

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 865

1 (3) the contract terminates after six weeks of operation under the contract or after
2 the operator receives \$3,000,000 in gross receipts under the contract, whichever comes first.

3 (b) An operator conducting off-track parimutuel wagering on behalf of a permittee shall
4 submit to the department a plan describing how the operator proposes to select permittees with
5 whom the operator enters into contracts. The department may disapprove the plan if the
6 department finds that the plan does not involve a sufficient number of permittees. The
7 department shall issue regulations concerning the criteria for permittee selection and the approval
8 or disapproval of plans submitted under this subsection.

9 (c) An operator conducting off-track parimutuel wagering on behalf of a permittee shall
10 pay the department two percent of the gross receipts received by the operator. The operator shall
11 make the payments at the same time as the operator makes payment to the permittee under (a)
12 of this section.

13 (d) An operator conducting off-track parimutuel wagering shall pay to holders of winning
14 tickets at least

15 (1) 80 percent of the parimutuel pool of wagers on a single horse, less breakage;
16 and

17 (2) 75 percent of the parimutuel pool of wagers involving more than one horse,
18 less breakage.

19 (e) An operator licensed under AS 05.15.122 may not conduct off-track parimutuel
20 wagering if the operator has been convicted at any time of a felony, and may not employ a
21 person to conduct or assist in the conducting of off-track parimutuel wagering if the operator
22 knows that the person has been convicted at any time of a felony, a crime involving theft or
23 dishonesty, or a violation of a municipal, state, or federal gambling law. A person who has been
24 convicted at any time of a felony, a crime involving theft or dishonesty, or a violation of
25 municipal, state, or federal gambling law may not conduct or assist in the conducting of off-track
26 parimutuel wagering.

27 (f) An operator may not accept, and a person may not make, wagers under this section
28 other than wagers made in person by the bettor at a location where the operator is conducting
29 parimutuel wagering. Wagers may not be made or accepted by telephone, facsimile transmission,
30 or similar means of transmission.

31 * Sec. 12. AS 05.15.210 is amended by adding new paragraphs to read:

1 (35) "breakage" means the odd cents by which the amount payable on each dollar
2 wagered in an off-track parimutuel wagering event exceeds a multiple of 10 cents;

3 (36) "off-track parimutuel wagering" means a form of wagering on the outcome
4 of horse races involving thoroughbred, standardbred, or quarter horses and sanctioned by a state
5 racing authority that are shown by closed-circuit television at a location different from the
6 location where the race takes place in which those who wager personally purchase tickets of
7 various denominations on a horse or combination of horses and all wagers for each race are
8 pooled and held by the race televisor for distribution; when the outcome of the race has been
9 decided, the race televisor distributes a percentage of the total wagers, according to regulations
10 adopted by the department, to the holders of tickets on the winning horses or combination of
11 horses.

12 * Sec. 13. AS 18.65.090 is amended by adding a new subsection to read:

13 (b) Upon receipt of the fingerprints of the applicant, and payment of fees authorized by
14 AS 44.41.025(b) and 44.41.040, the department shall perform a criminal history records check
15 of the persons listed in AS 05.15.122(c), and shall report the results of those records checks to
16 the Department of Commerce and Economic Development.

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula



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(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE

TO: Senator Pat Pourchot, Chair
Senate Finance Committee

FROM: Rod Mourant, Legislative Aide
Senate Labor & Commerce Committee

A handwritten signature in cursive script that reads "Rod".

DATE: April 23, 1991

RE: SB 162 - Off-track Parimutuel Wagering

The Senate Labor & Commerce Committee requests that you schedule SB 162 for a hearing by the Senate Finance Committee at your earliest convenience.

Within strict public safety guidelines, this legislation formulates another vehicle to assist non-profit agencies in Alaska in their fund raising efforts. The legislation calls for careful background reviews of personnel who would be involved in the gaming events, exclusion of convicted felons from the industry as well as strict guidelines for the disbursement of funds. The committee has delivered a complete bill package to your office.

Thank you for your consideration of this request.



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Phone 907/274-1593

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1-24-92 RET TO S (RLS)

STATE OF ALASKA

FISCAL NOTE

BILL NO. CSSB 162(L&C)

1992 LEGISLATIVE SESSION

Revision Date: 01/21/92 Department Affected: Commerce & Economic Development

Title: An Act authorizing off-track pari-mutuel BRU: Occupational Licensing

wagering as charitable gaming... Component: Administration

Sponsor: Senate Labor & Commerce

Requestor: Senate Labor & Commerce COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	214.9	214.9	214.9	214.9	214.9	214.9
TRAVEL	24.0	20.0	20.0	20.0	20.0	20.0
CONTRACTUAL	52.0	7.0	7.0	7.0	7.0	7.0
SUPPLIES	5.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT	85.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	381.4	246.9	246.9	246.9	246.9	246.9

CAPITAL						
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REVENUE	723.6	723.6	723.6	723.6	723.6	723.6
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FUNDING: (Thousands of Dollars)

GENERAL FUND	381.4	246.9	246.9	246.9	246.9	246.9
FEDERAL FUNDS						
OTHER						
TOTAL	381.4	246.9	246.9	246.9	246.9	246.9

POSITIONS:

FULL-TIME	5.0	5.0	5.0	5.0	5.0	5.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)
SEE ATTACHED

Prepared By: John N. Hansen, Gaming Program Manager Phone: 465-2581

Division: Occupational Licensing Date: 01/21/92

Approved by Commissioner: Glenn A. Olds *Glenn A. Olds* Asst. Comm.

Agency: Department of Commerce & Economic Development Date: 1.21.92

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

SB 162

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 162(L&C)

ANALYSIS:

This bill would provide for off-track parimutuel wagering to be authorized and provided for under AS 05.15, Games of Chance and Skill. It would allow for permittees to contract with and receive income from licensed operators conducting off-track parimutuel wagering. It provides for minimum returns to the permittees as well as payment of a percentage of the gross receipts to the department.

FY 93 OPERATING EXPENSES

PERSONAL SERVICES COSTS:

Anchorage	Clerk Typist III	8A	\$ 29.0
Juneau	Licensing Examiner I	12A	35.0
Juneau	State Satellite Supervisor	18A	50.3
Anchorage	Investigator III	18A	50.3
Juneau	Auditor III	18A	50.3
Total Personal Services			\$214.9

TRAVEL COSTS:

Staff to perform inspections, audits, investigations		\$ 20.0
Training		<u>4.0</u>
Total Travel		\$ 24.0

CONTRACTUAL COSTS:

Audits, security, hearing officer services, and other miscellaneous cost		\$ 20.0
General contractual needs - phone, photocopies, computer systems, postage, printing, etc.		<u>32.0</u>
Total Contractual		\$ 52.0

EQUIPMENT COSTS:

Office furnishings, files, chairs, module units. \$9.9 x 5 staff		\$ 49.5
Office Space (1500 sq.ft. at \$200 x 12 months)		<u>36.0</u>
Total Equipment		\$ 85.5

SUPPLIES:

\$ 5.0

FY 93 TOTAL GENERAL FUND OPERATING EXPENSES	\$381.4
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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 162(L&C)

FY 94 AND BEYOND OPERATING EXPENSES

PERSONAL SERVICES COSTS:

Same detail as FY 93 \$214.9

TRAVEL COSTS:

Staff to perform inspections, audits, investigations 20.0

CONTRACTUAL COSTS:

Audits, security, hearing officer services, and other miscellaneous costs 2.0

Postage, printing, etc. 5.0

SUPPLIES: 5.0

FY 94 AND BEYOND TOTAL GENERAL FUND OPERATING EXPENSES \$246.9

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 162(L&C)

FY 93 REVENUE DETAIL

Revenue estimates are based on total gross monthly revenue of \$3,000,000 (300,000 per day x 10 days operation).

Under the committee substitute, AS 05.15.189(c), an operator would pay 2% of the gross receipts as a fee to the state. These fees would be collected at the time the operator is required to pay the permittee and deposited in the general fund. An increase in the 1% net proceeds (under AS 05.15.020(b)) is also estimated.

OPERATOR REVENUE

Total daily handle		\$ 300,000	
10 days operating per month		<u> x 10 </u>	
Total estimated monthly gross		\$3,000,000	
Fee 2% (AS 05.15.189(c))		<u> x 2% </u>	
Total monthly fee revenue		\$ 60,000	
12 months' operation		<u> x 12 </u>	
Total Yearly Fee Revenue			\$ 720,000

PERMITTEE REVENUE INCREASE

Total monthly gross		\$3,000,000	
Minimum return to permittee		<u> x 2% </u>	
AS 05.15.189(a)(1) 2% of gross or 50% of net profit		\$ 60,000	
Less: Permittee expenses (estimated)		<u> 50% </u>	
Net Proceeds		\$ 30,000	
1% fee (AS 05.15.020(b))		<u> x 1% </u>	
		\$ 300	
12 permittees		<u> x 12 </u>	
Total 1% fee increase			\$ <u>3,600</u>
TOTAL ESTIMATE FY 93 REVENUE			\$ 723,600

FISCAL NOTE

No. 1

Bill Version: SB 162

(S) Publish Date: 4/17/91

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: An Act authorizing offtrack pari-mutuel wagering as charitable gaming BRU: Occupational Licensing - Gaming
 Component: Administration
 Sponsor: Senate Labor & Commerce Committee
 Requestor: Senate Labor & Commerce Committee

COMPONENT SERIAL NO.	0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Ann Boudreaux, Director Phone: 465-2534
 Division: Occupational Licensing Date: March 18, 1991
 Approved by Commissioner: Glenn A. Olds
 Agency: Department of Commerce & Economic Development Date: March 18, 1991

FISCAL NOTE

No. 2

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSSB 162 (R+C)

(S) Publish Date: 4/17/91

Revision Date: 4/11/91

Department Affected: COMMERCE & ECONOMIC DEV.

Title: SEE ATTACHED

BRU: Occupational Licensing

Component: Administration

Sponsor: Senate Labor & Commerce Comm.

Requestor: Senate Labor & Commerce Comm.

COMPONENT SERIAL NO.	0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	214.9	214.9	214.9	214.9	214.9	214.9
TRAVEL	24.0	20.0	20.0	20.0	20.0	20.0
CONTRACTUAL	52.0	7.0	7.0	7.0	7.0	7.0
SUPPLIES	5.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT	85.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	381.4	246.9	246.9	246.9	246.9	246.9

CAPITAL						
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REVENUE	723.6	723.6	723.6	723.6	723.6	723.6
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FUNDING: (Thousands of Dollars)

GENERAL FUND	381.4	246.9	246.9	246.9	246.9	246.9
FEDERAL FUNDS						
OTHER						
TOTAL	381.4	246.9	246.9	246.9	246.9	246.9

POSITIONS:

FULL-TIME	5	5	5	5	5	5
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHED

Prepared By: John N. Hansen, Jr., Gaming Program Manager Phone: 465-2581

Division: Occupational Licensing Date: 4/12/91

Approved by Commissioner: Glenn A. Olds *Glenn A. Olds* Asst. Comm.

Agency: Department of Commerce & Economic Development Date: 4-12-91

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

FISCAL NOTE - CSSB 162

TITLE:

"An Act authorizing off-track parimutuel wagering as charitable gaming, and relating to criminal history checks for applicants for charitable gaming operator's licenses and certain employees of those applicants."

ANALYSIS:

This bill would provide for off-track parimutuel wagering to be authorized and provided for under AS 05.15, Games of Chance and Skill. It would allow for permittees to contract with and receive income from licensed operators conducting off-track parimutuel wagering. It provides for minimum returns to the permittees as well as payment of a percentage of the gross receipts to the department.

FY 91 OPERATING EXPENSES

Personal Service Costs:

<u>Location</u>	<u>Position</u>	<u>Range/Step</u>	<u>Annual Salary and Benefits</u>
Anchorage	Clerk Typist III	8A	\$ 29.0
Juneau	Licensing Examiner	12A	35.0
Juneau	State Satellite Supervisor	18A	50.3
Anchorage	Investigator III	18A	50.3
Juneau	Auditor III	18A	50.3
Total Personal Services			\$214.9

Travel Costs:

Staff perform inspections, audits, investigations	\$ 20.0	
Training	4.0	
Total Travel		\$ 24.0

Contractual:

Audits, security, hearing officer services, miscellaneous	\$ 20.0	
General contractual - phone, photocopies, computer systems, postage, printing, etc.	32.0	
Total Contractual		\$ 52.0

Equipment:

Office furnishings, files, chairs, module units. \$9.9 x 5 staff	\$ 49.5	
Office space (1500 sq.ft. @ \$200 x 12 months)	36.0	
Total Equipment		\$ 85.5

Supplies: \$ 5.0

FY 92 TOTAL GENERAL FUND OPERATING EXPENSES \$381.4

FY 93 AND BEYOND OPERATING EXPENSES

Personal Service Costs:

Same detail as FY 91 \$214.9

Travel Costs:

Staff - perform inspections, audits, investigations 20.0

Contractual:

Audits, security, hearing officer services, miscellaneous 2.0
Postage, printing, etc. 5.0

Supplies:

5.0

FY 93 AND BEYOND TOTAL GENERAL FUND OPERATING EXPENSES \$246.9

FY 92 REVENUE DETAIL

Revenue estimates are based on total gross monthly revenue of \$3,000,000 (300,000 per day x 10 days operation).

Under the committee substitute, AS 05.15.189(c), an operator would pay 2% of the gross receipts as a fee to the state. These fees would be collected at the time the operator is required to pay the permittee and deposited in the general fund. An increase in the 1% net proceeds (under AS 05.15.020(b)) is also estimated.

OPERATOR REVENUE

Total daily handle	\$ 300,000
10 days operating per month	x 10
Total estimated monthly gross	<u>\$3,000,000</u>
Fee 2% (AS 05.15.189(c))	x 2%
Total monthly fee revenue	<u>\$ 60,000</u>
12 months' operation	x 12

Total Yearly Fee Revenue

\$720,000

PERMITTEE REVENUE INCREASE

Total monthly gross	\$3,000,000
Minimum return to permittee	x 2%
AS 05.15.189(a)(1) 2% of gross	<u>60,000</u>
or 50% of net profit	\$ 60,000
Less: Permittee expenses (estimated)	<u>50%</u>
Net Proceeds	\$ 30,000
1% fee (AS 05.15.020(b))	x 1%
	<u>\$ 300</u>
12 permittees	x 12

Total 1% fee increase

3,600

TOTAL ESTIMATE FY 92 REVENUE

\$723,600

FISCAL NOTE

No. 3

STATE OF ALASKA
1991 LEGISLATIVE SESSION

B. (S) Publish Date: SB 162
4/17/91

Revision Date: _____
Title: An Act authorizing off-track pari-mutuel wagering as charitable gaming
Sponsor: Senate Labor & Commerce
Requestor: Senate Labor & Commerce

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO.

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

Changes in CS SB 162 (L&C) have no fiscal impact. This fiscal note is appropriate.

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

4-15-91 RAM
date Comte Aide (initial)

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary)

CSSB 162 (L&C) requires the Department of Public Safety to conduct criminal history records checks of license applicants and their employees. As there is a fee for this service, there will be no significant fiscal impact on the Alaska State Troopers.

Prepared by: Gayle A. Horetski Phone: 465-4322
Division: Commissioner's Office Date: 3/19/91
Approved by Commissioner: Gayle A. Horetski for Richard L. Burton
Agency: Department of Public Safety Date: 3/19/91

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

SB 163

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 5, 1991

FURTHER REFERRALS:

Date of Committee Action: 5-9-91

The FINANCE Committee considered:

CSSB 163(FIN)am

CS FOR SENATE BILL NO. 163 (FINANCE) am AHFC & AIDEA BUDGETING AND REPORTING

"An Act relating to the budget and finances of the Alaska Housing Finance Corporation and the Alaska Industrial Development and Export Authority."

RECOMMENDATIONS:

be replaced with HCSL'S SB 163(FIN)am the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) REVENUE 3-26-91
OLEP 3-29-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ed Maclean</i>	<input checked="" type="checkbox"/>	<i>Bob King</i>		<input checked="" type="checkbox"/>	
<i>Mike Yavane</i>		<i>2000 & 2001</i>		<input checked="" type="checkbox"/>	
		<i>George T. ...</i>		<input checked="" type="checkbox"/>	
<i>Kay Brown</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>Danora Barnes</i>	<input checked="" type="checkbox"/>				

Mike Yavane Ed Maclean
CHAIRMAN'S SIGNATURE

FISCAL NOTE

Bill Version: CSSB 163(FIN)

(S) Publish Date: 3/29/91

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

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

2	3	5
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Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

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

Prepared By: Bertram L. Wagoner, Executive Director Phone: 907/561-8050

Division: AK Industrial Development & Export Authority Date: March 27, 1991

Approved by Commissioner: Commissioner Glen Olds *[Signature]*

Agency: Department of Economic Development Date: 3/28/91

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

STATE OF ALASKA
1991 LEGISLATIVE SESSION

(S) Publish Date: 3/26/91

Revision Date: _____

Department Affected: Revenue

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

BRU: Alaska Housing Finance Corporation

Component: Alaska Housing Finance Corporation

Sponsor: Senators Adams, Pouchot

Requestor: _____

COMPONENT SERIAL NO.

1	1	0
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Expenditures/Revenues (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

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

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

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

Date: 3-11-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor,

Changes in CSB 163 (Fin) have no fiscal impact. This fiscal note is appropriate.

Page of

HOUSE CS FOR CS FOR SENATE BILL NO. 163 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATORS ADAMS, Pourchot, Halford

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the budget and finances of the Alaska Housing Finance Corporation
2 and the Alaska Industrial Development and Export Authority."

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

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

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

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

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

1 during the next fiscal year are available without

2 (A) breaching any agreement entered into by the corporation;

3 (B) materially impairing the operations or financial integrity of the
4 corporation; or

5 (C) materially affecting the ability of the corporation to

6 (i) stabilize the market price of and demand for residential
7 housing; and

8 (ii) ensure an adequate long-term supply of residential housing
9 for persons of lower and moderate income; and

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

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

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

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

23 Sec. 44.88.205. COMPLIANCE WITH EXECUTIVE [OPERATING] BUDGET ACT;
24 AUTHORITY FINANCES. (a) The [FOR FISCAL YEARS BEGINNING AFTER JUNE 30,
25 1981, THE] operating budget of the authority is subject to AS 37.07 (Executive Budget Act).

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

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

29 (1) annually review the authority's assets to determine whether assets of the
30 authority exceed an amount required to fulfill the purposes of the authority as defined in this
31 chapter; in making its review, the members of the authority shall determine whether, and to what

1 extent, assets in excess of the amount required to fulfill the purposes of the authority during at
2 least the next fiscal year are available without

3 (A) breaching any agreement entered into by the authority;

4 (B) materially impairing the operations or financial integrity of the
5 authority; or

6 (C) materially affecting the ability of the authority to fulfill the authority's
7 purposes set out in AS 44.88.070; and

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

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

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

HOUSE CS FOR CS FOR SENATE BILL NO. 163 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS ADAMS, Pourchot, Halford

A BILL

FOR AN ACT ENTITLED

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2 and the Alaska Industrial Development and Export Authority."

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9 corporation shall

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

1 during the next fiscal year are available without

2 (A) breaching any agreement entered into by the corporation:

3 (B) materially impairing the operations or financial integrity of the

4 corporation; or

5 (C) materially affecting the ability of the corporation to

6 (i) stabilize the market price of and demand for residential

7 housing; and

8 (ii) ensure an adequate long-term supply of residential housing

9 for persons of lower and moderate income; and

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

18 (A) mortgage loan commitment fees [,] received by or accrued to the
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21 including earnings on assets of the state assisted mortgage fund.

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31 chapter; in making its review, the members of the authority shall determine whether, and to what

1 extent, assets in excess of the amount required to fulfill the purposes of the authority during at
2 least the next fiscal year are available without

3 (A) breaching any agreement entered into by the authority;

4 (E) materially impairing the operations or financial integrity of the
5 authority; or

6 (C) materially affecting the ability of the authority to fulfill the authority's
7 purposes set out in AS 44.88.070; and

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

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

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

See.

Alaska State Legislature

Al Adams
District L

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3707

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

3111 C Street
Anchorage, Alaska 99503
(907) 561-7622



Official Business

April 8, 1991

TO: Rep. Navarre, Co-Chairman
Rep. MacLean, Co-Chairman
House Finance Committee

FROM: Senator Al Adams *AAK*

RE: SB 163

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

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

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

I believe this bill is in the public's best interest, and I would appreciate your consideration of the matter.

State of Alaska

Rep. Ronald Larson

CHAIRMAN

Sen. Jay Kerttula

VICE-CHAIRMAN

Sen. Dick Eliason

Sen. Al Adams

Sen. Jim Duncan

Sen. Curt Menard

Sen. Lyman Hoffman

Rep. Pat Carney

Rep. Eileen MacLean

Rep. Kay Brown

Rep. Fran Ulmer

Rep. Terry Martin



Legislative Budget and Audit Committee

WHILE IN SESSION

P.O. Box V

Juneau, Alaska 99811

(907) 465-3727

INTERIM ADDRESS

P.O. Box 53

Palmer, Alaska 99645

(907) 745-3826

The Honorable Mike Navarre
The Honorable Eileen MacLean
Co-Chairs
House Finance Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

April 15, 1991

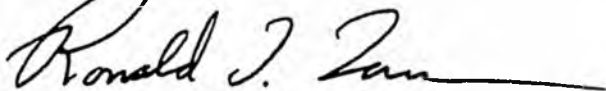
Dear Representatives:

The enclosed letter of April 10, 1991 proposed an amendment to CSSB 163(Fin) am to establish payment of dividends to the State from the Alaska Housing Finance Corporation.

With this letter, I enclose for the House Finance Committee's consideration a similar amendment to establish a dividend payment to the State from the Alaska Industrial Development and Export Authority.

By copy of this letter, I am providing the amendment to the Budget and Audit Committee and the Alaska Industrial Development and Export Authority, neither of which has had an opportunity to review this specific amendment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald L. Larson". The signature is written in dark ink and is positioned above the typed name.

Ronald L. Larson, Chairman
Legislative Budget and Audit Committee

cc Members of the Legislative Budget and Audit Committee
Bert Wagnon, Executive Director, Alaska Industrial Development and
Export Authority

HOUSE AMENDMENT

TO: CSSB 163(Fin) am BY: Larson

Page 2 Line 22

Insert:

"*Sec 5. AS 44.88.010 is amended by adding a new subsection to read:

(d) The legislature finds and declares that, to the extent the authority experiences annual earnings in excess of that necessary to fund its program needs and needed to be retained to maintain its financial viability, meet future debt service requirements, or comply with existing financial covenants, payment of dividends to the state from the annual earnings of the authority is necessary to provide for a return to the state on its investment in the authority.

*Sec. 6. AS 44.88 is amended by adding a new section to read:

Sec. 44.88.153. PAYMENT OF DIVIDENDS. (a) The authority shall pay each year a dividend to the state in the amount determined under (b) of this section, subject to the provisions of (c) of this section. The payment shall be made prior to November 30 of each year from the revolving fund established under AS 44.88.060.

(b) The amount of the dividend shall be the lesser of 50 percent of net income or 75 percent of unrestricted net income for the year ending June 30, reduced in either case by amounts the board determines necessary to meet the requirements of (c) of this section.

(c) Payment of the dividend is subject to the adoption of a resolution by the board approving the amount of the dividend and affirming that

(1) the authority is not in default as to payments of any required amounts and that payment to the state is not expected to impair its ability to meet future financial requirements including the payment of principal, interest, and program costs associated with outstanding debt;

(2) the payment will not cause the authority to be in default under the terms of any financial agreements or disable the authority from meeting any financial covenant including minimum asset maintenance requirements;

(3) financial resources remaining after payment are determined adequate to meet anticipated program requirements through the fiscal year subsequent to that in which payment is being made;

(4) neither the state nor any of its agencies, political subdivisions , or instrumentalities is in default as to payment of any amounts due pursuant to the terms of financial agreements with the authority; and,

(5) if the authority has unsecured general obligation debt outstanding, the payment will not result in the then existing credit ratings, if any, on such debt being reduced."

and renumber succeeding sections accordingly.

Page 3 Line 15

Add:

"*Sec. 9. AS 44.88.900 is amended by adding new subsections to read:

(8) 'net income' means the amount stated as net income in the authority's financial statements that are audited by an independent firm of certified public accountants;

(16) 'unrestricted net income' means the portion of net income that may be used for general purposes of the authority.

and renumbering subsections (8)-(14) as subsections (9)-(15)."

State of Alaska

Rep. Ronald Larson

CHAIRMAN

Sen. Jay Kerttula

VICE-CHAIRMAN

Sen. Dick Eliason

Sen. Al Adams

Sen. Jim Duncan

Sen. Curt Menard

Sen. Lyman Hoffman

Rep. Pat Carney

Rep. Eileen MacLean

Rep. Kay Brown

Rep. Fran Ulmer

Rep. Terry Martin

WHILE IN SESSION
P.O. Box V
Juneau, Alaska 99811
(907) 465-3727

INTERIM ADDRESS:
P.O. Box 53
Palmer, Alaska 99645
(907) 745-3826

Legislative Budget and Audit Committee

The Honorable Mike Navarre
The Honorable Eileen MacLean
Co-Chairs
House Finance Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

April 10, 1991

Dear Representatives:

Pursuant to AS 24.20.201(a)(10), the Legislative Budget and Audit Committee recommended that the Alaska Housing Finance Corporation Board of Directors favorably consider the draft *State Appropriation Repayment Plan* that is enclosed.

The Budget and Audit Committee also recommends to the Legislature that the corporation's statutes be amended to provide for such a plan. I enclose for the House Finance Committee's consideration an amendment to CSSB 163(Fin) am to accomplish this. By copy of this letter, I am providing the amendment to the Budget and Audit Committee and the Alaska Housing Finance Corporation, neither of which has had an opportunity to review this specific amendment.

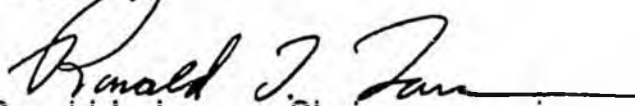
As indicated in the enclosed March 28, 1991 Board Consideration Memorandum on this subject, the plan has the following attributes:

1. payments are initiated by the corporation, avoiding legal concerns or bond market reactions that might result from appropriations, at least, from sizable ones;
2. payments are a portion of earnings, which also minimizes legal concerns and bond market reactions because the existing amount of corporation assets, which serve as security for bondholders, is not reduced; and,
3. the corporation's Board has the discretion to reduce or withhold the payments if necessary to meet the corporation's financial requirements or operational needs.

Continued legislative interest in the corporation's financial resources is evidenced by Senate Bill 163, relating to the budget and finances of the corporation and the Alaska Industrial Development and Export Authority, as well as by proposed appropriations of \$4 million and \$80 million from corporation assets in House Bill 75 and Senate Bill 233. This interest can be expected to increase as Prudhoe production declines.

A plan such as the proposed *Repayment Plan*, which adequately addresses the needs of the corporation, could make an important contribution to the State's fiscal well-being in the years ahead.

Sincerely,



Ronald L. Larson, Chairman
Legislative Budget and Audit Committee

cc Members of the Legislative Budget and Audit Committee
Barry Hulin, Chief Operating Officer, Alaska Housing Finance
Corporation

HOUSE AMENDMENT

TO: CSSB 163(Fin) am BY: Larson

Page 1 Line 4

Insert:

**Section 1. AS 18.56.010 is amended by adding a new subsection to read:

(g) The legislature finds and declares that, to the extent the corporation experiences annual earnings in excess of that necessary to fund its program needs and needed to be retained to maintain its financial viability, meet future debt service requirements, or comply with existing financial covenants, payment of dividends to the state from the annual earnings of the corporation is necessary to provide for a return to the state on its investment in the corporation.

*Sec. 2. AS 18.56 is amended by adding a new section to read:

Sec. 18.56.086. PAYMENT OF DIVIDENDS. (a) The corporation shall pay each year a dividend to the state in the amount determined under (b) of this section, subject to the provisions of (c) of this section. The payment shall be made prior to November 30 of each year from the revolving fund established under AS 18.56.082.

(b) The amount of the dividend shall be the lesser of 50 percent of net income or 75 percent of unrestricted net income for the year ending June 30, reduced in either case by amounts the board determines necessary to meet the requirements of (c) of this section.

(c) Payment of the dividend is subject to the adoption of a resolution by the board approving the amount of the dividend and affirming that

(1) the corporation is not in default as to payments of any required amounts and that payment to the state is not expected to impair its ability to meet future financial requirements including the payment of principal, interest, and program costs associated with outstanding debt;

(2) the payment will not cause the corporation to be in default under the terms of any financial agreements or disable the corporation from meeting any financial covenant including minimum asset maintenance requirements;

(3) financial resources remaining after payment are determined adequate to meet anticipated program requirements through the fiscal year subsequent to that in which payment is being made;

(4) neither the state nor any of its agencies, political subdivisions, or instrumentalities is in default as to payment of any amounts due pursuant to the terms of financial agreements with the corporation; and,

(5) if the corporation has unsecured general obligation debt outstanding, the payment will not result in the then existing credit ratings, if any, on such debt being reduced."

and renumber succeeding sections accordingly.

Page 2 Line 22

Insert:

"*Sec. 4. AS 18.56.900 is amended by adding new subsections to read:

(11) 'net income' means the amount stated as net income in the corporation's financial statements that are audited by an independent firm of certified public accountants;

(15) 'unrestricted net income' means the portion of net income that may be used for general purposes of the corporation.

and renumbering subsections (11)-(13) as subsections (12)-(14)."

and renumber succeeding sections accordingly.

Alaska Housing Finance Corporation
Board Consideration Memorandum

Date: March 28, 1991

Staff Member: Tom Behan

Item: Establishment of Board Position on State General Fund Transfers

Issue:

Over recent years, legislative interest in the Corporation's financial resources has persisted. Legislative proposals have varied as to the means of calculating specific amounts, but each involved some form of transfer back to the State. The recent appearance of a \$4 million appropriation from AHFC to capitalize the Alaska Children's Trust Fund is an extreme example of the confusion which exists over who owns the assets reflected in the Corporation's financial statements. It has become obvious that AHFC needs to establish a position on how it views its existing resources and define its financial relationship with the State. The AHFC Board and staff should then do everything possible to gain legislative support for the plan and vigorously resist any further efforts to remove corporate resources. Should these efforts to treat AHFC funds as if they were State General Fund resources be successful, the general pledge of AHFC becomes meaningless and transactions will require higher capitalization levels. The number of institutions available to provide credit support will also decline and fees increase.

Options:

- (1) Continue without a formalized policy, determining a position on each legislative action separately.
- (2) Establish boundaries, permitting legislative reappropriations falling within such boundaries to proceed unchallenged.
- (3) Establish a plan for the transfer of resources back to the State and actively solicit legislative support for it.

Recommendation:

Adopt a plan for transfers which contains the following key elements: (1) the transfer of assets is initiated by the Corporation, (2) the transfer is from annual earnings, so that the financial condition of the Corporation is not weakened, and (3) the AHFC Board has the ability to take all pertinent factors into consideration prior to releasing assets.

Requested Board Action:

As a means of initiating Board discussion regarding this matter, staff has drafted a State Appropriation Repayment Plan. This plan is attached along with a draft Resolution and an analysis of transfers which would have taken place since 1980 were the plan to have been in effect. Adoption of a plan similar to that drafted is encouraged. Establishment of a Board consensus regarding the position the Corporation should take on legislative proposals which involve transfer of assets would also be helpful.

Alaska Housing Finance Corporation
State Appropriation Repayment Plan

Draft of March 28, 1991

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

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

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

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

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

Alaska Housing Finance Corporation
State Appropriation Repayment Plan
Draft of March 28, 1991

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

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

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

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

c:\wp51\divplan\mkc

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

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

I. Findings:

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

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

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

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

II. Conclusion:

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

III. Effective Date:

This resolution shall take effect immediately.

DATED THIS ____ day of _____, 1991.

Robert Mintz
Chairman of the Board

Alaska Housing Finance Corporation

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

Fiscal Period			Net Income				Maximum Repayment Amount
No. Months	Ending		Unrestricted		All Funds		
	Month	Year	Total	75%	Total	50%	
12	6	1990	35,888	26,918	34,342	17,171	17,171
12	6	1989	(4,001)	(3,001)	(124,049)	(62,025)	0
12	6	1988	16,317	12,238	(11,454)	(5,727)	0
12	6	1987	34,121	25,591	20,928	10,464	10,464
12	6	1986	41,297	30,973	41,835	20,918	20,918
12	6	1985	46,738	35,054	78,882	38,441	35,054
12	6	1984	37,905	28,429	74,774	37,387	28,429
12	6	1983	46,837	35,128	73,187	36,594	35,128
12	6	1982	60,577	45,433	95,193	47,597	45,433
7	6	1981	28,063	21,047	44,858	22,429	21,047
12	11	1980	14,136	10,602	25,913	12,957	10,602
Totals			<u>321,990</u>	<u>268,410</u>	<u>352,409</u>	<u>176,206</u>	<u>224,246</u>

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

MEMORANDUM

Date: March 28, 1991

To: Thomas C. Behan
CEO/Executive Director

From: Mark Cameron *mkc*
CFO/Finance Director

Subject: Senate Bill 163

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

What the Bill Does

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

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

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

Positive Aspects of the Bill

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

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

Concerns Regarding the Bill

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

Thomas C. Behan

March 28, 1991

Page 3

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

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

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

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

Thomas C. Behan
March 28, 1991
Page 4

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

1. The Corporation has "a legal existence independent and separate from the State."
2. By virtue of its separate legal status, the Corporation's debt does not represent an obligation of the State and therefore does not have to be approved by the voters.
3. The AHFC statutes have a specific provision for the return of assets to the State. AS 18.56.020 states that "The corporation may not be terminated as long as it has bonds, notes or other obligation outstanding. Upon termination of the corporation, its rights and property pass to the state." If the Legislature can reappropriate assets of the corporation at any time, this statutory provision would be unnecessary.
4. All of the Corporation's debt has been issued with AHFC's general obligation supporting it. As such, existing holders of AHFC's obligations have claim to all of its resources, and the AHFC Board has contractual obligations and implicit obligations to protect and maintain those assets. Any positions or actions taken by the Corporation must take these existing responsibilities into consideration.
5. Each public offering of AHFC debt has included complete financial statements. These statements have treated legislative appropriations as having been complete when received.
6. Should the State treat the Corporation's assets as their own, a potential bondholder claim could arise that AHFC's debt should be treated as if it were that of the State.

Conclusion

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

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

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

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

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

Thomas C. Behan
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Page 6

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

Steve Rieger

UNCERTAIN FINANCIAL TIMES FOR AHFC

The annual budget process for the State of Alaska is, in part, a quest for money. The revenue forecasts for the upcoming year are a big event because they strongly determine how much the governor can propose to spend and how much the legislature can appropriate. However, the revenue forecast is not the only source of funds. An additional, smaller boost to spending has come from little pockets of money lying around from the high revenue years of the early 1980s.

Sometimes the pockets of money are not so little. One state corporation, AHFC, has a net worth of about \$1.6 billion. The financial survival and effectiveness of AHFC will be an interesting question over the next few years. It also may turn out that AHFC made a key mistake last year in resisting a proposal which could have protected the corporation.

AHFC is particularly vulnerable for a number of reasons. Most important, it has a large net worth. Second, money promises to get much tighter for the state operating budget as North Slope production declines and as the Gulf War windfall finds itself easily absorbed in this year's spending. Third, some of the easier targets have already been picked clean. Fourth, AHFC relies on the confidence of Wall

Street investors if it is to borrow funds at low cost and pass the benefit on to homebuyers — in other words the corporation could suffer just as much



from a loss of lender confidence as it could from a loss of some of its funds. Fifth, AHFC has lost some of its luster and its political constituency.

The first two points need little explanation. The other bear some discussion:

The largesse which was bestowed on many state programs and agencies during the big money years of the early 1980s did not always pass into memory with nothing to show for it. We ended up purchasing the Alaska Railroad, and placed a large endowment into the assets of the Alaska Housing Finance Corporation (AHFC) and the Alaska Industrial Development and Export Authority (AIDEA). There also was a large amount of cash in the state's general fund, although there were outstanding reserves or unspent appropriations from prior years laying claim to that money.

Any leftover state wealth is a tempting target as money gets tighter,

and in recent years the legislature has spent its operating income plus dug into these old pools of money. In the later years of the decade, as oil prices and state revenue weakened, more and more of the state's assets were scrutinized by the legislature. Old, unspent capital appropriations, with cash reserved against them in the state's general fund, were repealed to yield a good chunk of change each year, but now

the bones are pretty well picked clean. Ditto with the old Railbelt Energy Fund, which at one time was well in excess of \$200 million.

The state corporations such as AHFC and AIDEA were largely protected against any raids. One year AHFC was forced to purchase some state housing loans from a different state agency for cash, but little has happened beyond that. That may change now that easier targets are gone.

AHFC's structure and its high net worth have allowed it to borrow money at very good long term rates. In the markets where AHFC gets its money, the confidence of the lenders is critical. Bond rating agencies and lenders look for current financial strength and long term stability in giving its blessing to borrowers such as AHFC. They understand private corporations and their financial practices, but can be much more skeptical about politically-controlled institutions.

This makes for a potentially explosive situation for AHFC. While it is possible that some of AHFC's net worth or its future earnings are not necessary for the continued operation of its programs, releasing that money could snowball into a five-course meal. The bond rating agencies are sensitive to such a dynamic, and would view with alarm any propensity of the legislature to take money from AHFC without strict controls and protections for the bondholders. If AHFC's bond rating were reduced, the cost of borrowing would go up and

the benefit of the corporation to Alaskans would be lowered.

The political constituency for AHFC is still good, but not rock-solid. AHFC has had its ups and downs in profitability and popularity with Alaska citizens, as it has provided lower-cost mortgage money to many residents, but has been blamed for inflating housing prices in some segments of the market, causing hardship on owners when the collapse in housing prices occurred. One of AHFC's programs in particular, the "HOF" program, was blamed for encouraging the construction of some real junk. AHFC also took some significant operating losses during the collapse. With mixed reviews, it is a little harder for AHFC to fend off proposals to use some of its net worth somewhere else.

None of the above is to say that the state's other financial resources are insufficient for its other needs, or that taking some of AHFC's net worth is justified at this time. It is just a fact of life that AHFC is in the unenviable position of being state-owned and having a high net worth at a time when the state may be making cuts elsewhere. The scrutiny of AHFC is inevitable.

When the shareholders of a private corporation want some cash from their investment, they request or demand a dividend. However, tradeoffs between reinvesting earnings and paying the earnings to the owners often do not lead to a confrontation between the board and the shareholders — instead the board declares a dividend sufficient to give a return to the shareholders but also retains a sufficient amount to meet operating needs, growth needs, and financial covenants. When this is done prudently the corporation's lenders are not alarmed and continue to lend money. However, if an adequate payout is not made and the corporation becomes perceived, rightly or wrongly, as too rich, conditions become ripe for a corporate raid.

It seems that a dividend proposal could work for AHFC. The dividend would take only a fraction of each year's earnings, and the net worth of the corporation would grow by the remainder of the earnings. It would seem that everyone would be happy: AHFC would preserve and increase its net worth, the legislature would have a vested interest in the contin-

ued success of AHFC because the operating budget would share in the earnings, and Wall Street would be calm because dividends are a concept it understands.

Unfortunately, last year AHFC passed up a chance to support just such a proposal.

Last year's proposal would mandate AHFC to pay a dividend to the Legislature out of a portion of each year's earnings, but the payout could be reduced if necessary to protect the corporation's financial integrity.

AHFC resisted the measure and rallied enough support to defeat it.

Their opposition may turn out to be a mistake. This year the operating budget passed by the House contains an appropriation of \$4 million from AHFC's funds to an unrelated program. This is the very kind of direct appropriation of AHFC reserves which a dividend program would have helped prevent. Without the dividend program a direct appropriation was inevitable — if not this year then very soon after. AHFC can afford a \$4 million bite, as it made \$34 million in 1990 and will probably earn more than double that this year.

However this measure might be the first of many.

It is certain to raise alarms among AHFC's lenders if it is not represented as part of any official long term program to protect the financial soundness of AHFC.

If borrowing costs go up, the ordinary homebuyer is the one who will lose.

AHFC may now be facing a rear-guard battle to preserve its financial integrity while the state faces ever tighter financial pressures. The battle is over practical reality, not over the merits of the other operating budget needs. If AHFC loses, its days as an agency able to borrow money at a low cost and pass those savings through to middle-class Alaskans are in jeopardy.

It will be interesting to see whether the corporation will be able to act in time to correct its position of last year and support a more controlled dividend or other payment policy.

I hope it succeeds, because in spite of its ups and downs AHFC has provided a lot of benefits to a lot of people.

Steve Rieger, a former member of the state House from Anchorage, is a financial consultant.

SB 163

SENATE FINANCE COMMITTEE REPORT

DATE: 3/4/91

FURTHER:

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

DATE TURNED INTO OFFICE 3-26-91

The Finance Committee considered SB 163

Budget and finances of the Alaska Housing Finance Corporation.

and recommended:

replace with _____ CS
 or adopt _____ CS

SB 163 (Fix)

same title
 new title
 technical title change (HB only)

attached amendment(s)

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) _____

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

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

zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

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

[Signature]

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

FISCAL NOTE

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

BILL NO. GS SB 163

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

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

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

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

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

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 163

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

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

Sponsor: Senators Adams, Pouchot

Requestor: _____

COMPONENT SERIAL NO.

1	1	0
---	---	---

Expenditures/Revenues: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

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

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

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

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

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

Date: 3-11-91

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

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

A M E N D M E N T

OFFERED IN THE SENATE
TO: SB 163

BY SENATOR ADAMS

Page 1, line 1, after "Corporation":

Insert "and the Alaska Industrial Development and Export Authority"

Page 2, following line 14:

· Insert new bill sections to read:

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

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

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

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

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

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

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

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

SENATE BILL NO. 163

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY SENATORS ADAMS, Pourchot

Introduced: 3/4/91
 Referred: Finance

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

3/22/91
SFL

Alaska State Legislature

Al Adams
District L

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OUT OF SESSION
P.O. Box 333
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Anchorage, Alaska 99503
(907) 561-7622

Official Business

March 8, 1991

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

FROM: Senator Al Adams *AK*

RE: SB 163

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

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

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

Your attention to this matter is much appreciated.

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

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

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OF COUNSEL
JAMES J. DELANEY
EUGENE F. WILES

January 11, 1990

James A. Gibson
Project Director
Ernst & Young

Dear Mr. Gibson:

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

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

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

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

STATEMENT OF QUERIES PRESENTED

I. GENERAL

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

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Page 2

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

II. TRANSFER OF ASSETS

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

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Page 3

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

III. SUBSIDY

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

IV. CHANGE OF OWNERSHIP

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

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Page 4

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

ANALYSIS

I. GENERAL

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

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

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

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

James A. Gibson
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Page 5

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

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

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

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

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Page 6

law and need not be allocated within a principal department.

Article III, section 24 states:

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

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

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

AHFC is significantly different from a private corporation in that:

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

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

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

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

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

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

We have considered AS 18.56.110(b) which provides:

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

and AS 18.56.170 which provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. TRANSFER OF ASSETS

1. Can the state legally expropriate funds from AHFC?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. SUBSIDY

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

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

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

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

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

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

Equal Protection.

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

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

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

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Due Process.

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CHANGE OF OWNERSHIP

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

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

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

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

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

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

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

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

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

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

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

1. Are there any legal constraints to:

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

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

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

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

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

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

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

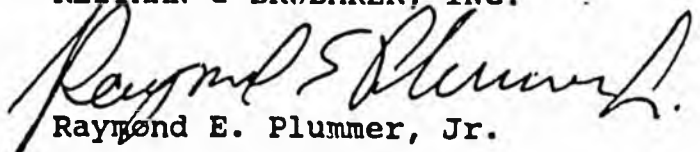
It is questionable whether the formation of a partnership with AHFC would be for a valid public purpose as presumably other private parties would have partnership interests or interests in the assets transferred to the partnership. Further, contracts and debts incurred by the partnership would arguably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

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

We are pleased to have been engaged on this matter.

Very truly yours,

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


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REP:jaf

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May 6, 1985

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

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

Dear Representative Adams:

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

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

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