

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 866

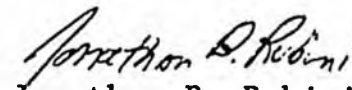
Honorable Albert P. Adams
Alaska House of Representatives
Re: 366-479-85

May 6, 1985
Page #2

If you have any questions, please feel free to contact
me.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Jonathan B. Rubini
Assistant Attorney General

JBR/pjg

Enc.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

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

April 24, 1985

Hon. Al Adams, Chairman
House Finance Committee
Alaska House of Representatives
Pouch V
Juneau, AK 99811

Re: Legislative power of appropriation over funds of public corporations
Our file: 366-463-85

Dear Representative Adams:

You have requested our advice whether the legislature's power of appropriation includes the power to appropriate money administered by the Alaska Housing Finance Corporation (AHFC). AHFC was created to administer a state enterprise consisting almost entirely of making housing loans or providing a secondary mortgage market for housing loans originated by private lending institutions. AHFC is a state agency with the power to incur indebtedness if repayment is secured by pledging revenue earned from AHFC enterprises. See Alaska Const. art. IX, § 11. The pledge is secured by dedicating money, including revenues earned from the loan enterprise, to special accounts established for the benefit of bondholders. You desire to know whether the legislature may appropriate directly from AHFC's Alaska housing finance revolving loan fund (AS 18.52.082) for a purpose unrelated to AHFC. In addition, you ask if the unobligated balance of an appropriation from the general fund to the revolving fund may be reappropriated for another purpose.

First, we believe there is little doubt that the legislature may reappropriate the unencumbered and unobligated balance of an existing appropriation. See Inf. Op. Att'y Gen. (Sept. 26; 366-132-81). The legislature is merely reducing the authorization to spend money. The formal act of appropriating money does not invest a person or entity with the right to ultimately expend the money unless a valid, binding contract is made with that entity. It is very doubtful that a political subdivision of the state being entirely a creature of statute could claim a vested right to expend money under an appropriation absent the intervention of innocent third parties. Based on these principles, we

conclude that the unexpended and unobligated balance of an appropriation to the AHFC revolving fund may be appropriated for purposes unrelated to AHFC.

We next turn to the more difficult question of whether the balance of the AHFC revolving fund may be appropriated by the legislature for a purpose unrelated to AHFC. The AHFC revolving fund serves as a central pool of money consisting of the following:

- (1) appropriations from the legislature;
- (2) assets transferred there by AHFC; and
- (3) unrestricted repayments of principal on loans made or purchased by AHFC.

The assets of the revolving fund are transferred to separate funds when necessary to satisfy covenants made with bondholders. Amounts remaining in the fund do not secure specific bond issues of AHFC and remain unrestricted for use by AHFC "for the purposes of the corporation." Id.

The answer to your question turns on whether the revolving fund is within the state treasury or, failing that, if the fund is an asset of the state which may be appropriated by the legislature. Revolving funds administered by state agencies are generally included in the state treasury for financial reporting purposes. However, the AHFC revolving fund is not carried on the state's ledgers as an asset of the state treasury. Rather, the revolving fund is an asset of AHFC. In a recent appropriation Act, the legislature has specifically appropriated to the AHFC revolving fund interest earned on loans made or purchased by AHFC on deposit in the fund. See sec. 1, ch. 129, SLA 1984. This was done to remove any question that AHFC had improperly dedicated an unrestricted revenue source of the state for a special purpose in violation of the dedicated fund prohibition set out in section 7, article IX of the Alaska Constitution. This provides some evidence that the legislature considers unrestricted earnings of AHFC to be subject to appropriation. It is important to note that we have identified these earnings as "unrestricted." This means that the rights of innocent third parties to retain the fund balance as security for the payment of debt service on bonds have not intervened to restrict the ability of AHFC to spend them. We believe that the AHFC revolving fund is not in the state treasury. The effect of this conclusion is that AHFC may spend money in the fund without further appropriation. However, money earned from investments or assets of the

Hon. Al Adams, Chairman
House Finance Committee
366-463-85

April 24, 1985
Page #3

fund have customarily been considered a state asset which may be transferred and deposited into the general fund.

The question then becomes: if the AHFC revolving fund is not in the state treasury, but is an asset of a state agency, is the fund subject to appropriation? We believe that unrestricted money in the fund is probably available for appropriation. No specific authority was located to support this conclusion. We base our opinion on a belief that the legislative power of appropriation will be liberally construed by the courts. The appropriation power is often described as plenary. That is, the power to appropriate is limited only by express provisions set out in the Alaska Constitution. Judicial decisions reciting this principle are legion. See, e.g., San Francisco Labor Council v. Regents of University of California, 608 P.2d 277 (Cal. 1980); City of Sand Springs v. Department of Public Welfare, 608 P.2d 1139, 1148 (Okla. 1980). Absent a specific prohibition in the Alaska Constitution against appropriating assets of an executive branch agency held outside the state treasury, we believe that the legislature may do so. This opinion does not hold that the legislature must appropriate revenue of a public corporation before it can be spent, only that the legislature may exercise control over unrestricted assets of a public corporation. To deny this power would establish an entity capable of segregating unrestricted state revenue forever. At some point, this would do violence to the dedicated fund prohibition set out in article IX, section 7 of the Alaska Constitution.

We believe it is also our responsibility to inform you that there is a contrary view on this subject. The argument could be made on behalf of bondholders that AHFC has undertaken certain obligations to bondholders which are binding on AHFC and the legislature. AHFC bonds are issued as general obligations of the corporation. Typically, AHFC covenants in its indenture that it will "defend, preserve and protect the pledge of the program obligations, pledged revenues, and other assets." Bondholders could attack any direct appropriation of the AHFC revolving fund as a violation of the covenant to preserve assets. We believe this covenant will not restrict legislative appropriations of unrestricted assets of AHFC which are unnecessary to secure the repayment of debt service on bonds. See Opinion of the Justices, 313 N.E.2d 882 (Mass 1977); Opinion of the Justices, 136 N.E.2d 223 (Mass 1956). This means that the directors of AHFC must be certain that an appropriation of corporation assets will not jeopardize its ability to pay debt service on outstanding bonds.

To prepare for and meet any challenge to the appropriation of AHFC assets, we recommend that the legislature not only

appropriate the asset but also amend the enabling Act of AHFC to assure bondholders that an impairment of their security will not occur. Under this approach, a valid transfer of assets requires not only an appropriation from the AHFC revolving fund but also an amendment to AS 18.56.020 which provides authority for AHFC to transfer unrestricted surplus to the general fund. */ Authorization by general law for the transfer of assets of public corporations has been used in the past. In 1980, the legislature transferred the assets of the Alaska State Development Corporation (AS 44.59.010), the Small Business Development Corporation (AS 44.60.020), and the Alaska Toll Bridge Authority (AS 44.57.010) to the Alaska Industrial Development Authority. Sec. 42, ch. 106, SIA 1980. The transfer was made not in an appropriations bill, but in a bill proposing the enactment of general law. It is curious to note that no corresponding appropriation was made. This approach is consistent with another familiar adage of public finance law that appropriation bills may not be used to amend substantive law. Legislative Budget & Audit Committee v. Hammond, No. 1JU-80-1163 CIV. It could be argued that AS 18.56.020 implies that the assets of AHFC will be transferred to the state treasury only upon termination. Because an appropriation cannot amend existing law, a transfer from the fund before dissolution of AHFC would be subject to question.

While we believe that a direct appropriation of surplus AHFC assets is legally defensible, to avoid any question as to the validity of a transfer appropriation, we recommend that the legislature

(1) enact an amendment to AS 18.56.020 authorizing interim transfers of unrestricted surplus assets of AHFC to the general fund;

(2) provide that the board of directors shall annually determine the amount of surplus available for transfer; and

*/ AS 18.56.020 provides:

ALASKA HOUSING FINANCE CORPORATION. The Alaska Housing Finance Corporation is a public corporation and government instrumentality within the Department of Revenue, but havein a legal existence independent of and separate from the state. The corporation may not be terminated as long as it has bonds, notes or other obligations outstanding. Upon termination of the corporation, its rights and property pass to the state.

Hon. Al Adams, Chairman
House Finance Committee
366-463-85

April 24, 1985
Page #5

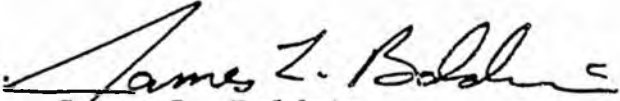
(3) appropriate the assets from the fund to the general fund in accordance with the transfer authorization.

We hope this memorandum has answered your questions.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


James L. Baldwin
Assistant Attorney General

JLB/pjg

Alaska Housing

FINANCE CORPORATION

520 East 34th Avenue
Anchorage, AK 99503
(907) 561-1900
P.O. Box 101020
Anchorage, AK 99510

March 19, 1991

The Honorable Al Adams
Senator
State of Alaska
P.O. Box V
Juneau, Alaska 99811

Re: Senate Bill 163

Dear Senator Adams:

Your office has asked us to comment on Senate Bill 163 in anticipation of it coming before the Senate Finance Committee this Friday, March 22nd. Senate Bill 163 raises numerous policy and legal issues. At this time staff is not prepared to comment on the bill. The next AHFC Board meeting is scheduled for April 5, 1991 in Juneau. We intend to prepare a legislative update for Board review. At that meeting we expect to receive direction from the Board as to the Corporation's position with respect to Senate Bill 163 as well as others of impact to AHFC.

I am enclosing, as requested, copies of information which updates much of that which was presented in last year's Ernst & Young report. I would encourage your staff to contact Mark Cameron, our Finance Director, with any questions regarding the enclosed material.

Please let me know if I can be of any further assistance. I look forward to commenting on SB 163 as soon as we receive Board direction.

Sincerely,



Thomas C. Behan
CEO/Executive Director

DRAFT
MEMORANDUM

Date: Draft of March 21, 1991

To: Thomas C. Behan
CEO/Executive Director

From: Mark Cameron
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 21, 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 21, 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 loosing 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
March 21, 1991
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.

Alaska Housing Finance Corporation
State Appropriation Repayment Plan

Draft of March 21, 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 21, 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-_____.

Alaska Housing Finance Corporation
Resolution no. 91-__

*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

Attachments

c:\wp51\divrea\mkc

Alaska Housing Finance Corporation

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

Fiscal Period			Net Income				Maximum Dividend Amount
No. Months	Ending		Unrestricted		All Funds		
	Month	Year	Total	75%	Total	50%	
12	6	1990	35,688	26,916	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	43,738	35,054	76,882	38,441	38,441
12	6	1984	37,905	28,429	74,774	37,387	37,387
12	6	1983	43,837	35,128	73,187	36,594	36,594
12	6	1982	60,577	45,433	95,193	47,597	47,597
7	6	1981	28,063	21,047	44,858	22,429	22,429
12	11	1980	14,156	10,602	26,913	12,957	12,957
Totals			<u>351,990</u>	<u>269,410</u>	<u>352,409</u>	<u>176,208</u>	<u>227,248</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

Alaska Housing Finance Corporation

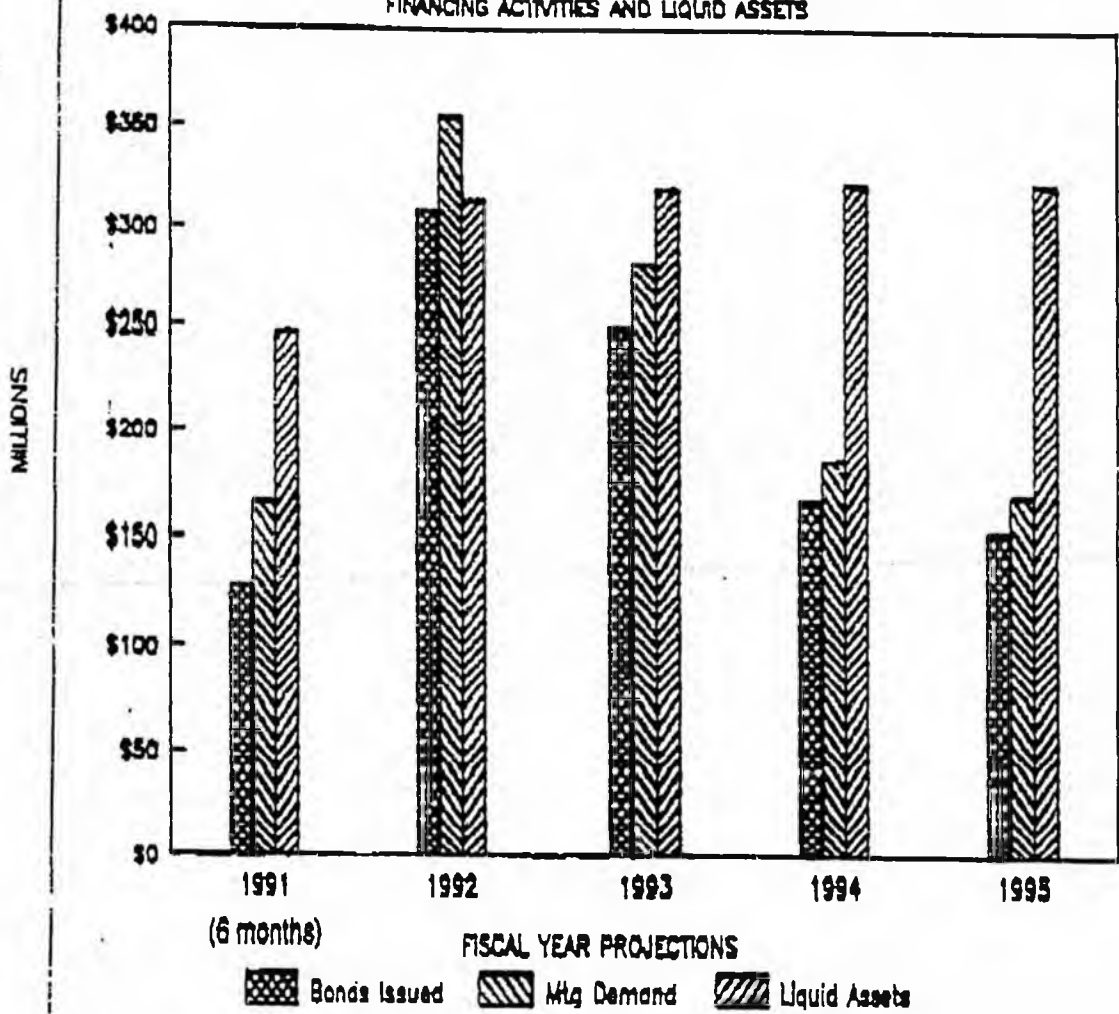
Residential Financing Related Activity

(Projected)

Prepared as of March 6, 1991

Beginning Balances: December 31, 1990

ALASKA HOUSING FINANCE CORPORATION
 FINANCING ACTIVITIES AND LIQUID ASSETS



Fiscal Year Ended June 30,	Bonds Issued	Estimated Mortgage Demand-all Programs	Related Subsidy Transfer	Net Liquid Assets End of FY
1991	130.00	185.00	27.79	247.00
1992	310.61	355.50	41.49	316.16
1993	249.67	282.68	32.97	321.98
1994	165.24	183.00	28.55	323.79
1995	152.72	168.00	25.23	323.91
	<u>1,009.24</u>	<u>1,152.18</u>	<u>153.63</u>	<u>N/A</u>

ALABAMA RESISTANCE CORPORATION
 FIVE YEAR FINANCIAL PLAN AS OF DECEMBER 31, 1990
 SUMMARY OF FIVE YEAR PLAN
 FY 1991 THROUGH 1995

The Corporation's net unrestricted assets as of December 31, 1990 are:

\$268,551,000

and as of June 30, 1995, the projected net unrestricted assets are:

\$323,905,000

The total increase of \$57,354,000 is summarized as follows:

	Inc (Decr) <u>(\$000)</u>
Subsidy for bond issuance	(153,625)
Collateral released from debt retirement	100,648
Long term investments maturing	96,783
Interest earnings on loans & investments	101,395
Interest on short-term borrowing	0
General & Administrative	(20,500)
Unreimbursed REO Expenses	(67,347)
Rounding	<u>0</u>
	<u>57,354</u>

The Corporation has forecasted debt retirement through FY 1995.
 Any release of collateral is assumed to be available for use as subsidy for subsequent bond issuance.

**AHFC Equity -- Corporation and Combined
December 31, 1990
(\$ Millions)**

Program	Retained Earnings	Contributed Capital	Total
Operating/General	\$409	\$140	\$549
Home Ownership Fund (HOF)	(39)	103	64
Insurance Fund	<u>(39)</u>	<u>64</u>	<u>25</u>
Corporation Totals	\$331	\$307	\$638
Bond Financed Programs	80	727	807
Combined Totals	\$411	\$1,034	\$1,445

AHFC Unrestricted Net Assets

December 31, 1990

(\$ Millions)

Total Unrestricted Net Assets		\$549
Less:		
Non-Liquid Assets		
Mortgage Loans	112	
Long-Term Investments	56	
REO	8	
		(178)
Net Due From Other Programs (98 x .30)		(29)
Unrestricted Net Liquid Assets (Before Debt Covenant Requirements)		<u>\$344</u>
Less:		
Restrictions on Assets and Equity (from Debt Covenant Requirements)		(150)
Total Unrestricted Net Liquid Assets		\$194

Net liquid assets includes \$171,000,000 of mortgage loans and mortgage backed securities warehoused pending funding into long-term bond issues.

**Change in Unrestricted Net Assets
For Five Year Period Ending December 31, 1995**

(\$ Millions)

Increases Over Five Years

Collateral Released From Retirement of Bonds	\$101
Interest Earnings on Loans and Investments	101
Maturing Long Term Investments	<u>97</u>
Subtotal of Increases	<u>\$299</u>

Reductions over Five Years

Interest Rate Subsidy	\$154
General & Administrative	21
Unreimbursed REO Expenses	<u>67</u>
Subtotal of Reductions	<u>\$242</u>

Total Five-Year Change in Unrestricted Assets	<u><u>\$57</u></u>
---	--------------------

Alaska Housing Finance Corporation

Financial Status Report

(\$'s in thousands)

December 31, 1990			
	Unrestricted Accounts	Restricted Accounts	Total
<u>Balance Sheet Data:</u>			
Assets	655,009	4,681,093	5,336,102
Liabilities	106,335	3,785,162	3,891,497
Total Fund Equity	548,674	895,931	1,444,605
Six Months Ended			
<u>Earnings Data:</u>			
<i>Income:</i>			
Interest and other	20,490	215,301	235,791
<i>Expenses:</i>			
Interest	1,178	163,311	164,489
Loan loss and REC related	10,359	(10,329)	30
All other	(457)	32,907	32,450
Total expenses	11,080	185,889	196,969
Net Income	9,410	29,412	38,822

AHFC Unrestricted Net Assets

December 31, 1990

(\$ Millions)

Total Unrestricted Net Assets		\$549
Less:		
Non-Liquid Assets		
Mortgage Loans	112	
Long-Term Investments	56	
REO	8	
		(176)
Net Due From Other Programs (98 x .30)		<u>(29)</u>
Unrestricted Net Liquid Assets (Before Debt Covenant Requirements)		<u>\$344</u>
Less:		
Restrictions on Assets and Equity (from Debt Covenant Requirements)		(150)
Total Unrestricted Net Liquid Assets		\$194

Mortgage and Loan Information

As of December 31, 1990

(\$'s in Millions)

	<u>Outstanding</u>		<u>Delinquency</u>	<u>Real Estate</u>
	<u>Number</u>	<u>\$ Amount</u>	<u>Rates</u>	<u>Owned</u>
Mortgage Loans	40,071	\$3,335	5.11%	1,729
Mobile Home Loans	<u>2,583</u>	<u>64</u>	<u>17.69%</u>	<u>202</u>
Total	<u>42,654</u>	<u>\$3,399</u>	<u>5.87%</u>	<u>1,931</u>

	<u>Foreclosures</u>	<u>Sold</u>	<u>Dispositions</u>	
			<u>Other</u>	<u>Total</u>
Mortgage Loans	1248	2010	799	2809
Mobile Home Loans	<u>177</u>	<u>476</u>	<u>34</u>	<u>510</u>
Total	<u>1,425</u>	<u>2,486</u>	<u>833</u>	<u>3,319</u>

Summary of Bonds Outstanding

As of and for the Year Ending

December 31, 1990

(\$'s in Thousands)

	Outstanding 12/31/90	1990 Financing Activity		Total Calendar Year 1990
		Issued During Calendar Year 1990	Remarketed Calendar Year 1990	
Taxable Bonds	\$1,698,819	\$200,000		\$200,000
Tax-Exempt Mortgage Bonds	1,357,774	425,604	50,000	475,604
Other Tax-Exempt Bonds	129,500	129,500		129,500
Tax-Exempt Veteran Bonds	378,605	35,000		35,000
	<u>\$3,562,698</u>	<u>\$790,104</u>	<u>\$50,000</u>	<u>\$840,104</u>

History of State Appropriations to AHFC

(\$ Millions)

Year	-- Revolving Fund --					Total State Funding
	General Purposes	Home Ownership Fund (HOF)	Rural Mortgage Purchase	Mobile Home Purchase	State Mortgage Insurance Fund	
FY 1979 and Prior			\$ 1		\$ 7	\$ 8
FY 1980					3	3
FY 1981	\$474	\$53	12	\$12	7	558
FY 1982	222	43				265
FY 1983	105	45				150
FY 1984	7	42				49
Total	\$808	\$183	\$13	\$12	\$17	\$1,033

AHFC Equity -- Corporation and Combined
June 30, 1989
(\$ Millions)

Program	Retained Earnings	Contributed Capital	Total
<i>Operating/General</i>	\$371	\$148	\$519
<i>Home Ownership Fund (HOF)</i>	(42)	103	61
<i>Insurance Fund</i>	<u>(44)</u>	<u>16</u>	<u>(28)</u>
Corporation Totals	\$285	\$267	\$552
<i>Bond Financed Programs</i>	53	766	819
Combined Totals	\$338	\$1,033	\$1,371

AHFC Unrestricted Net Assets
June 30, 1989
(\$ Millions)

Total Unrestricted Net Assets	\$519
Less:	
• Non-Liquid Assets	
- Mortgage Loans	119
- REO	<u>27</u>
	(146)
• Net Due From Other Programs (\$89 x .30)	<u>(27)</u>
Unrestricted Net Liquid Assets (Before Debt Covenant Requirements)	\$346
Less:	
• Restrictions on Assets and Equity (from Debt Covenant Requirements)	<u>(336)</u>
Total Unrestricted Net Liquid Assets	\$ 10

Change in Unrestricted Net ~~Assets~~ Assets
For Five Year Period Ending June 30, 1994
Baseline A
(\$ Millions)

<i>Increases Over Five Years</i>	
Collateral Released From Retirement of Bonds	\$80
Interest Earnings on Loans and Investments	215
Subtotal of Increases	\$295
 <i>Reductions Over Five Years</i>	
Interest Rate Subsidy	\$83
Overcollateralization of Bonds (a)	109
State Financed Loan Purchases	50
Interest on Short-Term Borrowings	60
Loan Losses and Net REO Losses	50
AHFC General and Administrative Expenses	50
Subtotal of Reductions	\$402
Total Five-Year Change in Unrestricted Assets	(\$107)

Assumptions

No subsidy on tax-exempt or veterans bond programs
A 0.75 percent subsidy on taxable program
A 2.5 percent subsidy on HOAP II program during FY 1989/90
A 2.0 percent subsidy on HOAP III program during FY 1989/90 and 1990/91
Total purchases of loans over five years as follows:

- Tax exempt \$300 million
- Tax exempt veterans \$150 million
- Taxable \$580 million
- HOAP \$100 million
- State financed \$30 million

Bonds are assumed overcollateralized by 2 percent for credit rating enhancement.
Bond sales costs are 1.0 percent of bond sale (1.75 percent for Veterans bonds).
Reserve accounts for taxable bonds equal 5 percent, and for HOAP bonds,
10 percent. No reserve accounts assumed for tax-exempt or Veterans bonds.
Annual interest expenses and earnings of Corporate and General accounts are
assumed equal to 80 percent of the average of the previous five years.

(a) This line item also includes bond sales costs and reserve accounts.

A sign of AIDEA's present course is the Skagway Ore Terminal, a 1990 purchase funded by a \$25 million bond issue.

ADN, March 17, 91

Future tugs AIDEA purse strings

Agency still could subsidize loans or bankroll major development

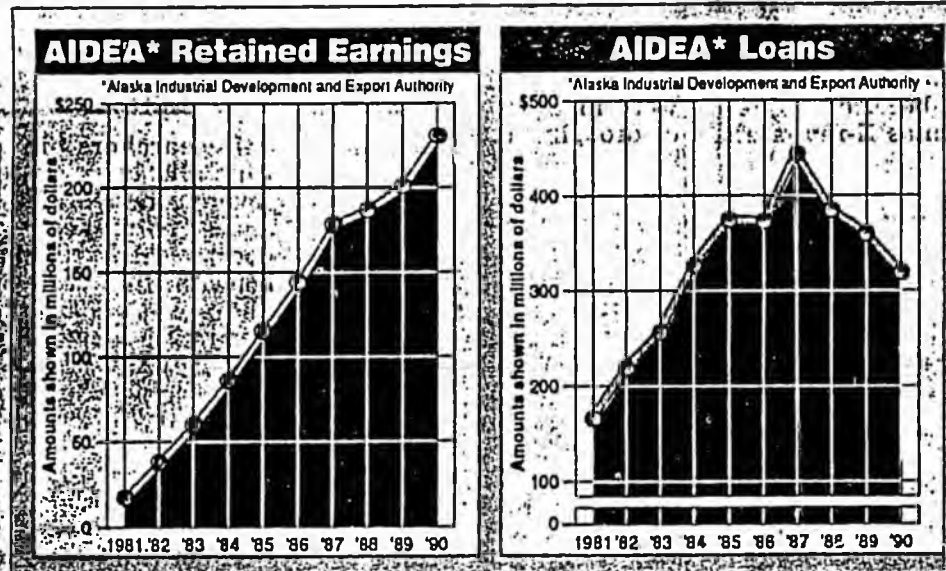
By HAL BERNTON
Daily News business reporter

From headquarters in a foreclosed Tudor Road office building, a cash-rich investment group is bankrolling and taking title to major Alaska industrial properties.

Its first acquisition was a northwest Alaska zinc ore port. Then came a southeast Alaska lead ore terminal. By year's end, it will own a new dock in the booming North Pacific fisheries. It hopes to build a 50-watt, coal-fired power plant in interior Alaska and also is eyeing construction of up to \$50 million worth of new Anchorage airplane maintenance hangars.

The group is neither some high-flying Outside investment group nor the shadowy subsidiary of a Japanese conglomerate. It is the Alaska Industrial Development and Export Authority, a 24-year-old creation of the state legislature.

AIDEA spent much of the past decade financing the building of strip malls, office buildings and other white-collar trappings of the Anchorage urban economy. In the late '80s — prodded by critics who



Source: University of Alaska Anchorage, Institute of Social and Economic Research

say the agency has strayed from its initial development charter — AIDEA began to focus on building Alaska's blue-collar economy.

"I'm a fan of industrial development, a junior Genghis Khan when it comes to mining," said Bert Wagnon, the agency's executive director

since 1982. "I would absolutely place our emphasis on resource development. The problem is identifying those projects that aren't financial boondoggles and have the ability to repay money."

Under Wagnon's tenure, the agency suffered a sharp upturn in bad

loans in 1987 as collapsing real-estate values caused a near-tripling of delinquent loans. But the agency still has managed to operate in the black for 10 years in a row and last year posted a near-record profit of \$29 million. It enters the new decade with \$331 million in cash and liquid investments.

AIDEA's bulging piggy bank also makes it a tempting target for a Hickel administration that came to power last December pledging to use state money to spur new development. Since then, collapsing oil prices have swept away anticipated budget surpluses, and AIDEA has emerged as one of the few state agencies with cash to bankroll development.

"I am intending to make it a central feature of the state role in stimulating ... economic development," said Glenn Olds, the state commerce commissioner and an AIDEA board member.

But there is still no consensus about just what AIDEA should be in the '90s.

Please see Page F-3, AIDEA

AIDEA: Different uses seen for agency's big bankroll

Continued from Page F-1

Bankers say they will continue to need the agency's help to provide financing for commercial real estate in a decade when other sources of long-term capital are drying up. Others, including Olds, say the agency should rapidly expand its industrial financing and consider a wide range of subsidy projects. And some say the agency should try to do both.

AIDEA was created in 1967 during the first Hickey administration as a bond-issuing agency to help finance construction of Kenai Peninsula liquefied natural gas plants.

But Marathon Oil and Phillips Petroleum got financing elsewhere. The agency was dormant until 1980, when the legislature roused it back to life with a \$180 million injection of assets.

At that time, banks wanted help with long-term lending in commercial real estate, and AIDEA cooperated with an avalanche of tax-exempt bond sales. Dozens of Anchorage strip malls and office buildings — including the agency's own Tudor Road building — were financed with AIDEA money. The building boom peaked in 1985, when AIDEA's loan portfolio totaled \$374 million.

The next year, a real estate market began to collapse. AIDEA took its first major step into industrial development with the \$177 million construction of a road and port for the Red Dog zinc mine, near Kotzebue.

As the agency moved into this industrial development, it also became an owner.

It put up the money for a 52-mile road, dock and fuel storage complex, then built and took title to them.

"We're the ones that own all the equipment. The crew quarters, the refueling facilities," Waggon said.

The agency expects to get its money back by charging user fees to Comulco Ltd., Red Dog developer.

User fees — over 50 years — are expected to generate enough revenue to repay initial development costs plus 6.5 percent interest, at a minimum. But in a move sanctioned by the legislature, that interest rate is slightly below the 7.3 percent rate AIDEA pays the bond investors.

The agency's board — a mix of businessmen and state officials — has decided to move ahead with more industrial development based on the concept of AIDEA as "financier, builder and owner."

Total system and product quality control will be maintained and managed through training, distribution, service and registration programs. Manufacturers such as AT&T, Lennox, Texas-Instruments and Westinghouse have contracted to make product changes for Smart home applications. Builders, contractors and installers will be specially trained and certified for installation and to ensure manufacturer warranties.

So what does this mean? The ultimate goal is to create a new kind of home. Until it becomes standard within the industry, it will be an extra cost. If it endures the test of time it may prove to be something we didn't know how we managed without it. I hope we won't need to ask the kids how to run the smart home terminal.

□ Clair Ramsey is a local associate broker specializing in residential real estate. His column appears every fourth Sunday.

"Red Dog set a pattern," Waggon said.

In July 1990, the authority purchased a Skagway lead-ore terminal for \$14 million and is improving both its environmental and handling systems in a \$13 million project scheduled to be completed this year. The agency plans to recoup all of its money through fees charged the mining companies that use the terminal.

AIDEA also this year is building and taking title to a city dock in Unalaska, which is the major staging point for a North Pacific fishing industry worth more than \$1 billion annually.

In years past, such basic infrastructure/projects often were funded by the state legislature. But AIDEA found another way to get the job done — working with the city government. It surveyed potential users and found there was enough demand to guarantee that, as AIDEA built, it could be repaid through long-term leases.

The \$7 million, 730-foot dock is scheduled to be completed late this year, and private companies plan to invest another \$7.5 million in improvements.

The agency also is considering spending up to \$50 million to build hangars at Anchorage International Airport for aircraft maintenance. "Federal Express, Alaska Airlines and other carriers would lease the hangars at rates high enough to cover AIDEA's costs, according to Waggon.

AIDEA's fourth industrial project would be a heavily subsidized coal-fired power plant that is one of its most controversial ventures. The \$193 million project is designed to demonstrate new technology for cleaner coal-burning power plants.

The project has received a \$93 million federal grant and the legislature has approved another \$25 million in funding. AIDEA has agreed to go into bond markets to raise \$40 million.

But the project proved more expensive than early estimates and is still \$35 million short of funding. Critics say it should never be built because it would flood the state with power it doesn't need and might replace cheaper — and cleaner — natural gas-generated power.

The project received a major setback this month when the Alaska Public Utilities Commission rejected a power sales agreement with the Golden Valley Electric Association

of Fairbanks because of the funding shortfall.

The Fairbanks utility could pay more for the power to help make up the shortfall. But that also would force up consumer power rates, and the commission might reject such a move.

"Healy's a marginal project. Right now there's a problem with the shortfall," Waggon said.

But some argue the agency is not moving fast enough to trigger new industrial development. The agency needs to worry less about the bottom line, they say, and consider a wide range of subsidy projects.

Some of the harshest criticism comes from a University of Alaska study commissioned by the AIDEA board. The study, released last December, says AIDEA should act more like the World Bank.

That bank is financed in part by grants from developed nations and offers some Third World, no-interest loans with an up-to-10-year initial grace period on principal payments.

"We believe AIDEA should continue to be a public corporation of the state of Alaska but that it should look and function like a development finance institution," wrote Musa Essayad and Dave Gordon, authors of the report.

AIDEA's charter said it can loan money only to projects that pay back all of the agency's financing costs in bond markets. But Essayad and Gordon said the state should step in with money to help worthy projects repay AIDEA loans.

Such recommendations are being given a real-world test with the recent request by a Seattle fishing company for a 2 percent, \$25 million loan. The money would finance construction of a \$14.6 million plant that makes imitation crab legs in Homer and a vessel to carry supplies up from Seattle and finished product to market.

Oceantrawl Inc. officials said the low-interest loan would offset the higher costs of building and operating the plant in Homer. The company has hired Tony Smith, a former state commerce commissioner and AIDEA chairman, to help persuade the legislature to approve such a loan.

"AIDEA should have the ability to accept less than the market rate of return if it gets other public sector benefits," Smith said.

Smith said the Oceantrawl plant would create 64 jobs and increase local and state tax revenue. He's

convinced that eventually Homer operating costs, as shipping lines developed to bring raw product directly from Unalaska, would be competitive with Seattle.

He also thinks AIDEA should offer low-interest loans to companies that agree to build roads and other basic utilities. Sebu Alaska, for example, might agree to take on the cost of extending roads to open the area known as Winter Creek.

Such policies will be up the legislature to decide. If the gate is thrown open to 2 percent loans, Waggon expects a lot of requests.

"What is the appetite for 2 percent money? My sense is it's infinite," he said.

Smith has at least a philosophical ally in Olds, who said he would favor subsidized loans to help launch new projects. He proposes waiving interest in the early years of a loan, and then restoring it to market rates during a later payback period.

But Alaska banks don't want to see all of AIDEA's loans go to big-ticket industrial projects. They are lobbying the legislature to help make it easier to keep their hands in the AIDEA till for commercial real estate loans.

Demand for such commercial lending is still very weak, said Bob Gray, president of National Bank of Alaska. But once it starts up again, state banks won't have much long-term money to offer, he said.

That's because new federal regulations restrict banks' long-term lending abilities. And pension funds, life insurance groups and big Outside commercial banks no longer are eager to invest in Anchorage real estate.

That makes AIDEA an important source of long-term money, Gray said. In a typical 20-year loan package, a bank will provide 20 percent of the money and AIDEA the other 80 percent.

But bank officials say it is difficult for them to lend any of their money for longer than 10 years when most of their assets are in short-term deposits. They have asked the legislature to approve a new type of loan participation in which all of the bank's money is paid off in the first 10 years.

"This isn't really a state problem. It's a national problem. A lot of the traditional long-term real estate lenders just aren't making loans," Gray said.

SB 190

SENATE FINANCE COMMITTEE REPORT

DATE: 4/12/91

FURTHER:

DATE TURNED INTO OFFICE: 5-6-91

The Finance Committee considered SENATE BILL NO. 190

"An Act relating to powers of the Alaska Safety Advisory Council; and providing for an effective date."

and recommended:

- replace with _____ CS _____
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted

- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S): Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____
DR 2/15/91

appropriation-no fiscal note

SIGNING DO-PASS:

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

APPROVES PREVIOUS:

fiscal note(s) Dept/Date:
Do Labor 2/14/91 109.5

zero fiscal note(s) _____

OTHER RECOMMENDATIONS:

[Signature] - No Rec
[Signature] No Rec

1. [Signature]

2. [Signature] Do pass

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

No. 1

Version: SB 190

(S) Publish Date: 3/11/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____

Title: Alaska Safety Advisory Council

Department: _____

BRU: Treasury

Component: _____

Sponsor: Hickel

Requestor: _____

Component Serial No.

--	--	--	--

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: None

ANALYSIS:

Prepared by: Brian C. Andrews

Phone: 465-2350

Division: Treasury

Date: February 15, 1991

Approved by Commissioner: 

Agency: Revenue

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

FISCAL NOTE

No. 2

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO

Bill Version: SB 190

(S) Publish Date: 3/11/91

Revision Date: _____
Title: "An Act relating to the Alaska
Safety Advisory Council"
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Labor
BRU: Commissioner's Office
Component: Commissioner's Office

COMPONENT SERIAL NO. 340

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	103.5	103.5	103.5	103.5	103.5	103.5
SUPPLIES	6.0	6.0	6.0	6.0	6.0	6.0
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	109.5	109.5	109.5	109.5	109.5	109.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE	109.5	109.5	109.5	109.5	109.5	109.5
---------	-------	-------	-------	-------	-------	-------

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
GF Program Receipts	109.5	109.5	109.5	109.5	109.5	109.5
TOTAL	109.5	109.5	109.5	109.5	109.5	109.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: If the effective date is 1/1/91, the FY 91 impact would also be \$109.5.

ANALYSIS: (Attach a separate page if necessary)

see attached

Prepared by: Eileen Plate, Special Assistant

Phone: 465-2700

Division: Commissioner's Office

Date: 2/14/91

Approved by Commissioner: Nancy Bear Usery

Agency: Department of Labor

Date: 2/14/91

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

Fiscal Note Analysis for:

"An Act relating to the Alaska Safety Advisory Council"

This bill would allow the Alaska Safety Advisory Council to collect program receipts at its annual safety & health conference. These receipts would, in turn, be used to pay for the conference activities as well as other council activities.

Projected receipts for FY 92:

Annual Governor's Conference		\$109,500
Registration fees:	\$85,000	
Exhibit fees:	14,000	
Other fees:	10,500	

Projected expenses for FY 92:

Annual Governor's Conference		\$109,500
Speakers expense	\$58,000	
Conference hotel	36,000	
Portfolios/Nametags/Awards	6,000	
Miscellaneous	9,500	

If the effective date is January 1, 1991, the receipts and expenditures for FY 91 would also fall under the provisions of this bill. We estimate the receipts and expenditures will be about the same in 1991 as shown above for 1992.

SENATE BILL NO. 190

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/11/91

Referred: L&C and Finance

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to powers of the Alaska Safety Advisory Council; and providing for an
2 effective date."

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

4 * Section 1. AS 18.60 is amended by adding a new section to read:

5 Sec. 18.60.840. POWERS OF THE COUNCIL. (a) The council may charge
6 a fee for attendance at the annual governor's safety conference, based on the estimated
7 cost to organize and hold the conference.

8 (b) The receipt and expenditure by the council of money from any source is
9 subject to the Executive Budget Act (AS 37.07).

10 * Sec. 2. Section 1 of this Act is retroactive to January 1, 1991.

11 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 465-2784

April 26, 1991

The Honorable Pat Pourchot, Co-Chair
Finance Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Pourchot:

I am writing to urge the Finance Committee's early consideration of Senate Bill 190. Passage of this bill is needed to bring the Alaska Safety Advisory Council into conformity with state budget/appropriation laws.


Specifically, Senate Bill 190 provides the Council with the required statutory authority to charge a fee for attendance at their annual Governor's Safety Conference. In addition, the accompanying fiscal note properly brings the Council's program receipts and expenditures into the legislative appropriation process.

Since the Council was established in 1982, it has charged conference fees and expended them outside of the state budget/legislative appropriation process. Enclosed is a copy of an opinion from the Department of Law which provides additional background information on the issue.

Passage of Senate Bill 190 is needed this year to permit the Council to continue to organize and hold its annual safety conference.

Thank you for your help; and if any additional information is needed, please let me know.

Sincerely,


Nancy Bear Usera
Commissioner

NBU:kh

Enclosure

MEMORANDUM

X AG Opinion
State of Alaska
Department of Law

TO: The Honorable Nancy Bear Usera
Commissioner
Department of Labor

DATE: January 4, 1991

FILE NO.: 663-91-0215

RECEIVED
Department of Labor

Comm	<i>[Signature]</i>	TEL NO.	
Deputy	<i>[Signature]</i>		
So Asst			
So Asst		SUBJECT	
Info OH			
Adm Asst			
Int Aud			
ASD			
ESD			
LS&S			
W/G			
CC: <i>[Signature]</i>			✓
PC: <i>[Signature]</i>			✓

465-3603

Alaska Safety Advisory Council - receipt and expenditure of funds

[Signature]

Office of the Commissioner
Thomas J. Slagle
Assistant Attorney General
Human Services-Juneau

ISSUE

Your predecessor, Jim Sampson, requested an opinion on whether the Alaska Safety Advisory Council (ASAC) can legally spend program receipts without going through the state budgetary or other administrative process.

The short answer is that by statute program receipts must be deposited with the Department of Revenue. Authority to receive and expend funds for a state agency must be through legislative appropriation. ASAC is a state body and the purchase of goods and services by the ASAC must conform with the State Procurement Code.

BACKGROUND

The ASAC is established in the Department of Labor with the aim of promoting safety to reduce the menace of accidental death and injury. AS 18.60.830 -- 18.60.835. The council's 13 members are appointed by the governor and represent industry, labor, government, and the public sector. A primary responsibility of ASAC is to organize and hold the governor's annual safety conference.

ASAC generates program receipts through private donations and from fees charged to attend the annual conference. ASAC uses the program receipts to help underwrite the next conference, which includes the cost of renting a conference hall, food services, hiring speakers, and additional administrative costs. While ASAC receives an annual appropriation through the state budget, the majority of its funding is through the program receipts. ASAC has been informally advised that, to conform with state law, its budgetary program, as presently constituted, must be channeled through the legislative/state budgetary process, but the council continues to maintain a separate bank account in Anchorage to fund its program.

The Honorable Nancy Bear Usera
Department of Labor
Our file: 663-88-0375

January 4, 1991
Page 2

LEGAL ANALYSIS

AS 18.60.830(a) provides: "There is established in the Department of Labor the Alaska Safety Advisory Council." (Emphasis added.)

The Department of Labor administrative statute in AS 23.05.030 provides: "The department shall remit to the Department of Revenue all money it receives and sign and issue vouchers for necessary disbursement." (Emphasis added.)

ASAC is established within the Department of Labor, thus the money received through program receipts must be remitted to the Department of Revenue. ASAC's failure to remit the program receipts is contrary to the above statutory obligation. In addition, AS 43.05.150 provides, in part, that the Department of Revenue shall "collect, receive, and safely keep all money of the state which is not by law entrusted to the care and custody of some other office."

The Alaska Constitution prohibits the expenditure of money absent legislative appropriation (art. IX, § 13). 1/ ASAC has made expenditures for its annual safety conference without state legislative approval or statutory authority. These expenditures are contrary to law.

The State Procurement Code (AS 36.30) provides the statutory framework for the purchase of goods and services by a state agency.

ASAC contracts to rent space and to obtain food services for its annual safety conference. Payment for the services are made through the ASAC private savings account. There is no indication that ASAC follows the procedures or regulations provided through the State Procurement Code, such as competitive bidding. The space rental and food services connected with the annual safety conference are not exceptions to the application of the State Procurement Code (AS 36.30.850 lists the exceptions). Thus, ASAC's procurement procedures are in violation of the State Procurement Code.

1/ Alaska Const. art. IX, § 13, provides: "No money shall be withdrawn from the treasury except in accordance with appropriation made by law. No obligation for the payment of money shall be incurred except as authorized by law. Unobligated appropriations outstanding at the end of the period of time specified by law shall be void."

The Honorable Nancy Bear Usera
Department of Labor
Our file: 663-88-0375

January 4, 1991
Page 3

CONCLUSION

State law mandates that all program receipts must be remitted to the Department of Labor for deposit with the Department of Revenue. ASAC is required by law to obtain authority to receive and expend funds through the legislative process. ASAC's current use of a savings account to deposit program receipts is contrary to state law. ASAC's procedure for obtaining goods and services for the annual safety conference is contrary to the State Procurement Code and is improper. 2/

TJS:jh:jal

cc: Doug Blankenship
Deputy Attorney General

2/ While not the focus of the memo, ASAC should obtain statutory authority to generate program receipts. AS 37.10.050, as amended in 1990, provides, in part:

(a) A state agency may not charge for the provision of state services unless the charge (1) is set or otherwise authorized by statute; and (2) where a regulation is necessary, is set by or provided for in a regulation that meets the standards of AS 44.62.020 and 44.62.030. A fee or other charge that is set by regulation may not exceed the estimated actual costs of the state agency in administering the activity or providing the service unless otherwise provided by the statute under which the regulation is adopted; this limitation does not apply to sales of property by a state agency. Unless specifically exempted by statute, a state agency authorized to collect or receive fees, licenses, taxes, or other money belonging to the state shall account for and remit the receipts, less fees to which the collector is entitled by statute or regulation, to the Department of Revenue at least once each month. The commissioner of administration shall separately account under AS 37.05.142 for receipts deposited under this subsection.

There is no statutory authority for ASAC to charge a fee for attendance at the annual safety conference.

WALTER J. HICKEL
GOVERNOR



SB190

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 11, 1991

The Honorable Richard I. Eliason
President of the Senate
P.O. Box V
Juneau, AK 99811

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the powers of the Alaska Safety Advisory Council (council).

The council is made up of 13 members from industry, labor, government, and the public sector. A primary function of the council is to organize and hold an annual governor's safety conference to bring together citizens interested in safety and health matters. (AS 18.60.835) The council, through its annual safety conference and other duties, provides the people of Alaska with an important format to develop and exchange ideas relating to safety and health. The annual appropriation to the council, \$15,000, has been insufficient to cover the cost of the annual conference. Therefore, the council charges an attendance fee for the safety conference to help underwrite the cost of the next conference.

To conform with state law, the council's funding must be channeled through the state budget/legislative appropriation process. This bill provides statutory authority for the council to charge the conference attendance fee, thereby generating program receipts which must be accounted for under the Executive Budget Act (AS 37.07). Thus, the bill provides for accountability of amounts received by the council and provides a source for future legislative appropriations.

I urge your prompt action on this matter.

Sincerely,

A large, stylized handwritten signature of Walter J. Hickel in dark ink.

Walter J. Hickel
Governor

SB 193

HOUSE COMMITTEE REPORT

(11)

Date Referred: May 6, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/9/92

The FINANCE Committee considered:

CSSB 193(FIN)

CS FOR SENATE BILL NO. 193 (FIN)

UNIFORM LIMITED PARTNERSHIP ACT

"An Act relating to limited partnerships; amending Alaska Rule of Civil Procedure 8; and providing for an effective date."

RECOMMENDATIONS:

be replaced with _____ [] the same title

[] have attached amendments(s) [] a new title

[] 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) DCED 2/5/92
DNR 2/5/92

[] zero fiscal note _____

[] zero fiscal note(s) law 2/5/92

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Mike Sproule</i> NAUAYE	<input checked="" type="checkbox"/>	<i>Mark Baur</i> Baur		<input checked="" type="checkbox"/>	
		<i>Fay Brown</i> Brown		<input checked="" type="checkbox"/>	
		<i>Kayans</i> Kopmen		<input checked="" type="checkbox"/>	
		<i>Robert (JED)</i> Phillips		<input checked="" type="checkbox"/>	
		<i>Donald J. Larson</i> Larson		<input checked="" type="checkbox"/>	
		<i>Thomas Barnes</i> Barnes		<input checked="" type="checkbox"/>	

Mike Sproule NAUAYE

CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 5Bill Version: CS SB 193 (FIN)(S) Publish Date: 2-5-92STATE OF ALASKA
1992 LEGISLATIVE SESSIONRevision Date: January 30, 1992Department Affected: Commerce & Econ. Dev.Title: Uniform Limited Partnership ActBRU: Banking, Securities & CorporationsComponent: CorporationsSponsor: Sen. Rodey

Requestor: _____

COMPONENT SERIAL NO.

1	2	3	3
---	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	3.0	0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND RESOURCE:	4.0	4.0	4.0	4.0	4.0	4.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	3.0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	3.0	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.)

The Department of Commerce and Economic Development (DCED) and the Department of Natural Resources (DNR) have consulted in the preparation of their respective fiscal notes in response to SB 193. This fiscal note reflects only those expenses which DCED expects to incur in implementing this legislation.

(CONTINUED NEXT SHEET)

Prepared By: Willis F. Kirkpatrick, Director Phone: 455-2521Division: Banking, Securities & Corporations Date: _____Approved by Commissioner: Glenn A. OldsAgency: Department of Commerce & Economic Development Date: January 30, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Leg. O., and Impacted Agency(ies).

Page 1 of 2

WFK/MM/dg19391D-1/0130921

(Rev. 12/91)

FISCAL NOTE - SB 193

ANALYSIS - CONTINUED:

DCED will receive both hardcopy documents (filed) and microfilmed documents (recorded). Hardcopy documents will be converted to microfilm and indexed to conform to the department's filing system.

The database utilized by DNR will be purchased from Motznik Computer Services, Inc. and modified to conform to the department's computer filing system.

The projected expenses will be the cost of the record conversion. The additional expenses are to cover the expenses of postage and promulgating regulations.

Contractual expenditures:

- \$.5 Postage - Projected for mailing notice of agency change and for the promulgation of regulations.
- \$.2 Supplies - Projected for costs incurred in conversion and mailing.
- \$.5 Motznik Conversion - Projected for the cost incurred in purchasing computer records from Motznik Computer Services, Inc. and for the cost of conversion of these records.
- \$.3 Advertising - Projected cost of posting regulations for commentary.
- \$1.5 Conversion - Projected cost for personnel data input of initial hardcopy records.

The projected revenue of \$4.0 will be new program receipts for DCED. This revenue is based upon the present filing charged by DNR of \$15.00. Approximately 260 limited partnerships are filed each year.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE No. 3
Bill Version: CSSB 193 (JLD)
(S) Publish Date: 2-5-92

Revision Date: January 27, 1992 Department Affected: Department of Law
Title: "An Act relating to limited partnerships..." BRU: Legal Services
Sponsor: Senator Rodev Component: Operations
Requestor: Senator Rodev COMPONENT SERIAL NO.

		9	3
--	--	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

This bill amends the state's Uniform Partnership Act, AS 32, to add a new chapter covering limited partnerships. The bill deals with transactions between private parties and will not have a fiscal impact on the Department of Law.

Prepared By: Richard I. Pegues Director Phone: 465-3672
Division: Administrative Services Date: January 27, 1992
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law to: January 27, 1992

Distribution (by preparer): Leg. Fin., Legislative Spcl
Rev 10/7/91

Changes in CSSB 193 (FIN) have no fiscal impact. This fiscal note is appropriate. Page 1 of 1

2/5/92 [Signature]
date COMPTROLLER (initial)

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: 30-Jan-92

Department Affected: Natural Resources

Title: Limited Partnerships

BRU: Management & Administration

Components: Recorder's Office

Sponsor: Senator Rodey

Requestor: Senate Finance

COMPONENT SERIAL NO. 802

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL	1.0					
CONTRACTUAL	3.5					
SUPPLIES	2.1					
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.6	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
Funding Source:	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)

FUNDING: (Thousands of Dollars)

GENERAL FUND	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	6.6	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

Changes in CSSB 193 (FD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

2/5/92 date *[Signature]* Comte Aide (initial)

Prepared by: Meg Hayes

Phone: 762-2437

Division: Management & Administration

Date: 29-Jan-92

Approved by Commissioner: Harold C. Heinze

Date: 29-Jan-92

Agency: Department of Natural Resources

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

CSSB 193 (JUD)
Fiscal Note Analysis
January 30, 1992

The Departments of Natural Resources and Commerce and Economic Development have consulted in the preparation of their respective fiscal notes. This note includes only those expenses for the Department of Natural Resources and to our knowledge does not overlap with that of the Department of Commerce and Economic Development.

The Department of Natural Resources will duplicate those original documents retained or microfilmed in the statewide Recorder's Offices pertaining to limited partnerships. A microfilm copy of all original documents filed and of documents recorded prior to transfer will be transferred to the Department of Commerce and Economic Development along with those original documents filed prior to 1988. (After January 1, 1988 partnership documents became a "recorded" document rather than a "filed" document and originals were returned to the client.) Another microfilm copy of all documents will be kept in the Recorder's Offices in order to maintain the integrity of the public record and because persons who filed prior to that date will expect to be able to return to the office of record for copies.

Funding is requested to bring all documents filed prior to January 1, 1988 to a central location where they will be microfilmed by a contractor. Documents recorded since January 1, 1988 are already on microfilm and will be extracted and duplicate filmed.

100 none requested

200 \$1.0 is requested to travel to the Court System maintained offices in Glennallen, Seward, and Valdez to pack and transport records. In other locations, Recorder's Office employees will do the work.

300 \$3.5 is requested for computer programming charges necessary to identify and extract the records and for contract microfilm services.

400 \$2.1 is requested for postage, packing materials, and miscellaneous supplies.

JUD
FIN

CS FOR SENATE BILL NO. 193 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 2/5/92
Referred: Rules

Sponsor(s): SENATOR RODEY,

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to limited partnerships; amending Alaska Rule of Civil Procedure 8; and
2 providing for an effective date."

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

4 * Section 1. AS 32 is amended by adding a new chapter to read:

5 CHAPTER 11. UNIFORM LIMITED PARTNERSHIP ACT.

6 ARTICLE 1. FORMATION AND CERTIFICATE OF LIMITED PARTNERSHIP.

7 Sec. 32.11.010. CERTIFICATE OF LIMITED PARTNERSHIP. (a) In order to form
8 a limited partnership, two or more persons shall execute a certificate of limited partnership. The
9 certificate shall be filed with the Department of Commerce and Economic Development and must
10 set out

- 11 (1) the name of the limited partnership;
- 12 (2) the general character of the business of the limited partnership;
- 13 (3) the address of the office and the name and address of the agent for service
- 14 of process required to be maintained by AS 32.11.830;

1 (4) the name and business address of each partner, specifying separately the
2 general partners and limited partners;

3 (5) the amount of cash and a description and statement of the agreed value of the
4 other property or services

5 (A) contributed by each partner; and

6 (B) that each partner has agreed to contribute in the future;

7 (6) the times at which or events on the happening of which any additional
8 contributions agreed to be made by each partner are to be made;

9 (7) any power of a limited partner to grant the right to become a limited partner
10 to an assignee of a part of the limited partner's partnership interest, and the terms and conditions
11 of the power;

12 (8) if agreed upon, the time at which or the events on the happening of which a
13 partner may terminate the partner's membership in the limited partnership, the amount of or the
14 method of determining the distribution to which the partner may be entitled respecting the
15 partner's partnership interest, and the terms and conditions of the termination and distribution;

16 (9) any right of a partner to receive distributions of property, including cash, from
17 the limited partnership;

18 (10) any right of a partner to receive, or of a general partner to make,
19 distributions to a partner that include a return of all or a part of the partner's contribution;

20 (11) any time at which or events upon the happening of which the limited
21 partnership is to be dissolved and its affairs wound up;

22 (12) any right of the remaining general partners to continue the business on the
23 happening of an event of withdrawal of a general partner; and

24 (13) other matters the partners determine to include.

25 (b) A limited partnership is formed at the time of the filing of the certificate of limited
26 partnership with the department or at a later time specified in the certificate of limited partnership
27 if, in either case, there has been substantial compliance with the requirements of this section.

28 Sec. 32.11.020. AMENDMENT TO CERTIFICATE. (a) A certificate of limited
29 partnership is amended by filing a certificate of amendment with the department. The certificate
30 must set out

31 (1) the name of the limited partnership;

- 1 (2) the date of filing the certificate to be amended; and
2 (3) the amendment to the certificate.

3 (b) Within 30 days after the following events, an amendment to a certificate of limited
4 partnership reflecting the occurrence of the event or events shall be filed:

5 (1) a change in the amount or character of the contribution of a partner, or in a
6 partner's obligation to make a contribution;

7 (2) the admission of a new general partner;

8 (3) the withdrawal of a general partner; or

9 (4) the continuation of the business under AS 32.11.370 after an event of
10 withdrawal of a general partner.

11 (c) A general partner who becomes aware that a statement in a certificate of limited
12 partnership was false when made or that an arrangement or other fact described has changed,
13 making the certificate inaccurate, shall promptly amend the certificate.

14 (d) A certificate of limited partnership may be amended at any time for any other proper
15 purpose the general partners determine.

16 (e) A person may not be held liable because an amendment to a certificate of limited
17 partnership has not been filed to reflect the occurrence of an event referred to in (b) of this
18 section if the amendment is filed within the 30-day period specified in (b) of this section.

19 (f) A restated certificate of limited partnership may be executed and filed in the same
20 manner as a certificate of amendment.

21 Sec. 32.11.030. CANCELLATION OF CERTIFICATE. A certificate of limited
22 partnership shall be canceled upon the dissolution and the commencement of winding up of the
23 partnership or at any other time there are no limited partners. A certificate of cancellation shall
24 be filed with the department and must set out

25 (1) the name of the limited partnership;

26 (2) the date of filing of its certificate of limited partnership;

27 (3) the reason for filing the certificate of cancellation;

28 (4) the effective date, which must be a date certain, of cancellation if it is not to
29 be effective upon the filing of the certificate; and

30 (5) other information the general partners filing the certificate determine.

31 Sec. 32.11.040. EXECUTION OF CERTIFICATES. (a) Each certificate required by

1 AS 32.11.010 - 32.11.090 to be filed with the department shall be executed in the following
2 manner:

3 (1) an original certificate of limited partnership shall be signed by all partners
4 named in the certificate;

5 (2) a certificate of amendment shall be signed by a least one general partner and
6 by each other partner designated in the certificate as a new partner or whose contribution is
7 described as having been increased; and

8 (3) a certificate of cancellation shall be signed by all general partners.

9 (b) A person may sign a certificate by an attorney-in-fact, but a power of attorney to sign
10 a certificate relating to the admission, or increased contribution, of a partner must specifically
11 describe the admission or increase.

12 (c) The execution of a certificate by a general partner constitutes an affirmation under
13 the penalty of false swearing that the facts stated are true.

14 Sec. 32.11.050. EXECUTION BY JUDICIAL ACT. If a person required by
15 AS 32.11.040 to execute a certificate fails or refuses to do so, a person who is adversely affected
16 by the failure or refusal may petition the superior court to direct the execution of the certificate.
17 If the court finds that it is proper for the certificate to be executed and that a person so
18 designated has failed or refused to execute the certificate, it shall order the department to record
19 an appropriate certificate.

20 Sec. 32.11.060. FILING WITH DEPARTMENT. (a) An original and an exact copy of
21 the certificate of limited partnership and of a certificate of amendment or cancellation, or of a
22 judicial decree of amendment or cancellation, shall be delivered to the department. A person
23 who executes a certificate as an agent or fiduciary need not exhibit evidence of the person's
24 authority as a prerequisite to filing. Unless the department finds that a certificate does not
25 conform to law, upon receipt of all filing fees required by law the department shall

26 (1) endorse on each original and exact copy the word "Filed" and the day, month,
27 and year of the filing;

28 (2) file the original in the department's office; and

29 (3) return the exact copy to the person who filed it or the person's representative.

30 (b) Upon the filing of a certificate of amendment or judicial decree of amendment with
31 the department, the certificate of limited partnership is amended, and upon the effective date of

1 a certificate of cancellation or a judicial decree of cancellation, the certificate of limited
2 partnership is canceled.

3 Sec. 32.11.070. LIABILITY FOR FALSE STATEMENT IN CERTIFICATE. If a
4 certificate of limited partnership or certificate of amendment or cancellation contains a false
5 statement, one who suffers loss by reliance on the statement may recover damages for the loss
6 from

7 (1) a person who executes the certificate, or causes another to execute the
8 certificate on the person's behalf, and knew, and a general partner who knew or should have
9 known, the statement to be false at the time the certificate was executed; and

10 (2) a general partner who thereafter knows or should have known that an
11 arrangement or other fact described in the certificate has changed, making the statement
12 inaccurate in any respect within a sufficient time before the statement was relied upon reasonably
13 to have enabled that general partner to cancel or amend the certificate, or to file a petition for
14 its cancellation or amendment under AS 32.11.050.

15 Sec. 32.11.080. SCOPE OF NOTICE. The fact that a certificate of limited partnership
16 is on file with the department is notice that the partnership is a limited partnership and the
17 persons designated in the certificate as limited partners are limited partners, but it is not notice
18 of any other fact.

19 Sec. 32.11.090. DELIVERY OF CERTIFICATES TO LIMITED PARTNERS. Upon the
20 return by the department under AS 32.11.060 of a certificate marked "Filed," the general partners
21 shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate
22 of amendment or cancellation to each limited partner unless the partnership agreement provides
23 otherwise.

24 ARTICLE 2. LIMITED PARTNERS.

25 Sec. 32.11.100. ADMISSION OF LIMITED PARTNERS. (a) After the filing of a
26 limited partnership's original certificate of limited partnership, a person may be admitted as an
27 additional limited partner

28 (1) in the case of a person acquiring a partnership interest directly from the
29 limited partnership, upon compliance with the partnership agreement or, if the partnership
30 agreement does not provide, upon the written consent of all partners; and

31 (2) in the case of an assignee of a partnership interest of a partner who has the

1 power under AS 32.11.350 to grant the assignee the right to become a limited partner, upon the
2 exercise of that power and compliance with conditions limiting the grant or exercise of the
3 power.

4 (b) In each case under (a) of this section, the person acquiring the partnership interest
5 becomes a limited partner only upon amendment of the certificate of limited partnership
6 reflecting that fact.

7 Sec. 32.11.110. VOTING. Subject to AS 32.11.120, the partnership agreement may grant
8 to all or a specified group of the limited partners the right to vote on a per capita or other basis
9 on any matter.

10 Sec. 32.11.120. LIABILITY TO THIRD PARTIES. (a) Except as provided in (d) of this
11 section, a limited partner is not liable for the obligations of a limited partnership unless the
12 limited partner is also a general partner or, in addition to the exercise of the limited partner's
13 rights and powers as a limited partner, the limited partner participates in the control of the
14 business. However, if the limited partner participates in the control of the business, the limited
15 partner is liable only to persons who transact business with the limited partnership reasonably
16 believing, based upon the limited partner's conduct, that the limited partner is a general partner.

17 (b) A limited partner does not participate in the control of the business within the
18 meaning of (a) of this section solely by doing one or more of the following:

19 (1) being a contractor for or an agent or employee of the limited partnership or
20 of a general partner or being an officer, director, or shareholder of a general partner that is a
21 corporation;

22 (2) consulting with and advising a general partner with respect to the business of
23 the limited partnership;

24 (3) acting as surety for the limited partnership or guaranteeing or assuming one
25 or more specific obligations of the limited partnership;

26 (4) taking any action required or permitted by law to bring or pursue a derivative
27 action in the right of the limited partnership;

28 (5) requesting or attending a meeting of partners;

29 (6) proposing, approving, or disapproving, by voting or otherwise, one or more
30 of the following matters:

31 (A) the dissolution and winding up of the limited partnership;

1 (B) the sale, exchange, lease, mortgage, pledge, or other transfer of all or
2 substantially all of the assets of the limited partnership;

3 (C) the incurrence of indebtedness by the limited partnership other than
4 in the ordinary course of its business;

5 (D) a change in the nature of the business;

6 (E) the admission or removal of a general partner;

7 (F) the admission or removal of a limited partner;

8 (G) a transaction involving an actual or potential conflict of interest
9 between a general partner and the limited partnership or the limited partners;

10 (H) an amendment to the partnership agreement or certificate of limited
11 partnership; or

12 (I) matters related to the business of the limited partnership not otherwise
13 enumerated in this paragraph that the partnership agreement states in writing may be
14 subject to the approval or disapproval of limited partners;

15 (7) winding up the limited partnership under AS 32.11.390; or

16 (8) exercising a right or power permitted to limited partners under this chapter
17 and not specifically enumerated in this subsection.

18 (c) The enumeration in (b) of this section does not mean that the possession or exercise
19 of any other powers by a limited partner constitutes participation by the limited partner in the
20 business of the limited partnership.

21 (d) A limited partner who knowingly permits the limited partner's name to be used in
22 the name of the limited partnership, except under circumstances permitted by AS 32.11.810(2),
23 is liable to creditors who extend credit to the limited partnership without actual knowledge that
24 the limited partner is not a general partner.

25 Sec. 32.11.130. ERRONEOUS BELIEF IN STATUS AS A LIMITED PARTNER. (a)
26 Except as provided in (b) of this section, a person who makes a contribution to a business
27 enterprise and erroneously but in good faith believes that the person has become a limited partner
28 in the enterprise is not a general partner in the enterprise and is not bound by its obligations by
29 reason of making the contribution, receiving distributions from the enterprise, or exercising the
30 rights of a limited partner, if, on ascertaining the mistake, the person

31 (1) causes an appropriate certificate of limited partnership or a certificate of

1 amendment to be executed and filed; or

2 (2) withdraws from future equity participation in the enterprise by executing and
3 filing in the office of the commissioner a certificate declaring withdrawal under this section.

4 (b) A person who makes a contribution of the kind described in (a) of this section is
5 liable as a general partner to a third party who transacts business with the enterprise before (1)
6 the person withdraws and an appropriate certificate is filed to show withdrawal, or (2) an
7 appropriate certificate is filed to show the person's status as a limited partner and, in the case of
8 an amendment, after expiration of the 30-day period for filing an amendment relating to the
9 person as a limited partner under AS 32.11.020, but in either case under (1) or (2) only if the
10 third party actually believed in good faith that the person was a general partner at the time of the
11 transaction.

12 Sec. 32.11.140. INFORMATION. Each limited partner has the right to

13 (1) inspect and copy the partnership records required to be maintained by
14 AS 32.11.840; and

15 (2) obtain from the general partners from time to time upon reasonable demand

16 (A) true and full information regarding the state of the business and
17 financial condition of the limited partnership;

18 (B) promptly after it becomes available, a copy of the limited partnership's
19 federal, state, and local income tax returns for each year; and

20 (C) other information regarding the affairs of the limited partnership as
21 is just and reasonable.

22 ARTICLE 3. GENERAL PARTNERS.

23 Sec. 32.11.150. ADMISSION OF ADDITIONAL GENERAL PARTNERS. After the
24 filing of a limited partnership's original certificate of limited partnership, additional general
25 partners may be admitted as provided in writing in the partnership agreement or, if the
26 partnership agreement does not provide in writing for the admission of additional general
27 partners, with the written consent of all partners.

28 Sec. 32.11.160. EVENTS OF WITHDRAWAL. Except as approved by the specific
29 written consent of all partners at the time, a person ceases to be a general partner of a limited
30 partnership upon the happening of any of the following events:

31 (1) the general partner withdraws from the limited partnership under

1 AS 32.11.250;

2 (2) the general partner ceases to be a member of the limited partnership under
3 AS 32.11.330;

4 (3) the general partner is removed as a general partner in accordance with the
5 partnership agreement;

6 (4) unless otherwise provided in writing in the partnership agreement, the general
7 partner

8 (A) makes an assignment for the benefit of creditors;

9 (B) files a voluntary petition in bankruptcy;

10 (C) is adjudicated a bankrupt or insolvent;

11 (D) files a petition or answer seeking for the general partner
12 reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar
13 relief under a statute, law, or regulation;

14 (E) files an answer or other pleading admitting or failing to contest the
15 material allegations of a petition filed against the general partner in a proceeding of the
16 nature of those specified in (A) - (D) of this paragraph; or

17 (F) seeks, consents to, or acquiesces in the appointment of a trustee,
18 receiver, or liquidator of the general partner or of all or a substantial part of the general
19 partner's properties;

20 (5) unless otherwise provided in writing in the partnership agreement, 120 days
21 after the commencement of a proceeding against the general partner seeking reorganization,
22 arrangement, composition, readjustment, liquidation, dissolution, or similar relief under a statute,
23 law, or regulation, the proceeding has not been dismissed, or if within 90 days after the
24 appointment without the general partner's consent or acquiescence of a trustee, receiver, or
25 liquidator of the general partner or of all or a substantial part of the general partner's properties,
26 the appointment is not vacated or stayed or within 90 days after the expiration of a stay, the
27 appointment is not vacated;

28 (6) in the case of a general partner who is a natural person,

29 (A) the general partner's death; or

30 (B) the entry of an order by a court of competent jurisdiction adjudicating
31 the general partner incompetent to manage the general partner's person or the general

1 partner's estate;

2 (7) in the case of a general partner who is acting as a general partner by virtue
3 of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new
4 trustee;

5 (8) in the case of a general partner that is a separate partnership, the dissolution
6 and commencement of winding up of the separate partnership;

7 (9) in the case of a general partner that is a corporation, the filing of a certificate
8 of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

9 (10) in the case of an estate, the distribution by the fiduciary of the estate's entire
10 interest in the partnership.

11 Sec. 32.11.170. GENERAL POWERS AND LIABILITIES. (a) Except as provided in
12 this chapter or in the partnership agreement, a general partner of a limited partnership has the
13 rights and powers and is subject to the restrictions of a partner in a partnership without limited
14 partners.

15 (b) Except as provided in this chapter, a general partner of a limited partnership has the
16 liabilities of a partner in a partnership without limited partners to persons other than the
17 partnership and the other partners. Except as provided in this chapter or in the partnership
18 agreement, a general partner of a limited partnership has the liabilities of a partner in a
19 partnership without limited partners to the partnership and to the other partners.

20 Sec. 32.11.180. CONTRIBUTIONS BY GENERAL PARTNER; PERSON BOTH
21 LIMITED AND GENERAL PARTNER. A general partner of a limited partnership may make
22 contributions to the partnership and share in the profits and losses of, and in distributions from,
23 the limited partnership as a general partner. A general partner also may make contributions to
24 and share in profits, losses, and distributions as a limited partner. A person who is both a general
25 partner and a limited partner has the rights and powers, and is subject to the restrictions and
26 liabilities, of a general partner and, except as provided in the partnership agreement, also has the
27 powers, and is subject to the restrictions, of a limited partner to the extent of the person's
28 participation in the partnership as a limited partner.

29 Sec. 32.11.190. VOTING. The partnership agreement may grant to all or certain
30 identified general partners the right to vote, on a per capita or any other basis, separately or with
31 all or any class of the limited partners, on any matter.

1 ARTICLE 4. FINANCE.

2 Sec. 32.11.200. FORM OF CONTRIBUTION. The contribution of a partner may be in
3 cash, property, or services rendered, or a promissory note or other obligation to contribute cash
4 or property or to perform services.

5 Sec. 32.11.210. LIABILITY FOR CONTRIBUTION. (a) Except as provided in the
6 certificate of limited partnership, a partner is obligated to the limited partnership to perform an
7 enforceable promise to contribute cash or property or to perform services, even if the partner is
8 unable to perform because of death, disability, or other reason. If a partner does not make the
9 required contribution of property or services, the partner is obligated at the option of the limited
10 partnership to contribute cash equal to that portion of the value, as stated in the certificate of
11 limited partnership of the stated contribution that has not been made.

12 (b) Unless otherwise provided in the partnership agreement, the obligation of a partner
13 to make a contribution or return money or other property paid or distributed in violation of this
14 chapter may be compromised only by consent of all partners. Notwithstanding the compromise,
15 a creditor of a limited partnership who extends credit or otherwise acts in reliance on that
16 obligation after the partner signs a writing that reflects the obligation, and before the amendment
17 or cancellation to reflect the compromise, may enforce the original obligation.

18 Sec. 32.11.220. SHARING OF PROFITS AND LOSSES. The profits and losses of a
19 limited partnership shall be allocated among the partners, and among classes of partners, in the
20 manner provided in writing in the partnership agreement. If the partnership agreement does not
21 specify in writing, profits and losses shall be allocated on the basis of the value, as stated in the
22 certificate of limited partnership, of the contributions made by each partner to the extent they
23 have been received by the partnership and have not been returned.

24 Sec. 32.11.230. SHARING OF DISTRIBUTIONS. Distributions of cash or other assets
25 of a limited partnership shall be allocated among the partners and among classes of partners in
26 the manner provided in writing in the partnership agreement. If the partnership agreement does
27 not specify in writing, distributions shall be made on the basis of the value, as stated in the
28 certificate of limited partnership of the contributions made by each partner to the extent they have
29 been received by the partnership and have not been returned.

30 ARTICLE 5. DISTRIBUTIONS AND WITHDRAWAL.

31 Sec. 32.11.240. INTERIM DISTRIBUTIONS. Except as provided in AS 32.11.240 -

1 32.11.310, a partner is entitled to receive distributions from a limited partnership before the
2 partner's withdrawal from the limited partnership and before the dissolution and winding up of
3 the partnership

4 (1) to the extent and at the times or upon the happening of the events specified
5 in the partnership agreement; and

6 (2) if a distribution constitutes a return of a part of the partner's contribution
7 under AS 32.11.310(c), to the extent and at the times or upon the happening of the events
8 specified in the certificate of limited partnership.

9 Sec. 32.11.250. WITHDRAWAL OF GENERAL PARTNER. A general partner may
10 withdraw from a limited partnership at any time by giving written notice to the other partners,
11 but if the withdrawal violates the partnership agreement, the limited partnership may recover from
12 the withdrawing general partner damages for breach of the partnership agreement and offset the
13 damages against the amount otherwise distributable to the general partner.

14 Sec. 32.11.260. WITHDRAWAL OF LIMITED PARTNER. A limited partner may
15 withdraw from a limited partnership at the time or upon the happening of events specified in the
16 certificate of limited partnership and in accordance with the partnership agreement. If the
17 certificate does not specify the time or the events upon the happening of which a limited partner
18 may withdraw or a definite time for the dissolution and winding up of the limited partnership,
19 a limited partner may withdraw upon not less than six months' prior written notice to each
20 general partner at the general partner's address on the books of the limited partnership at its
21 office in this state.

22 Sec. 32.11.270. DISTRIBUTION UPON WITHDRAWAL. Except as provided in
23 AS 32.11.240 - 32.11.310, upon withdrawal a withdrawing partner is entitled to receive a
24 distribution to which the withdrawing partner is entitled under the partnership agreement and, if
25 not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within
26 a reasonable time after withdrawal, the fair value of the withdrawing partner's interest in the
27 limited partnership as of the date of withdrawal based upon the withdrawing partner's right to
28 share in distributions from the limited partnership.

29 Sec. 32.11.280. DISTRIBUTION IN KIND. Except as provided in the certificate of
30 limited partnership, a partner, regardless of the nature of the partner's contribution, does not have
31 the right to demand and receive a distribution from a limited partnership in a form other than

1 cash. Except as provided in writing in the partnership agreement, a partner may not be
2 compelled to accept a distribution of an asset in kind from a limited partnership to the extent that
3 the percentage of the asset distributed to the partner exceeds a percentage of that asset that is
4 equal to the percentage in which the partner shares in distributions from the limited partnership.

5 Sec. 32.11.290. RIGHT TO DISTRIBUTION. At the time a partner becomes entitled
6 to receive a distribution, the partner has the status of, and is entitled to all remedies available to,
7 a creditor of the limited partnership with respect to the distribution.

8 Sec. 32.11.300. LIMITATIONS ON DISTRIBUTION. A partner may not receive a
9 distribution from a limited partnership to the extent that, after giving effect to the distribution,
10 all liabilities of the limited partnership, other than liabilities to partners on account of their
11 partnership interest, exceed the fair value of the partnership assets.

12 Sec. 32.11.310. LIABILITY UPON RETURN OF CONTRIBUTION. (a) If a partner
13 has received the return of a part of the partner's contribution without violation of the partnership
14 agreement or this chapter, the partner is liable to the limited partnership for a period of one year
15 thereafter for the amount of the returned contribution, but only to the extent necessary to
16 discharge the limited partnership's liabilities to creditors who extended credit to the limited
17 partnership during the period the contribution was held by the partnership.

18 (b) If a partner has received the return of a part of the partner's contribution in violation
19 of the partnership agreement or this chapter, the partner is liable to the limited partnership for
20 a period of six years thereafter for the amount of the contribution wrongfully returned.

21 (c) A partner receives a return of the partner's contribution to the extent that a
22 distribution to the partner reduces the partner's share of the fair value of the net assets of the
23 limited partnership below the value, as set out in the certificate of limited partnership, of the
24 partner's contribution that has not been distributed to the partner.

25 ARTICLE 6. ASSIGNMENT OF PARTNERSHIP INTERESTS.

26 Sec. 32.11.320. NATURE OF PARTNERSHIP INTEREST. A partnership interest is
27 personal property.

28 Sec. 32.11.330. ASSIGNMENT OF PARTNERSHIP INTEREST. Except as provided
29 in the partnership agreement, a partnership interest is assignable in whole or in part. An
30 assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee
31 to become or to exercise the rights of a partner. An assignment entitles the assignee to receive,

1 to the extent assigned, only the distribution to which the assignor would be entitled. Except as
2 provided in the partnership agreement, a partner ceases to be a partner upon assignment of all
3 of the partner's partnership interest.

4 Sec. 32.11.340. RIGHTS OF CREDITOR. On application to a court of competent
5 jurisdiction by a judgment creditor of a partner, the court may charge the partnership interest of
6 the partner with payment of the unsatisfied amount of the judgment with interest. To the extent
7 charged, the judgment creditor has only the rights of an assignee of the partnership interest. This
8 chapter does not deprive a partner of the benefit of an exemption law applicable to the partner's
9 partnership interest.

10 Sec. 32.11.350. RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER. (a) An
11 assignee of a partnership interest, including an assignee of a general partner, may become a
12 limited partner if and to the extent that

13 (1) the assignor gives the assignee that right in accordance with authority
14 described in the certificate of limited partnership; or

15 (2) all other partners consent.

16 (b) An assignee who has become a limited partner has, to the extent assigned, the rights
17 and powers, and is subject to the restrictions and liabilities, of a limited partner under the
18 partnership agreement and this chapter. An assignee who becomes a limited partner also is liable
19 for the obligations of the assignee's assignor to make and return contributions as provided in
20 AS 32.11.200 - 32.11.310. However, the assignee is not obligated for liabilities unknown to the
21 assignee at the time the assignee became a limited partner and that could not be ascertained from
22 the certificate of limited partnership.

23 (c) If an assignee of a partnership interest becomes a limited partner, the assignor is not
24 released from the assignor's liability to the limited partnership under AS 32.11.070 and
25 32.11.210.

26 Sec. 32.11.360. POWER OF ESTATE OF DECEASED OR INCOMPETENT PARTNER.
27 If a partner who is an individual dies or a court of competent jurisdiction adjudges the partner
28 to be incompetent to manage the partner's person or the partner's property, the partner's executor,
29 administrator, guardian, conservator, or other legal representative may exercise all of the partner's
30 rights for the purpose of settling the partner's estate or administering the partner's property,
31 including any power the partner had to give an assignee the right to become a limited partner.

1 If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of
2 that partner may be exercised by its legal representative or successor.

3 ARTICLE 7. DISSOLUTION.

4 Sec. 32.11.370. DISSOLUTION. A limited partnership is dissolved and its affairs shall
5 be wound up upon the happening of the first to occur of the following:

6 (1) at the time specified in the certificate of limited partnership;

7 (2) upon the happening of events specified in the certificate of limited partnership;

8 (3) written consent of all partners;

9 (4) an event of withdrawal of a general partner unless at the time there is at least
10 one other general partner and the certificate of limited partnership permits the business of the
11 limited partnership to be carried on by the remaining general partner and that partner does so,
12 but the limited partnership is not dissolved and is not required to be wound up by reason of an
13 event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to
14 continue the business of the limited partnership and to the appointment of one or more additional
15 general partners if necessary or desired; or

16 (5) entry of a decree of judicial dissolution under AS 32.11.380.

17 Sec. 32.11.380. JUDICIAL DISSOLUTION. On application by or for a partner the
18 superior court may decree dissolution of a limited partnership whenever it is not reasonably
19 practicable to carry on the business in conformity with the partnership agreement.

20 Sec. 32.11.390. WINDING UP. Except as provided in the partnership agreement, the
21 general partners who have not wrongfully dissolved a limited partnership or, if there are no
22 general partners, the limited partners, may wind up the limited partnership's affairs; but the
23 superior court may wind up the limited partnership's affairs upon application of a partner, a
24 partner's legal representative, or assignee.

25 Sec. 32.11.400. DISTRIBUTION OF ASSETS. Upon the winding up of a limited
26 partnership, the assets shall be distributed as follows:

27 (1) to creditors, including partners who are creditors, to the extent permitted by
28 law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions
29 to partners under AS 32.11.240 or 32.11.270;

30 (2) except as provided in the partnership agreement, to partners and former
31 partners in satisfaction of liabilities for distributions under AS 32.11.240 or 32.11.270; and

1 (3) except as provided in the partnership agreement, to partners first for the return
2 of their contributions and secondly respecting their partnership interests, in the proportions in
3 which the partners share in distributions.

4 ARTICLE 8. FOREIGN LIMITED PARTNERSHIPS.

5 Sec. 32.11.410. LAW GOVERNING. Subject to the Constitution of the State of Alaska,

6 (1) the laws of the state under which a foreign limited partnership is organized
7 govern its organization and internal affairs and the liability of its limited partners; and

8 (2) a foreign limited partnership may not be denied registration by reason of a
9 difference between those laws and the laws of this state.

10 Sec. 32.11.420. REGISTRATION. Before transacting business in this state, a foreign
11 limited partnership shall register with the department. In order to register, a foreign limited
12 partnership shall submit to the department an original and an exact copy of an application for
13 registration as a foreign limited partnership, signed and sworn to by a general partner and setting
14 out

15 (1) the name of the foreign limited partnership and, if different, the name under
16 which it proposes to register and transact business in this state;

17 (2) the state and date of its formation;

18 (3) the general character of the business it proposes to transact in this state;

19 (4) the name and address of an agent for service of process on the foreign limited
20 partnership whom the foreign limited partnership elects to appoint; the agent must be an
21 individual resident of this state, a domestic corporation, or a foreign corporation having a place
22 of business in, and authorized to do business in, this state;

23 (5) a statement that the commissioner is appointed the agent of the foreign limited
24 partnership for service of process if an agent has not been appointed under (3) of this section or,
25 if appointed, the agent's authority has been revoked or if the agent cannot be found or served
26 with the exercise of reasonable diligence;

27 (6) the address of the office required to be maintained in the state of its
28 organization by the laws of that state or, if not so required, of the principal office of the foreign
29 limited partnership; and

30 (7) if the certificate of limited partnership filed in the foreign limited partnership's
31 state of organization is not required to include it, the following information:

1 (A) the names and business addresses of each partner; and

2 (B) the capital contribution of each limited partner.

3 Sec. 32.11.430. ISSUANCE OF REGISTRATION. (a) If the department finds that an
4 application for registration conforms to law and all requisite fees have been paid, the department
5 shall

6 (1) endorse on the application the word "Filed," and the month, day, and year of
7 the filing;

8 (2) file in the department the original of the application; and

9 (3) issue a certificate of registration to transact business in this state.

10 (b) The certificate of registration, together with an exact copy of the application, shall
11 be returned to the person who filed the application or the person's representative.

12 Sec. 32.11.440. NAME. A foreign limited partnership may register with the department
13 under any name, whether or not it is the name under which it is registered in its state of
14 organization, that includes without abbreviation the words "limited partnership" and that could
15 be registered by a domestic limited partnership.

16 Sec. 32.11.450. CHANGES AND AMENDMENTS. If a statement in the application for
17 registration of a foreign limited partnership was false when made or arrangements or other facts
18 described have changed, making the application inaccurate, the foreign limited partnership shall
19 promptly file with the department a certificate, signed and sworn to by a general partner,
20 correcting the statement.

21 Sec. 32.11.460. CANCELLATION OF REGISTRATION. A foreign limited partnership
22 may cancel its registration by filing with the department a certificate of cancellation signed and
23 sworn to by a general partner. A cancellation does not terminate the authority of the
24 commissioner to accept service of process on the foreign limited partnership with respect to
25 causes of action arising out of the transactions of business in this state.

26 Sec. 32.11.470. TRANSACTION OF BUSINESS WITHOUT REGISTRATION. (a) A
27 foreign limited partnership transacting business in this state may not maintain an action, suit, or
28 proceeding in a court of this state until it has registered in this state.

29 (b) The failure of a foreign limited partnership to register in this state does not impair
30 the validity of a contract or act of the foreign limited partnership or prevent the foreign limited
31 partnership from defending an action, suit, or proceeding in a court of this state.

1 (c) A limited partner of a foreign limited partnership is not liable as a general partner of
2 the foreign limited partnership solely by reason of having transacted business in this state without
3 registration.

4 (d) A foreign limited partnership, by transacting business in this state without registration,
5 appoints the commissioner as its agent for service of process with respect to causes of action
6 arising out of the transaction of business in this state.

7 Sec. 32.11.480. ACTION BY DEPARTMENT. The department may bring an action to
8 restrain a foreign limited partnership from transacting business in this state in violation of
9 AS 32.11.410 - 32.11.480.

10 ARTICLE 9. DERIVATIVE ACTIONS.

11 Sec. 32.11.490. RIGHT OF ACTION. A limited partner may bring an action in the right
12 of a limited partnership to recover a judgment in its favor if general partners with authority to
13 do so have refused to bring the action or if an effort to cause those general partners to bring the
14 action is not likely to succeed.

15 Sec. 32.11.500. PROPER PLAINTIFF. In a derivative action, the plaintiff must be a
16 partner at the time of bringing the action and

17 (1) must have been a partner at the time of the transaction of which the plaintiff
18 complains; or

19 (2) the plaintiff's status as a partner must have devolved upon the plaintiff by
20 operation of law or under the terms of the partnership agreement from a person who was a
21 partner at the time of the transaction.

22 Sec. 32.11.510. PLEADING. In a derivative action, the complaint must set out with
23 particularity the effort of the plaintiff to secure initiation of the action by a general partner or the
24 reasons for not making the effort.

25 Sec. 32.11.520. RECOVERIES. If a derivative action is successful, in whole or in part,
26 or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement
27 of an action or claim, and if the plaintiff is awarded attorney fees or costs, the court shall direct
28 the plaintiff to remit to the limited partnership the portion of the recovery that remains after
29 deduction of the attorney fees and costs awarded to the plaintiff.

30 ARTICLE 10. GENERAL PROVISIONS.

31 Sec. 32.11.800. CONSTRUCTION AND APPLICATION. This chapter shall be so

1 applied and construed to effectuate its general purpose to make uniform the law with respect to
2 the subject of this chapter among states enacting it.

3 Sec. 32.11.810. NAME. The name of a limited partnership as set out in its certificate
4 of limited partnership

5 (1) must contain without abbreviation the words "limited partnership";

6 (2) may not contain the name of a limited partner unless

7 (A) it is also the name of a general partner or the corporate name of a
8 corporate general partner; or

9 (B) the business of the limited partnership had been carried on under that
10 name before the admission of that limited partner;

11 (3) may not contain a word or phrase indicating or implying that it is organized
12 other than for a purpose stated in its certificate of limited partnership; and

13 (4) may not be the same as, or deceptively similar to, the name of a corporation
14 or limited partnership organized under the laws of this state or licensed or registered as a foreign
15 corporation or limited partnership in this state.

16 Sec. 32.11.820. RESERVATION OF NAME. (a) The exclusive right to the use of a
17 name may be reserved by

18 (1) a person intending to organize a limited partnership under this chapter and to
19 adopt that name;

20 (2) a domestic limited partnership or a foreign limited partnership registered in
21 this state that, in either case, intends to adopt that name;

22 (3) a foreign limited partnership intending to register in this state and adopt that
23 name; or

24 (4) a person intending to organize a foreign limited partnership and intending to
25 have it register in this state and adopt that name.

26 (b) The reservation shall be made by filing with the department an application, executed
27 by the applicant, to reserve a specified name. If the department finds that the name is available
28 for use by a domestic or foreign limited partnership, and not a reserved or registered name under
29 AS 10.35, the department shall reserve the name for the exclusive use of the applicant for a
30 period of 120 days. Once having reserved a name, the same applicant may not again reserve the
31 same name until more than 60 days after the expiration of the last 120-day period for which that

1 applicant reserved that name. The right to the exclusive use of a reserved name may be
2 transferred to another person by filing with the department a notice of the transfer executed by
3 the applicant for whom the name was reserved and specifying the name and address of the
4 transferee.

5 Sec. 32.11.830. SPECIFIED OFFICE AND AGENT. (a) A limited partnership shall
6 continuously maintain in this state

7 (1) an office, which may but need not be a place of its business in this state, at
8 which shall be kept the records required by AS 32.11.840 to be maintained; and

9 (2) an agent for service of process on the limited partnership, which agent must
10 be an individual resident of this state, a domestic corporation, or a foreign corporation authorized
11 to do business in this state.

12 (b) A limited partnership may change its registered office, registered agent, or both, by
13 filing with the department a verified statement signed by a general partner stating

14 (1) the name of the limited partnership;

15 (2) the address of its registered office;

16 (3) the address of its new registered office if the registered office is being
17 changed;

18 (4) the name of its registered agent;

19 (5) the name of its new registered agent if the registered agent is being changed;

20 and

21 (6) a statement that the change has been approved by all of the general partners.

22 Sec. 32.11.840. RECORDS TO BE KEPT. (a) A limited partnership shall keep at the
23 office referred to in AS 32.11.830(a)(1) the following:

24 (1) a current list of the full name and last known business address of each partner;

25 (2) a copy of the certificate of limited partnership and all certificates of
26 amendment to them, together with executed copies of a power of attorney under which a
27 certificate has been executed;

28 (3) copies of the limited partnership's federal, state, and local income tax returns
29 and reports, if any, for the three most recent years; and

30 (4) copies of a then effective written partnership agreement and of a financial
31 statement of the limited partnership for the three most recent years.

1 (b) Records kept under this section are subject to inspection and copying at the
2 reasonable request and at the expense of a partner during ordinary business hours.

3 Sec. 32.11.850. NATURE OF BUSINESS. A limited partnership may carry on business
4 that a partnership without limited partners may carry on.

5 Sec. 32.11.860. BUSINESS TRANSACTIONS OF PARTNER AND PARTNERSHIP.
6 Except as provided in the partnership agreement, a partner may lend money to and transact other
7 business with the limited partnership and, subject to other applicable law, has the same rights and
8 obligations as a person who is not a partner.

9 Sec. 32.11.870. FILING FEES. A domestic or foreign limited partnership that files a
10 certificate of limited partnership, amendment, cancellation, or registration, or other application
11 with the department, shall pay to the commissioner a filing fee established by the department by
12 regulation. The filing fee must be uniform and fixed.

13 Sec. 32.11.890. RULES FOR CASES NOT COVERED BY CHAPTER. In a case not
14 provided for in this chapter, the provisions of AS 32.05 govern.

15 Sec. 32.11.900. DEFINITIONS. In this chapter, unless the context otherwise requires

16 (1) "certificate of limited partnership" means the certificate referred to in
17 AS 32.11.010 and the certificate as amended or restated;

18 (2) "commissioner" means the commissioner of commerce and economic
19 development;

20 (3) "contribution" means cash, property, services rendered, or a promissory note
21 or other binding obligation to contribute cash or property or to perform services, that a partner
22 contributes to a limited partnership as a partner;

23 (4) "department" means the Department of Commerce and Economic
24 Development;

25 (5) "event of withdrawal of a general partner" means an event that causes a person
26 to cease to be a general partner under AS 32.11.160;

27 (6) "foreign limited partnership" means a partnership formed under the laws of
28 a state other than this state and having as partners one or more general partners and one or more
29 limited partners;

30 (7) "general partner" means a person who has been admitted to a limited
31 partnership as a general partner in accordance with the partnership agreement and named in the

1 certificate of limited partnership as a general partner;

2 (8) "limited partner" means a person who has been admitted to a limited
3 partnership as a limited partner in accordance with the partnership agreement and named in the
4 certificate of limited partnership as a limited partner;

5 (9) "limited partnership" and "domestic limited partnership" mean a partnership
6 formed by two or more persons under the laws of this state and having one or more general
7 partners and one or more limited partners;

8 (10) "partner" means a limited or general partner;

9 (11) "partnership agreement" means a valid agreement, written or oral, of the
10 partners as to the affairs of a limited partnership and the conduct of its business;

11 (12) "partnership interest" means a partner's share of the profits and losses of a
12 limited partnership and the right to receive distributions of partnership assets;

13 (13) "state" means a state, territory, or possession of the United States, District
14 of Columbia, or Commonwealth of Puerto Rico.

15 Sec. 32.11.990. **SHORT TITLE.** This chapter may be cited as the Uniform Limited
16 Partnership Act.

17 * **Sec. 2.** AS 32.10 and AS 40.17.110(b)(36) are repealed.

18 * **Sec. 3. APPLICABILITY PROVISIONS.** (a) AS 32.11.200, 32.11.210, and 32.11.310, enacted
19 by sec. 1 of this Act, do not apply to a limited partnership contribution or distribution, unless the
20 contribution or distribution is made after the effective date of this Act.

21 (b) AS 32.11.350, enacted by sec. 1 of this Act, does not apply to a limited partnership
22 assignment unless the assignment is made after the effective date of this Act.

23 (c) Unless otherwise agreed by the partners, the applicable provisions of former AS 32.10,
24 repealed by sec. 2 of this Act, governing the allocation of profits and losses, distributions to a
25 withdrawing partner, and distributions of assets upon the winding up of a limited partnership apply to
26 limited partnerships formed before the effective date of this Act instead of AS 32.11.220, 32.11.270, and
27 32.11.400, enacted by sec. 1 of this Act.

28 * **Sec. 4. COURT RULE AMENDED.** AS 32.11.510, enacted by sec. 1 of this Act, amends Alaska
29 Rule of Civil Procedure 8 by requiring that certain information be set out in the complaint for a limited
30 partnership derivative action.

31 * **Sec. 5.** This Act takes effect July 1, 1993.

Alaska State Legislature

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-3793

PATRICK M. RODEY
SENATOR

Senate

M E M O R A N D U M

DATE: May 6, 1992

TO: Representatives Eileen MacLean and Mike Navarre
Co-Chairmen, House Finance Committee

FROM: Senator Patrick M. Rodey *Pat*

SUBJ: Request for Hearing - SB 193

I respectfully request a hearing in your committee for SB 193, the revisions to the Uniform Limited Partnership Act. This bill is supported by the Alaska Uniform Law Commission and the Alaska Bar Committee on Uniform State Law.

The bill has had no opposition to date. A copy of the bill summary is attached. If there are further questions, please contact Tim Benintendi of my staff 3793.

Thank you.

PMR/tb/memo004

SPONSOR STATEMENT

CSSB 193 (FIN)

The Uniform Limited Partnership Act seeks to provide for conformity in corporation law, among the states. Alaska is currently governed by the 1916 version of the act.

SB 193 would have Alaska adopt revisions to the Uniform Limited Partnership Act of 1916. The revisions are the 1976 revisions, recommended by the National Conference of Commissioners on Uniform State Laws, with amendments from 1985. SB 193 contains all of the 1976 revisions and all of the 1985 amendments, except Section 201 of the 1985 amendments.

Section 201 deals with the registration of limited partnerships. Currently, we in Alaska use the certificate process, or long form, which requires applicants to submit a variety of information pertaining to the partnership. Adopting the 1985 version of 201 would eliminate too many reporting requirements and soften disclosure obligations. Adopting Section 201 from the 1985 Amendments would reduce the registration requirement to one of a notice only.

I recommend keeping the 1976 version of Section 201 which would insure stricter reporting requirements. This was the recommendation of both the Senate Judiciary and Finance Committees.

CSSB 193 (FIN) also repeals AS 40.17.110 (b), a requirement that limited partnership certificates be filed in the Office of the Recorder. Under this bill, registration and all record keeping would be done completely within DCED.

It was originally hoped that this bill would pass last year. Since it did not, the effective date is now changed from July 1, 1992, to July 1, 1993.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

February 18, 1992

SUBJECT: Sectional summary of CSSB 193 (Fin)

TO: Senator Pat Rodey
Attn: Tim Benintendi

FROM: Theresa L. Bannister ^{TB}
Legislative Counsel

You have requested a sectional summary of CSSB 193 (Fin), an act relating to limited partnerships. Please be aware that this is only a summary of the bill and that the bill remains the best source of its contents.

The bill is taken from 1985 version of the Uniform Limited Partnership Act ("ULPA"), except that sec. 32.11.010 is based on the 1976 version and corresponding changes were made throughout the bill to accommodate sec. 32.11.010. The corresponding ULPA section number is given for each section, so that you can more easily refer to the information provided on each ULPA section by the National Conference of Commissioners on Uniform State Laws.

Section 1. Main provisions of the bill.

Sec. 32.11.010. This is sec. 201 of the ULPA. It requires the filing of a certificate of limited partnership in order to form a limited partnership. It indicates that two or more persons must execute the certificate and that it is to be filed with the Department of Commerce and Economic Development ("department"). It lists the information that the certificate must include. Subsec. (b) indicates when the partnership is considered to be formed.

Sec. 32.11.020. This is sec. 202 of the ULPA. This section establishes how a certificate of limited partnership can be amended. A certificate of amendment must be filed with the department. The section identifies what information the certificate of amendment must include. Subsec. (b) requires that an amendment to a certificate of limited partnership must be filed after certain listed events. Subsec. (c) requires a general partner to amend the certificate if the partner realizes that the certificate is inaccurate. Subsec. (d) allows the certificate to be amended freely. Subsec. (e)