 to the Department of Education for the purpose of holding harmless those
18 school districts that would otherwise lose in excess of 10 percent of their
19 foundation funding during the fiscal year ending June 30, 1987. Those
20 school districts and the sums to which they are entitled are:

21	Adak	\$ 55,281
22	Aleutian	153,027
23	Delta/Greely	161,056
24	Fairbanks	1,472,606
25	Haines	181,673
26	Juneau	6,394
27	Kenai	1,846,291
28	Ketchikan	471,166
29	Kuspuk	804,816

1	North Slope	454,478
2	Pelican	25,343
3	Pribilof	324,401
4	Sitka	135,246
5	Skagway	179,945
6	St. Mary's	113,642

7 * Sec. 40. The sum of \$300,000 is appropriated from the general fund to
 8 the Department of Law for additional costs connected with State v. Peel.

9 * Sec. 41. The sum of \$250,000 is appropriated from the general fund to
 10 the Department of Law for additional costs connected with State v. Mackay.

11 * Sec. 42. The sum of \$316,500 is appropriated from the general fund to
 12 the Department of Public Safety for contract jails during the fiscal year
 13 ending June 30, 1987, to be allocated as follows: City of Kotzebue,
 14 \$175,000; City of Kodiak, \$59,000; City of Dillingham, \$17,500; and City of
 15 Unalaska, \$65,000.

16 * Sec. 43. The sum of \$180,000 is appropriated from the general fund to
 17 the Department of Labor, office of the commissioner, for payment as a grant
 18 under AS 37.05.316 to the Western Alaska Building and Construction Trades
 19 Council for the apprentice outreach program.

20 * Sec. 44. The sum of \$28,600 is appropriated from private donation
 21 program receipts in the general fund to the Department of Education for the
 22 Rural Alaska Instructional Improvement Academy for the fiscal year ending
 23 June 30, 1987.

24 * Sec. 45. The sum of \$2,980,000 is appropriated from federal receipts
 25 to the Department of Education for the student lunch program during the
 26 fiscal year ending June 30, 1987.

27 * Sec. 46. This Act takes effect immediately under AS 01.10.070(c).

Offered: 4/21/87
Referred: Rules

wol267hB

Original sponsor: Rules/Governor

Funding Information
General Fund \$14,572,000
Other Funds 7,576,100
\$22,148,100

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26 longevity bonus participation.

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29 expenses of the John Peel case.

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14 fisheries enhancement tax receipt program.

15 * Sec. 22. The sum of \$150,000 is appropriated from the general fund to
16 the Department of Law for costs associated with Weiss v. State.

17 * Sec. 23. The sum of \$126,000 is appropriated from the general fund to
18 the Department of Law to pay judgments and claims against the state.

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20 the Department of Law for the North Slope Borough investigations.

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25 the Department of Natural Resources for the settlement agreement entered
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27 (CIRI), contingent on an opinion by the attorney general that the state is
28 legally obligated without an appropriation to compensate CIRI this amount
29 for rehabilitation of certain lands.

1 * Sec. 27. The sum of \$95,000 is appropriated from program receipts in
2 the general fund (user fees) to the Department of Natural Resources for the
3 operation of recorders' offices for the fiscal year ending June 30, 1987.

4 * Sec. 28. The sum of \$1,124,000 is appropriated from the general fund
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19 the Department of Revenue to compensate fish and game license vendors as
20 required under AS 16.05.390.
21 * Sec. 4. The sum of \$37,045 is appropriated from the general fund to
22 the Department of Revenue to pay the additional fiscal year 1986 sharing
23 required for the electric and telephone cooperative tax under AS 10.25.570.
24 * Sec. 5. The sum of \$212,000 is appropriated from the general fund to
25 the Department of Administration, longevity bonus program, for increased
26 longevity bonus participation.
27 * Sec. 6. The sum of \$484,100 is appropriated from the general fund to
28 the Department of Administration, public defender program, for additional
29 expenses of defending State v. John Peel.

1 * Sec. 7. The sum of \$305,800 is appropriated from the general fund to
2 the Department of Administration, Office of Public Advocacy, for costs
3 associated with increased caseload.

4 * Sec. 8. The sum of \$88,600 is appropriated from the general fund to
5 the Department of Administration, retirement and benefits program, for
6 costs associated with increased participation in the elected public offi-
7 cers retirement system.

8 * Sec. 9. The sum of \$180,029 is appropriated from the general fund to
9 the following agencies to pay miscellaneous claims and stale dated war-
10 rants:

11	Office of the Governor	\$ 4,072
12	Department of Administration	55,784
13	Department of Commerce and	
14	Economic Development	5,540
15	Department of Military and	
16	Veterans' Affairs	2,945
17	Department of Corrections	20,141
18	Department of Education	15,805
19	Department of Health and	
20	Social Services	19,023
21	Department of Public Safety	907
22	Department of Transportation and	
23	Public Facilities	42,598
24	Department of Fish and Game	13,214

25 * Sec. 10. The sum of \$1,141,600 is appropriated from the general fund
26 to the Department of Transportation and Public Facilities, Alaska Marine
27 Highway System, for the purpose of paying risk management costs.

28 * Sec. 11. The sum of \$1,778,000 is appropriated to the Department of
29 Health and Social Services to pay for costs associated with increased

1 caseloads in the aid to families with dependent children program, from the
2 following sources:

3	Federal Receipts	\$806,600
4	General Fund Match	439,000
5	Interagency Receipts	82,400
6	Child Support Enforcement	
7	Agency Receipts	450,000

8 * Sec. 12. The sum of \$511,400 is appropriated from the general fund to
9 the Department of Health and Social Services, adult public assistance
10 component, to pay for costs associated with increased caseloads in the aid
11 to disabled and the old age assistance programs.

12 * Sec. 13. The sum of \$675,500 is appropriated from the general fund to
13 the Department of Health and Social Services to pay for costs associated
14 with increased caseloads in the general relief assistance program.

15 * Sec. 14. The sum of \$231,600 is appropriated from the general fund to
16 the Department of Health and Social Services to pay for the increased
17 number of court-ordered autopsies in the post-mortem examination program.

18 * Sec. 15. The sum of \$178,000 is appropriated from the general fund to
19 the Department of Health and Social Services to pay for the shortfall of
20 third party and other federal receipts due to the lower patient count at
21 the Alaska Psychiatric Institute.

22 * Sec. 16. The sum of \$347,500 is appropriated from the general fund to
23 the Department of Health and Social Services for personal services and
24 medical costs associated with the operation of McLaughlin Youth Center.

25 * Sec. 17. The sum of \$306,900 is appropriated from the general fund to
26 the Department of Health and Social Services to pay for increased personal
27 services and support costs associated with on-going program operations and
28 opening the new wing at Fairbanks Youth Facility.

29 * Sec. 18. The sum of \$90,000 is appropriated from the general fund to

1 the Department of Health and Social Services to pay for community placement
2 in adult residential care programs for the chronically mentally ill.

3 * Sec. 19. The sum of \$5,896,400 is appropriated from the general fund
4 to the Alaska Power Authority for the settlement agreement entered into
5 between Harrison Western Corporation, d/b/a Susitna Constructors, and the
6 Alaska Power Authority based upon changes and increased costs associated
7 with construction of the Anchorage-Fairbanks Intertie.

8 * Sec. 20. The sum of \$90,000 is appropriated from the general fund to
9 the Department of Commerce and Economic Development, Office of Internation-
10 al Trade, to offset foreign office shortfalls arising from exchange rate
11 fluctuations.

12 * Sec. 21. The sum of \$239,000 is appropriated from the general fund to
13 the Department of Commerce and Economic Development for payments under the
14 fisheries enhancement tax receipt program.

15 * Sec. 22. The sum of \$390,000 is appropriated from the general fund to
16 the Department of Law for costs associated with Weiss v. State.

17 * Sec. 23. The sum of \$229,700 is appropriated from the general fund to
18 the Department of Law to pay judgments and claims against the state.

19 * Sec. 24. The sum of \$200,000 is appropriated from the general fund to
20 the Department of Law for the North Slope Borough investigations.

21 * Sec. 25. The sum of \$3,256,800 is appropriated from the general fund
22 to the Department of Natural Resources to pay for costs incurred in fire
23 suppression efforts during fiscal year 1987.

24 * Sec. 26.. The sum of \$657,600 is appropriated from the general fund to
25 the Department of Natural Resources for the settlement agreement entered
26 into on July 14, 1986, between the state and Cook Inlet Region, Inc.
27 (CIRI), for rehabilitation of certain CIRI land.

28 * Sec. 27. The sum of \$95,000 is appropriated from program receipts in
29 the general fund (user fees) to the Department of Natural Resources for the

1 operation of recorders' offices for the fiscal year ending June 30, 1987.

2 * Sec. 28. The sum of \$1,124,000 is appropriated from the general fund
3 to the Department of Corrections to cover higher than anticipated major
4 medical costs for prisoners.

5 * Sec. 29. The sum of \$245,700 is appropriated from program receipts in
6 the general fund (care and treatment funds) to the Department of Correc-
7 tions, statewide programs, to pay additional costs of care for community
8 residential and restitution centers.

9 * Sec. 30. The sum of \$32,900 is appropriated from the general fund to
10 the Department of 'Military and Veterans' Affairs for the flood control
11 program for the fiscal year ending June 30, 1987.

12 * Sec. 31. The sum of \$81,800 is appropriated from the general fund to
13 the Office of the Governor for payment to the contingency fund.

14 * Sec. 32. The sum of \$2,500,000 is appropriated from the general fund
15 to the Department of Education to reimburse the pupil transportation pro-
16 gram for transfers made to the tuition students (\$2,300,000) and handi-
17 capped students (\$200,000) programs for the fiscal year ending June 30,
18 1987.

19 * Sec. 33. The sum of \$318,250 is appropriated from the general fund to
20 the Department of Education for payments under AS 14.17 for the multi-
21 handicapped programs for the fiscal year ending June 30, 1987.

22 * Sec. 34. The sum of \$350,000 is appropriated from the general fund to
23 the Department of Education for settlement of a December 3, 1986, federal
24 administrative appeal brought by the Southwest Region School District for
25 fiscal year 1987.

26 * Sec. 35. The sum of \$250,000 is appropriated from the general fund to
27 the Department of Administration to provide security guards, supervised and
28 administered by the Department of Public Safety, for the State Office
29 Building, the Alaska Office Building, the Dimond Courthouse, the Capitol,

1 the Community Building, and selected other state buildings in Juneau. It
2 is the intent of the legislature that the guards who provide security in
3 the Capitol during the legislative session shall be appointed as special
4 officers by the commissioner of public safety, shall have adequate prior
5 police experience or training, and shall be armed.

6 * Sec. 36. The sum of \$16,500 is appropriated from the general fund to
7 the Commission on Judicial Conduct to pay additional costs during the
8 fiscal year ending June 30, 1987.

9 * Sec. 37. The sum of \$460,000 is appropriated from the general fund to
10 the Department of Education for water and sewer system rehabilitation and
11 temporary classroom rental costs not covered by insurance, associated with
12 the Shageluk school fire.

13 * Sec. 38. The sum of \$240,200 is appropriated from the general fund to
14 the Department of Education, commission on postsecondary education, for
15 costs associated with the WICHE program.

16 * Sec. 39. The sum of \$5,885,365 is appropriated from the general fund
17 to the Department of Education for the purpose of holding harmless those
18 school districts that would otherwise lose in excess of 10 percent of their
19 foundation funding during the fiscal year ending June 30, 1987. Those
20 school districts and the sums to which they are entitled are:

21	Adak	\$ 55,281
22	Aleutian	153,027
23	Delta/Greely	161,056
24	Fairbanks	1,472,606
25	Haines	181,673
26	Juneau	6,394
27	Kenai	1,846,291
28	Ketchikan	471,166
29	Kuspuk	804,816

1	North Slope	454,478
2	Pelican	25,343
3	Pribilof	324,401
4	Sitka	135,246
5	Skagway	179,945
6	St. Mary's	113,642

7 * Sec. 40. The sum of \$300,000 is appropriated from the general fund to
8 the Department of Law for additional costs connected with State v. Peel.

9 * Sec. 41. The sum of \$250,000 is appropriated from the general fund to
10 the Department of Law for additional costs connected with State v. Mackay.

11 * Sec. 42. The sum of \$316,500 is appropriated from the general fund to
12 the Department of Public Safety for contract jails during the fiscal year
13 ending June 30, 1987, to be allocated as follows: City of Kotzebue,
14 \$175,000; City of Kodiak, \$59,000; City of Dillingham, \$17,500; and City of
15 Unalaska, \$65,000.

16 * Sec. 43. The sum of \$180,000 is appropriated from the general fund to
17 the Department of Labor, office of the commissioner, for payment as a grant
18 under AS 37.05.316 to the Western Alaska Building and Construction Trades
19 Council for the apprentice outreach program.

20 * Sec. 44. The sum of \$28,600 is appropriated from private donation
21 program receipts in the general fund to the Department of Education for the
22 Rural Alaska Instructional Improvement Academy for the fiscal year ending
23 June 30, 1987.

24 * Sec. 45. The sum of \$2,980,000 is appropriated from federal receipts
25 to the Department of Education for the student lunch program during the
26 fiscal year ending June 30, 1987.

27 * Sec. 46. This Act takes effect immediately under AS 01.10.070(c).

HB

132

HOUSE COMMITTEE REPORT

Date referred: 2/16/87

FURTHER REFERRALS:

DATE: 5-2-87

The Finance Committee has considered HB 132

"An Act approving and ratifying restrictions on expenditures; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 132 (FIN) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]
[Signature]
[Signature] No Rec

[Signature]
 Chairman's signature

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: CS HB 132(FIN)
Publish Date: _____

REQUEST: _____
Revision Date: _____
Title: Approving and ratifying
restrictions on expenditures
Sponsor: Rules by request of Governor
Requestor: _____

Agency Affected: ALL
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Al Adams, Chair Phone: 465-3706
Division: House Finance Committee Date: 4/14/87

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 132 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act approving and ratifying executive restric-
7 tions on the fiscal year 1987 operating budget; and
8 providing for an effective date."

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

10 * Section 1. LEGISLATIVE FINDINGS, PURPOSE, AND INTENT. (a) The
11 legislature finds that

12 (1) estimated receipts and surpluses will not be sufficient to
13 cover appropriations for fiscal year 1987;

14 (2) in response to the anticipated deficit, Governor Sheffield
15 issued Administrative Order Number 90 on August 22, 1986, which restricted
16 the rate of obligation or expenditure of a number of appropriations under
17 the authority conferred by AS 37.07.080; Governor Cowper made a similar but
18 more limited reduction in Administrative Order Number 91 on December 8,
19 1986;

20 (3) the orders were in response to a fiscal crisis that was
21 facing the state;

22 (4) the orders have been challenged in court by the Fairbanks
23 North Star Borough and others, and the superior court has invalidated those
24 orders as they apply to the Fairbanks North Star Borough and the Fairbanks
25 North Star Borough School District;

26 (5) if the restrictions on the one-year appropriations for
27 fiscal year 1987 in Administrative Orders Numbers 90 and 91 are overturned
28 in full or in part, the consequences would impede rational state fiscal
29 management.

1 (b) It is the purpose of this Act to approve and ratify the orders
2 and the actions taken by the governor and the executive branch under those
3 orders and to remove any uncertainty about the status of the money with-
4 held, insofar as the orders concern the restrictions on one-year appropria-
5 tions for fiscal year 1987.

6 (c) In approving the restrictions on the one-year appropriations for
7 fiscal year 1987, the legislature intends that the unobligated portion of
8 those appropriations restricted by Administrative Orders Numbers 90 and 91
9 lapse in accordance with AS 37.25.010.

10 * Sec. 2. APPROVAL AND RATIFICATION. The actions of the governor and
11 the executive branch in restricting one-year appropriations for fiscal year
12 1987 by issuing and implementing Administrative Orders Numbers 90 and 91 as
13 reflected in the budget workbooks submitted to the legislature under
14 AS 37.07.040 and entitled "Operating Budget FY 87 Revised" are approved and
15 ratified.

16 * Sec. 3. SUSPENSION OF OTHER LAW. The provisions of sec. 2 of this
17 Act are effective notwithstanding the provisions of any other law, includ-
18 ing but not limited to AS 37.05.315, 37.05.316, and 37.05.317.

19 * Sec. 4. This Act is retroactive to July 1, 1986.

20 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Maynard

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

FAIRBANKS NORTH STAR BOROUGH, and)
FAIRBANKS NORTH STAR BOROUGH)
SCHOOL DISTRICT,)

Plaintiffs,)

vs.)

Case No. 4FA-86-2528 Ci.

STATE OF ALASKA, WILLIAM SHEFFIELD,)
Governor of the State of Alaska,)
MARSHALL LIND, Commissioner of)
Education, ELEANOR ANDREWS,)
Commissioner of Administration,)
EMIL NOTTI, Commissioner of)
Community & Regional Affairs,)
LOREN LOUNSBURY, Commissioner of)
Commerce & Economic Development,)
MILTON BARKER, Acting Commissioner)
of Revenue, all in their official)
capacities,)

Defendants.)

FILED in the Trial Courts
State of Alaska, Fourth District

APR 6 1987

Clerk, Trial Courts

By _____ Deputy

O P I N I O N

This case comes before the court on the State's motion for summary judgment and the Borough's cross-motion. The motions require the court to resolve questions of constitutional and statutory interpretation. The facts are undisputed.

In December of 1985, Governor Sheffield submitted his proposed budget for fiscal year 1987 (FY87) to the legislature. His proposal was based on the Department of Revenue's December revenue forecast, which predicted that \$2718.9 million in unrestricted funds would be available for FY87.

On March 12, 1986, the Department issued a new forecast, which projected a drop in revenue of \$641.3 million. The decline was due to sharply reduced oil prices. Revenues derived from oil comprise approximately eighty-five percent of the State's income.

The budget passed by the legislature in early June of 1986 was approximately \$400 million less than that submitted by the Governor in December. The Governor then exercised his veto power to further reduce appropriations to within \$40 million of the June revenue projection. The budget was approved with item vetoes on June 9, 1986.

On July 16, 1986, the Department of Revenue issued the June forecast, which projected a further decline of \$857.2 million, for a total projected deficit of \$897.2 million. At about the same time, the final accounting for FY86 was completed. Funds which remained unspent under the 1986 appropriations -- the unrestricted surplus -- totalled \$17.3 million. That amount lapsed back into the general fund.

To cope with the substantial projected deficit, the Governor decided to act without recalling the legislature for a special session. He announced that he would restrict the obligation of revenues set aside by appropriation for FY87. On August 22, 1986, he issued Administrative Order No. 90, which stated

that he had determined it to be in the State's best interest to withhold expenditure authority for certain appropriations.¹ His purpose was to avoid deficit spending which is prohibited by Article IX, sec. 8 of the Alaska Constitution.

Under Administrative Order No. 90, expenditure authority for different classes of appropriations was restricted by different percentages. Some appropriations were unrestricted. Appropriations which were intended to provide funds for municipalities were restricted ten percent; the ten percent restriction on those appropriations is at issue in this case.² Expenditures of appropriations for State agencies were limited by fifteen percent and those for capital projects sixty-five percent. The restrictions totalled approximately \$450 million.

The Governor based his authority to issue Administrative Order 90 on Article III, secs. 1 & 24 of the Alaska

1. On December 8, 1986, Governor Cowper issued Administrative Order No. 91 for the same purpose and under the same authority cited in Administrative Order No. 90. Governor Cowper made a ten percent actual cut in expenditures for school debt retirement.

2. Those appropriations included amounts set aside for municipal grants, school bond debt reimbursement, State shared revenue, municipal assistance, day care assistance, public school foundation account, tuition for military schools, education of youth in detention, grants for community schools and transportation.

Constitution³ and AS 37.07.080(f) and (g).⁴ The central question in this case is whether AS 37.07.080(g)(2) is constitutional.

AS 37.07.080(g)(2), a provision of the Executive Budget Act, provides that:

(g) The governor may direct the withholding or reduction of appropriations to a state agency at any time during the fiscal year only if the governor determines that

3. Art. III, sec. 1 provides that:

The executive power of the State is vested in the governor.

Art. III, sec. 24 provides that:

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

4. AS 37.07.080(f) and (g) provide as follows:

(f) The office shall report quarterly to the governor and the legislature on the operations of each state agency, relating actual accomplishments to those planned and modifying, if necessary, the operations plan of any agency for the balance of the fiscal year.

(g) The governor may direct the withholding or reduction of appropriations to a state agency at any time during the fiscal year only if the governor determines that

(1) the planned expenditures can no longer be made due to factors outside the control of the state which make the expenditure factually impossible; or

(2) estimated receipts and surpluses will be insufficient to provide for appropriations.

(2) estimated receipts and surpluses will be insufficient to provide for appropriations.

"Appropriation," for the purposes of the Executive Budget Act, is defined to mean "a maximum amount available for expenditure by a State agency for a stated purpose set out in an appropriation act." AS 37.07.120(3).

The Borough has argued that AS 37.07.080(g)(2) is unconstitutional for two reasons: first, because it delegates power over appropriations, a power which can only be exercised by the legislature in accord with the procedures mandated by Article II of the Alaska Constitution; second, because the statute lacks standards to guide the exercise of administrative discretion. In either case, the Borough argues that the statute violates the principle of separation of powers.

The doctrine of separation of powers is implicit in the Alaska Constitution. As Justice Brandeis said, the doctrine was adopted

not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the government powers among three

departments, to save the people from auto-
cracy.

Everson v. United States, 71 U.S. 160, 242-243 (U.S. 1826). The question then is whether AS 37.07.080(g)(2) permits the arbitrary exercise of power.

On its face, AS 37.07.080(g)(2) purports to endow the Governor with discretion to reduce appropriations -- in effect, to amend the budget -- when anticipated revenues appear inadequate to meet appropriation levels. The State contends that the legislature intended only to delegate discretion over expenditures in such a situation. This interpretation would comport with prior decisions which have held that the legislature may delegate discretion to the executive to spend or not spend appropriated funds. The existence of such discretion is a question of legislative intent, as manifested by the language and legislative history of the statute. Ellis v. City of Valdez, 686 P.2d 700, 705 (Alaska 1984).

This court is under a duty to construe a statute to avoid constitutional infirmity where possible. However, it cannot go so far as to redraft defective legislation. State v. Campbell, 536 P.2d 105, 110-111 (Alaska 1975). The limiting construction suggested by the State cannot save this statute. AS 37.07.080 fails because it authorizes the exercise of sweeping power over the entire budget with no guidance or limitation. The

statute is thus an unconstitutional delegation of legislative power.

The Alaska court has never applied the delegation doctrine to a statute of comparable breadth. This is not a case where the legislature has delegated broad authority to an agency with expertise to regulate a narrowly defined field. See Boehl v. Sabre Jet Room, Inc., 349 P.2d 585, 588 (Alaska 1960). Nor is this a case where the Act's purpose and standards are explicit and detailed. See Walker v. Alaska State Mortgage Association, 416 P.2d 247 (Alaska 1966). Indeed, the legislature has declined to provide even the general limitations and policy statements which were sufficient to guide administrative discretion involved in making loans to promote economic development. De Armond v. Alaska State Development Corporation, 376 P.2d 717, 723 (Alaska 1962). Surely a delegation of authority over the entire budget deserves no less.

The delegation doctrine was developed in the federal courts; therefore, it may be useful to assess this statute under the standard articulated in a recent federal case, Synar v. United States, 626 F. Supp. 1574, 1383-89 (D.D.C. 1986). In Synar, the court found that a limited delegation of power over appropriations was not an unconstitutional delegation of legislative power. In that court's view, the constitutionality

of a delegation is determined on the basis of the scope of the power delegated and the specificity of the standards to govern its exercise. "When the scope increases to immense proportions . . . the standards must be correspondingly more precise." Id. at 1386. The essential inquiry is whether the specified guidance "sufficiently marks the field within which the administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will." Id. at 1387 quoting Yakus v. United States, 88 L.Ed. 834, 849 (U.S. 1943).

The statute at issue in Synar permitted administrators to affect spending levels over a specified range of federal programs and only to a limited degree. Id. at 1386. The Act provided explicit direction as to the procedures to be followed and established basic assumptions, definitions and criteria to guide the administrators. Id. at 1387-89. The court held that Congress had provided an adequate "intelligible principle to guide and confine administrative decision making." Id. at 1389.

The detailed direction described in Synar stands in sharp contrast to the statute at issue here. The legislature has articulated no principles, intelligible or otherwise, to guide the executive. Under AS 37.07.060(g)(2), the governor decides

when projected revenues are inadequate to meet appropriations.⁵ Once he makes that determination, he may or may not assume authority under the statute. If he decides to act, he has total discretion as to which appropriations to cut and to what extent. The statute does not expressly require him to limit his cuts to the extent of the shortfall nor does it provide for adjustment of the cuts to the actual revenues received.

Most importantly, the executive is provided with no policy guidance as to how the cuts should be distributed. The State conceded at oral argument that the statute would permit the Governor to cut the entire budget for a particular department or project. Indeed, nothing in the statute would prevent him from effectively vetoing a project where his veto had previously been overridden. An appropriation could be eliminated entirely, cut in half or left untouched. In short, the effect of an exercise of authority under AS 37.07.080(g)(2) is no more predictable than the identity and priorities of our next governor.

5. Before the Governor can take any action under AS 37.05.159, the statute creating a reserve for emergency operating expenses, he must make an express finding that there is an "imminent danger" that the State will be unable to meet its operating budget expenses. AS 37.05.159(b)(1). AS 37.07.080(g)(2) does not explicitly require a similar finding.

This memorandum is not intended to impugn the motives or good faith of Governors Sheffield and Cowper. Both have interpreted the grant of authority under AS 37.07.080(g)(2) narrowly and have acted in accord with that narrow interpretation. However, the issue in this case is not what has been done under the statute; rather it is what can be done. As one court has said,

[W]e find nothing in [the statute] whatsoever to indicate that the legislature was granting the authority to be exercised only in the circumstances and under the conditions which respondent says it has imposed on itself. As we read the section, the grant is absolute and totally devoid of restraints, direction or rules. Accordingly, the fact that respondent acted only under certain self-imposed restraints can in no way serve to supply what has been omitted.

State ex rel. Holmes v. State Board of Finance, 367 P.2d 926, 932 (N.M. 1961). The limited exercise of authority undertaken in Administrative Orders 90 and 91 cannot save a statute which amounts to legislative abdication.

Nevertheless, the actions taken by the governors are relevant to the final issue in the case: the effect of this decision holding that AS 37.07.080(g)(2) is an unconstitutional delegation of legislative power. The State contends that this ruling should be given only prospective effect.

The Supreme Court has identified four conditions indicating the propriety of non-retroactive treatment in civil cases: 1. the holding is one of first impression . . . and was not foreshadowed in earlier decisions; 2. there has been justifiable reliance on an alternative interpretation of the law; 3. the purpose and intended effect of the holding is best accomplished by prospective application; 4. undue hardship would result from retroactive application. Plumley v. Hale, 594 P.2d 497, 503 (Alaska 1979) (citations omitted).

In this case, the factors listed above favor partial prospective application of the holding in this case. The decision is one of first impression which was not clearly foreshadowed in prior Alaska cases applying the delegation doctrine. The governors acted reasonably in justifiable reliance on the statute when they issued the Administrative Orders; it is probable that the legislature and the public have relied on those Orders as well. In addition, retroactive application would not further the purpose of this ruling. This court does not hold that the legislature could not draft a statute which would permit the executive to exercise limited authority to control expenditures as Governors Cowper and Sheffield have done. Rather this court holds that the legislature unconstitutionally delegated


legislative authority when it enacted AS 37.07.080(g)(2) without providing any meaningful guidance.

In the final analysis, the determination of the effect of this decision must be guided primarily by equitable considerations: what is necessary, what is fair, and what is workable. Id. at 504, n.28 (citation omitted). The court is aware that the governor, the legislature and the public are now attempting to cope with the effects of diminished revenues. Stability is an important factor in making that adjustment. Total invalidation of Administrative Orders 90 and 91 now would only inject additional uncertainty into an already difficult calculation. The court notes that others in positions similar to plaintiffs have elected not to join this suit. As a practical matter then, it would be unduly burdensome, indeed unnecessary, to require the legislature to reconsider the entire \$450 million deficit that the Administrative Orders served to remedy. The court therefore holds that this decision applies only prospectively except as to the plaintiffs in the case at bar. Whether plaintiffs ultimately obtain funding depends, of course, on legislative action or inaction.

SUMMARY

1. AS 37.07.080(g)(7) is unconstitutional.
2. Insofar as they are applicable to plaintiffs Fairbanks North Star Borough and Fairbanks North Star Borough School District, Administrative Orders Nos. 90 and 91 are set aside.
3. In light of the foregoing, it is unnecessary for the court to reach the other issues raised in plaintiffs' complaint.

DATED at Fairbanks, Alaska this 6th day of April 1987.


JAMES R. BLAIR
Superior Court Judge

DRAFT

7h

DATE: _____

BOOKPROOFED: _____

APPROVED: _____

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 CS for HOUSE BILL NO. 132(FIN)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act approving and ratifying restrictions on
7 expenditures; and providing for an effective date."

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

9 * Section 1. STATEMENT OF PURPOSE AND FINDINGS. The legislature finds
10 that:

11 1. Estimated receipts and surpluses will not be sufficient to
12 cover appropriations for fiscal year 1987.

13 2. In response to the anticipated deficit, Governor Sheffield
14 issued Administrative Order Number 90 (August 22, 1986), which restricted
15 the rate of obligation or expenditure of a number of appropriations under
16 the authority conferred by AS 37.07.080. Governor Cowper made a similar
17 but more limited reduction in Administrative Order No. 91 (December 8,
18 1986).

19 3. Issuing those Orders was a necessary and appropriate response
20 to a fiscal crisis that was facing the state.

21 4. Issuance of those Orders has been challenged in court by the
22 Fairbanks North Star Borough and others, and the Superior Court has
23 invalidated those orders as they apply to the Fairbanks North Star Borough
24 and the Fairbanks North Star Borough School District.

25 5. If the restrictions on the one-year appropriations for
26 FY 1987 in Administrative Orders Nos. 90 and 91 are overturned in full or
27 in part, the consequences to rational state fiscal management would be
28 incalculable.

29 6. The legislature desires that those Orders and the actions

DRAFT

DATE: _____

BOOKPROOFED: _____

APPROVED: _____

1 taken by the governor and the executive branch under those Orders be ap-
 2 proved and ratified, and that any uncertainty about the status of the money
 3 withheld be removed, insofar as those orders concern the restrictions on
 4 the one-year appropriations for fiscal year 1987.

5 7. In approving the restrictions on the one-year appropriations
 6 for fiscal year 1987, the legislature expects that the unobligated portion
 7 of those appropriations restricted by Administrative Orders Nos. 90 and 91
 8 will lapse in accordance with AS 37.25.010.

9 * Sec. 2. APPROVAL AND RATIFICATION. The actions of the governor and
 10 the executive branch in restricting one-year appropriations for fiscal year
 11 1987 by issuing and implementing Administrative Orders Nos. 90 and 91 as
 12 reflected in the budget workbooks submitted to the legislature under
 13 AS 37.07.040 and entitled "Operating Budget FY 87 Revised" are approved and
 14 ratified.

15 * Sec. 3. SUSPENSION OF OTHER LAW. The provisions of sec. 2 of this
 16 Act are effective notwithstanding the provisions of any other law,
 17 including but not limited to AS 37.05.315, 37.05.316, and 37.05.317.

18 * Sec. 4. This Act is retroactive to July 1, 1986.

19 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
 20
 21
 22
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 25
 26
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 28
 29

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 132

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

\ BILL

6 For an Act entitled: "An Act approving and ratifying restrictions on
7 expenditures; and providing for an effective date."

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

9 * Section 1. STATEMENT OF PURPOSE AND FINDINGS. The legislature finds
10 that:

11 1. Estimated receipts and surpluses will not be sufficient to
12 cover appropriations for fiscal year 1987.

13 2. In response to the anticipated deficit, Governor Sheffield
14 issued Administrative Order Number 90 (August 22, 1986), which restricted
15 the rate of obligation or expenditure of a number of appropriations under
16 the authority conferred by AS 37.07.080. Governor Cowper made a similar
17 but more limited reduction in Administrative Order No. 91 (December 8,
18 1986).

19 3. Issuing those Orders was a necessary and appropriate response
20 to a fiscal crisis that was facing the state.

21 4. Issuance of those Orders has been challenged in court by the
22 Fairbanks North Star Borough and others.

23 5. If Administrative Orders Nos. 90 and 91 are overturned in
24 full or in part, the consequences to rational state fiscal management would
25 be incalculable.

26 6. The legislature desires that those Orders and the actions
27 taken by the governor and the executive branch under those Orders be ap-
28 proved and ratified, and that any uncertainty about the status of the money
29 withheld be removed.

1 7. In approving the restrictions on the one-year appropriations
2 for fiscal year 1987, the legislature expects that the unobligated portion
3 of those appropriations restricted by Administrative Orders Nos. 90 and 91
4 will lapse in accordance with AS 37.25.010.

5 8. In approving the restrictions on the FY 1987 appropriations
6 that continue beyond one year, the legislature desires that the appro-
7 priations be continued in full, subject to the availability of money.
8 Consequently, the legislature desires that the governor be given the au-
9 thority to continue to restrict the obligation or expenditure of those
10 appropriations over the next two fiscal years (1988 and 1989) so that
11 approximately one-third of the original appropriation is released in each
12 fiscal year. If money is not sufficient to cover other appropriations for
13 those fiscal years, however, then the fiscal year 1987 appropriations that
14 do not lapse will be the first appropriations to be restricted, and the
15 governor can restrict the obligation or expenditure of those appropriations
16 in that instance in an amount greater than one-third. If a greater re-
17 striction is required, then the governor should be authorized to restrict
18 those appropriations up to the full amount that remains unobligated or
19 unexpended, depending upon the size of the impending deficit. The re-
20 strictions need not be pro rata; however, it is expected that the governor
21 will consult both with municipalities and with the appropriate legislative
22 standing committees before making those reductions or restrictions.

23 * Sec. 2. APPROVAL AND RATIFICATION. The actions of the governor and
24 the executive branch in issuing and implementing Administrative Orders Nos.
25 90 and 91, as reflected, for the operating budget, in the budget workbooks
26 submitted to the legislature under AS 37.07.040 and entitled "Operating
27 Budget FY 87 Revised," and, for the capital budget, in the computer
28 printout by the Office of Management and Budget, Division of Budget Review,
29 entitled "HB 574 & SB 171 Capital Appropriations With

1 Adjusted FY '87 Cash Flow, By Election District," further identified by
2 Date: 02/11/87, and Time: 14:11:35, are approved and ratified.

3 * Sec. 3. ADDITIONAL RESTRICTIONS. The governor may restrict the rate
4 of obligation or expenditure of any of the appropriations subject to sec. 2
5 which do not lapse on June 30, 1987. Unless the governor makes a finding
6 after June 30, 1987 that estimated receipts and surpluses will be insuffi-
7 cient to provide for appropriations, the rate of obligation or expenditure
8 shall not be less than an annual amount of 33 percent of the original
9 amount of the appropriation restricted. If the governor makes that find-
10 ing, however, then he may withhold from obligation or expenditure any of
11 those appropriations in any amount.

12 * Sec. 4. SUSPENSION OF OTHER LAW. The provisions of sec. 2 and sec. 3
13 of this Act are effective notwithstanding the provisions of any other law,
14 including but not limited to AS 37.05.315, 37.05.316, and 37.05.317.

15 * Sec. 5. This Act is retroactive to July 1, 1986.

16 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

CSHB

132

SENATE COMMITTEE REPORT

FURTHER:

5/5/87

DATE TURNED INTO OFFICE

5/11/87

Mr. President:

FINANCE

Committee considered

CSHB 132(Fin)

approving and ratify executive restrictions on the fiscal year 1987 operating budget; efd.

and recommended:

[] replace with CS FOR _____) [] same title
[] or adopt _____ CS FOR _____) [] new title

[] attached amendment(s) and

[x] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [x] attached or [] adopted fiscal note(s)

[] new [] updated or [x] previous House
[x] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Paul Zaroff
Paul Fulk
John Duncan
John
Willie Hundley

John B. ... DO PASS
Chairman signature and recommendation

[] Committee Backup Attached

1/B

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

REQUEST: _____

Bill Version: CSHB 132 (Fin)
Publish Date: HOUSE 5/4/87

Revision Date: _____

Agency Affected: ALL

Title: Approving and ratifying
restrictions on expenditures

BRU: _____

Sponsor: Rules by request of Governor

Components: _____

Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	------------	------------	------------	------------	------------	------------

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Al Adams, Chair
Division: House Finance Committee

Phone: 465-3706
Date: 4/14/87

Approved by Commissioner: _____
Agency: _____

Date: _____

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies).
 - Senate Secretary

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
2 CS FOR HOUSE BILL NO. 132 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
6 For an Act entitled: "An Act approving and ratifying executive restric-
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8 providing for an effective date."
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10 * Section 1. LEGISLATIVE FINDINGS, PURPOSE, AND INTENT. (a) The
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17 the authority conferred by AS 37.07.080; Governor Cowper made a similar but
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22 (4) the orders have been challenged in court by the Fairbanks
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24 orders as they apply to the Fairbanks North Star Borough and the Fairbanks
25 North Star Borough School District;
26 (5) if the restrictions on the one-year appropriations for
27 fiscal year 1987 in Administrative Orders Numbers 90 and 91 are overturned
28 in full or in part, the consequences would impede rational state fiscal
29 management.

1 (b) It is the purpose of this Act to approve and ratify the orders
2 and the actions taken by the governor and the executive branch under those
3 orders and to remove any uncertainty about the status of the money with-
4 held, insofar as the orders concern the restrictions on one-year appropria-
5 tions for fiscal year 1987.

6 (c) In approving the restrictions on the one-year appropriations for
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8 those appropriations restricted by Administrative Orders Numbers 90 and 91
9 lapse in accordance with AS 37.25.010.

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14 AS 37.07.040 and entitled "Operating Budget FY 87 Revised" are approved and
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19 * Sec. 4. This Act is retroactive to July 1, 1986.

20 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Maynard

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

FAIRBANKS NORTH STAR BOROUGH, and)
FAIRBANKS NORTH STAR BOROUGH)
SCHOOL DISTRICT,)

Plaintiffs,)

vs.)

STATE OF ALASKA, WILLIAM SHEFFIELD,)
Governor of the State of Alaska,)
MARSHALL LIND, Commissioner of)
Education, ELEANOR ANDREWS,)
Commissioner of Administration,)
EMIL NOTTI, Commissioner of)
Community & Regional Affairs,)
LOREN LOUNSBURY, Commissioner of)
Commerce & Economic Development,)
MILTON BARKER, Acting Commissioner)
of Revenue, all in their official)
capacities,)

Defendants.)

Case No. 4FA-86-2528 Ci.

FILED in the Trial Courts
State of Alaska, Fourth District

APR 6 1987

Clerk, Trial Courts

By _____ Deputy

O P I N I O N

This case comes before the court on the State's motion for summary judgment and the Borough's cross-motion. The motions require the court to resolve questions of constitutional and statutory interpretation. The facts are undisputed.

In December of 1985, Governor Sheffield submitted his proposed budget for fiscal year 1987 (FY87) to the legislature. His proposal was based on the Department of Revenue's December revenue forecast, which predicted that \$2718.9 million in unrestricted funds would be available for FY87.

On March 12, 1986, the Department issued a new forecast, which projected a drop in revenue of \$641.3 million. The decline was due to sharply reduced oil prices. Revenues derived from oil comprise approximately eighty-five percent of the State's income.

The budget passed by the legislature in early June of 1986 was approximately \$400 million less than that submitted by the Governor in December. The Governor then exercised his veto power to further reduce appropriations to within \$40 million of the June revenue projection. The budget was approved with item vetoes on June 9, 1986.

On July 16, 1986, the Department of Revenue issued the June forecast, which projected a further decline of \$857.2 million, for a total projected deficit of \$897.2 million. At about the same time, the final accounting for FY86 was completed. Funds which remained unspent under the 1986 appropriations -- the unrestricted surplus -- totalled \$17.3 million. That amount lapsed back into the general fund.

To cope with the substantial projected deficit, the Governor decided to act without recalling the legislature for a special session. He announced that he would restrict the obligation of revenues set aside by appropriation for FY87. On August 22, 1986, he issued Administrative Order No. 90, which stated

that he had determined it to be in the State's best interest to withhold expenditure authority for certain appropriations.¹ His purpose was to avoid deficit spending which is prohibited by Article IX, sec. 8 of the Alaska Constitution.

Under Administrative Order No. 90, expenditure authority for different classes of appropriations was restricted by different percentages. Some appropriations were unrestricted. Appropriations which were intended to provide funds for municipalities were restricted ten percent; the ten percent restriction on those appropriations is at issue in this case.² Expenditures of appropriations for State agencies were limited by fifteen percent and those for capital projects sixty-five percent. The restrictions totalled approximately \$450 million.

The Governor based his authority to issue Administrative Order 90 on Article III, secs. 1 & 24 of the Alaska

1. On December 8, 1986, Governor Cowper issued Administrative Order No. 91 for the same purpose and under the same authority cited in Administrative Order No. 90. Governor Cowper made a ten percent actual cut in expenditures for school debt retirement.

2. Those appropriations included amounts set aside for municipal grants, school bond debt reimbursement, State shared revenue, municipal assistance, day care assistance, public school foundation account, tuition for military schools, education of youth in detention, grants for community schools and transportation.

Constitution³ and AS 37.07.080(f) and (g).⁴ The central question in this case is whether AS 37.07.080(g)(2) is constitutional.

AS 37.07.080(g)(2), a provision of the Executive Budget Act, provides that:

(g) The governor may direct the withholding or reduction of appropriations to a state agency at any time during the fiscal year only if the governor determines that

3. Art. III, sec. 1 provides that:

The executive power of the State is vested in the governor.

Art. III, sec. 24 provides that:

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

4. AS 37.07.080(f) and (g) provide as follows:

(f) The office shall report quarterly to the governor and the legislature on the operations of each state agency, relating actual accomplishments to those planned and modifying, if necessary, the operations plan of any agency for the balance of the fiscal year.

(g) The governor may direct the withholding or reduction of appropriations to a state agency at any time during the fiscal year only if the governor determines that

(1) the planned expenditures can no longer be made due to factors outside the control of the state which make the expenditure factually impossible; or

(2) estimated receipts and surpluses will be insufficient to provide for appropriations.

. . . .
(2) estimated receipts and surpluses will be insufficient to provide for appropriations.

"Appropriation," for the purposes of the Executive Budget Act, is defined to mean "a maximum amount available for expenditure by a State agency for a stated purpose set out in an appropriation act." AS 37.07.120(3).

The Borough has argued that AS 37.07.080(g)(2) is unconstitutional for two reasons: first, because it delegates power over appropriations, a power which can only be exercised by the legislature in accord with the procedures mandated by Article II of the Alaska Constitution; second, because the statute lacks standards to guide the exercise of administrative discretion. In either case, the Borough argues that the statute violates the principle of separation of powers.

The doctrine of separation of powers is implicit in the Alaska Constitution. As Justice Brandeis said, the doctrine was adopted

not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the government powers among three

departments, to save the people from auto-
cracy.

Hyatt v. United States, 71 L.Ed. 160, 242-243 (U.S. 1926). The question then is whether AS 37.07.080(g)(2) permits the arbitrary exercise of power.

On its face, AS 37.07.080(g)(2) purports to endow the Governor with discretion to reduce appropriations -- in effect, to amend the budget -- when anticipated revenues appear inadequate to meet appropriation levels. The State contends that the legislature intended only to delegate discretion over expenditures in such a situation. This interpretation would comport with prior decisions which have held that the legislature may delegate discretion to the executive to spend or not spend appropriated funds. The existence of such discretion is a question of legislative intent, as manifested by the language and legislative history of the statute. Ellis v. City of Valdez, 686 P.2d 700, 705 (Alaska 1984).

This court is under a duty to construe a statute to avoid constitutional infirmity where possible. However, it cannot go so far as to redraft defective legislation. State v. Campbell, 536 P.2d 105, 110-111 (Alaska 1975). The limiting construction suggested by the State cannot save this statute. AS 37.07.080 fails because it authorizes the exercise of sweeping power over the entire budget with no guidance or limitation. The

statute is thus an unconstitutional delegation of legislative power.

The Alaska court has never applied the delegation doctrine to a statute of comparable breadth. This is not a case where the legislature has delegated broad authority to an agency with expertise to regulate a narrowly defined field. See Boehl v. Sabre Jet Room, Inc., 249 P.2d 585, 588 (Alaska 1960). Nor is this a case where the Act's purpose and standards are explicit and detailed. See Walker v. Alaska State Mortgage Association, 416 P.2d 247 (Alaska 1966). Indeed, the legislature has declined to provide even the general limitations and policy statements which were sufficient to guide administrative discretion involved in making loans to promote economic development. De Armond v. Alaska State Development Corporation, 376 P.2d 717, 723 (Alaska 1962). Surely a delegation of authority over the entire budget deserves no less.

The delegation doctrine was developed in the federal courts; therefore, it may be useful to assess this statute under the standard articulated in a recent federal case, Synar v. United States, 626 F. Supp. 1574, 1383-F9 (D.D.C. 1986). In Synar, the court found that a limited delegation of power over appropriations was not an unconstitutional delegation of legislative power. In that court's view, the constitutionality

of a delegation is determined on the basis of the scope of the power delegated and the specificity of the standards to govern its exercise. "When the scope increases to immense proportions . . . the standards must be correspondingly more precise." Id. at 1386. The essential inquiry is whether the specified guidance "sufficiently marks the field within which the administrator is to act so that it may be known whether he has kept within it in compliance with the legislative will." Id. at 1387 quoting Yakus v. United States, 88 L.Ed. 834, 849 (U.S. 1943).

The statute at issue in Synar permitted administrators to affect spending levels over a specified range of federal programs and only to a limited degree. Id. at 1386. The Act provided explicit direction as to the procedures to be followed and established basic assumptions, definitions and criteria to guide the administrators. Id. at 1387-89. The court held that Congress had provided an adequate "intelligible principle to guide and confine administrative decision making." Id. at 1389.

The detailed direction described in Synar stands in sharp contrast to the statute at issue here. The legislature has articulated no principles, intelligible or otherwise, to guide the executive. Under AS 37.07.060(g)(2), the governor decides

when projected revenues are inadequate to meet appropriations.⁵ Once he makes that determination, he may or may not assume authority under the statute. If he decides to act, he has total discretion as to which appropriations to cut and to what extent. The statute does not expressly require him to limit his cuts to the extent of the shortfall nor does it provide for adjustment of the cuts to the actual revenues received.

Most importantly, the executive is provided with no policy guidance as to how the cuts should be distributed. The State conceded at oral argument that the statute would permit the Governor to cut the entire budget for a particular department or project. Indeed, nothing in the statute would prevent him from effectively vetoing a project where his veto had previously been overridden. An appropriation could be eliminated entirely, cut in half or left untouched. In short, the effect of an exercise of authority under AS 37.07.080(g)(2) is no more predictable than the identity and priorities of our next governor.

5. Before the Governor can take any action under AS 37.05.159, the statute creating a reserve for emergency operating expenses, he must make an express finding that there is an "imminent danger" that the State will be unable to meet its operating budget expenses. AS 37.05.159(b)(1). AS 37.07.080(g)(2) does not explicitly require a similar finding.

This memorandum is not intended to impugn the motives or good faith of Governors Sheffield and Cowper. Both have interpreted the grant of authority under AS 37.07.080(g)(2) narrowly and have acted in accord with that narrow interpretation. However, the issue in this case is not what has been done under the statute; rather it is what can be done. As one court has said,

[W]e find nothing in [the statute] whatsoever to indicate that the legislature was granting the authority to be exercised only in the circumstances and under the conditions which respondent says it has imposed on itself. As we read the section, the grant is absolute and totally devoid of restraints, direction or rules. Accordingly, the fact that respondent acted only under certain self-imposed restraints can in no way serve to supply what has been omitted.

State ex rel. Holmes v. State Board of Finance, 367 P.2d 926, 932 (N.M. 1961). The limited exercise of authority undertaken in Administrative Orders 90 and 91 cannot save a statute which amounts to legislative abdication.

Nevertheless, the actions taken by the governors are relevant to the final issue in the case: the effect of this decision holding that AS 37.07.080(g)(2) is an unconstitutional delegation of legislative power. The State contends that this ruling should be given only prospective effect.

The Supreme Court has identified four conditions indicating the propriety of non-retroactive treatment in civil cases: 1. the holding is one of first impression . . . and was not foreshadowed in earlier decisions; 2. there has been justifiable reliance on an alternative interpretation of the law; 3. the purpose and intended effect of the holding is best accomplished by prospective application; 4. undue hardship would result from retroactive application. Plumley v. Hale, 594 P.2d 497, 503 (Alaska 1979) (citations omitted).

In this case, the factors listed above favor partial prospective application of the holding in this case. The decision is one of first impression which was not clearly foreshadowed in prior Alaska cases applying the delegation doctrine. The governors acted reasonably in justifiable reliance on the statute when they issued the Administrative Orders; it is probable that the legislature and the public have relied on these Orders as well. In addition, retroactive application would not further the purpose of this ruling. This court does not hold that the legislature could not draft a statute which would permit the executive to exercise limited authority to control expenditures as Governors Cowper and Sheffield have done. Rather this court holds that the legislature unconstitutionally delegated


legislative authority when it enacted AS 37.07.080(g)(2) without providing any meaningful guidance.

In the final analysis, the determination of the effect of this decision must be guided primarily by equitable considerations: what is necessary, what is fair, and what is workable. Id. at 504, n.28 (citation omitted). The court is aware that the governor, the legislature and the public are now attempting to cope with the effects of diminished revenues. Stability is an important factor in making that adjustment. Total invalidation of Administrative Orders 90 and 91 now would only inject additional uncertainty into an already difficult calculation. The court notes that others in positions similar to plaintiffs have elected not to join this suit. As a practical matter then, it would be unduly burdensome, indeed unnecessary, to require the legislature to reconsider the entire \$450 million deficit that the Administrative Orders served to remedy. The court therefore holds that this decision applies only prospectively except as to the plaintiffs in the case at bar. Whether plaintiffs ultimately obtain funding depends, of course, on legislative action or inaction.

SUMMARY

1. AS 37.07.080 (g) (7) is unconstitutional.
2. Insofar as they are applicable to plaintiffs Fairbanks North Star Borough and Fairbanks North Star Borough School District, Administrative Orders Nos. 90 and 91 are set aside.
3. In light of the foregoing, it is unnecessary for the court to reach the other issues raised in plaintiffs' complaint.

DATED at Fairbanks, Alaska this 6th day of April 1987.


JAMES R. BLAIR
Superior Court Judge

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE
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3 IN THE LEGISLATURE OF THE STATE OF ALASKA
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5 A BILL
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15 ratified.

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19 * Sec. 4. This Act is retroactive to July 1, 1986.

20 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 12, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would ratify the actions taken by Governor Sheffield in issuing and implementing Administrative Order No. 90 (August 22, 1986) and by me in Administrative Order No. 91 (December 8, 1986). Those orders withheld FY 1987 appropriations or, more specifically, restricted the rate of obligation or expenditure of those appropriations, in response to an otherwise anticipated deficit of approximately \$900 million.

The attached bill approves and ratifies the actions taken by the Administration in issuing and implementing those Administrative Orders. In addition to involving the legislature in approving those actions, the bill also moots the Fairbanks North Star Borough's legal challenge to those actions.

The bill also expressly confers the authority to continue to restrict the rate of obligation or expenditure of those appropriations made for FY 1987 which did not lapse after one year (primarily capital appropriations). The bill would allow the spending of approximately one-third of those appropriations each year, depending on the availability of money.

This bill is not an appropriation bill; rather, it concerns conditions under which appropriations may or may not be expended. Compare Thomas v. Rosen, 569 P.2d 793, 796 (Alaska 1977), with Board of Ed. of Wyoming County v. Board of Public Works, 109 S.E.2d 552, 559 (W.Va. 1959). As a result, this bill is not an unconstitutional delegation of legislative authority. Further, since this bill is not an appropriation bill, substantive law can be changed by the bill, as is done in sec. 4 of the bill.

Section 1 of the bill contains a statement of purpose and finding of emergency. Since this bill is somewhat unusual, it is appropriate that the reasons for its enactment be formally stated. In particular, the bill would formally recognize the potentially disastrous consequences if the Administrative Orders were invalidated as a result of legal actions, including the pending Fairbanks North Star Borough lawsuit.

Section 2 of the bill approves and ratifies the actions taken under Administrative Order Nos. 90 and 91. Although the Orders themselves are relatively brief, their specific application to the myriad of FY 87 appropriations would result in a bill of huge proportions. Instead of listing the effect on each individual appropriation and allocation, the bill refers to specific documents given to the legislature which itemize the individual effects.

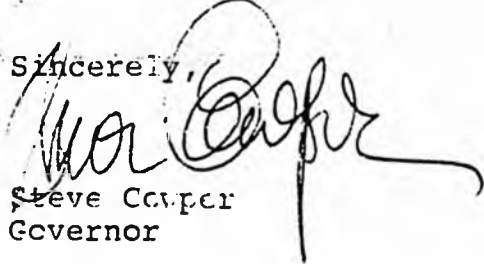
Section 3 of the bill allows the restrictions to continue on those appropriations that do not lapse at the end of FY 1987. The releasing of only one-third of those appropriations would be allowed even if there were no impending deficit for FY 1988 or FY 1989. Given the recent volatility of oil prices, I believe that the restrictions on those particular appropriations should be continued even if a formal finding of an impending deficit is not made after the legislature completes its business this year. If another budget crisis occurs, those appropriations can be restricted even further. The practical effect of these provisions would be to make those particular appropriations the first sources of funds to be available if a budget deficit looms again. Any rearrangement of priorities for particular non-lapsing appropriations can be accomplished in the FY 1988 and FY 1989 budget.

Section 4 of the bill suspends the operation of any substantive law that might set out a different schedule for payment of appropriations than was used in the implementation of Administrative Orders Nos. 90 and 91 and authorized by sec. 3 of the bill. Although we are confident that no such substantive law was violated, a legal challenge on that particular ground was raised in the Fairbanks lawsuit. As a cautionary measure, this provision was added to the bill to help insulate the actions already taken, and to authorize future restrictions as set out in sec. 3. Although only three specific statutory sections are listed in this bill, it is the intent of this section to suspend any other substantive law that might be interpreted by a court (whether presently raised by Fairbanks or otherwise) as impeding the legality of actions already taken or that might be taken under the Orders and this bill.

Section 5 of the bill would make the Act retroactive to the beginning of the fiscal year. This, again, is to make sure that the actions taken on FY 1987 appropriations will be considered ratified. Under one view, a retroactivity clause for a ratification bill is redundant; nonetheless, as a matter of caution it is expressly included.

The report prepared by the division of budget review lists approximately \$181,300,000 in unrestricted general funds released for expenditure. Not all of these items are generally considered capital appropriations. This total includes \$61,000,000 for FY 87 student loans and approximately \$200,000 reported as operating items by the fiscal 1986 Annual Financial Report and the 1986 Appropriations Digest. The remaining total of approximately \$120,600,000 will be found in these publications under capital appropriations.

Sincerely,


Steve Cooper
Governor