

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 2

613 SCOMM18: HOUSE SPECIAL COMM. ON PERMANENT FUND 1978-80

1 basis by a home rule borough or city or general law borough or city of
2 any class incorporated under the laws of the state if the borough or
3 city provides its bid form to the director at least 10 days before the
4 opening of the bid. The request for bids and the bid proposal shall
5 provide for issuing all or a portion of the bonds based upon the best
6 combination of bids. The bid shall be determined on the basis of the
7 Daily Bond Buyer 20 bond average as follows:

8 (1) For general obligation bonds with a rating of "A" or
9 higher, the bid shall be

10 (A) 100 points under the average for the first five
11 years maturity;

12 (B) 75 Points under the average for the next five years
13 maturity;

14 (C) 50 points under the average for the next five years
15 maturity;

16 (D) 25 points under the average for the next five years
17 maturity;

18 (E) 0 points under the average for the next five years
19 maturity;

20 (F) 25 points above the average for the next five years
21 maturity.

22 (2) For general obligation bonds with a rating of "Baa" or
23 lower or which are unrated, the bid shall be

24 (A) 50 points under the average for the first five years
25 maturity;

26 (B) 25 points under the average for the next five years
27 maturity;

28 (C) 0 points under the average for the next five years
29 maturity;

1 (D) 25 points above the average for the next five years
2 maturity;

3 (E) 50 points above the average for the next five years
4 maturity;

5 (F) 75 points above the average for the next five years
6 maturity.

7 (c) The director of the division of Alaska loan programs shall
8 submit a bid for all revenue bonds offered on a competitive basis by a
9 home rule borough or city or general law borough or city of any class or
10 on behalf of a nonprofit corporation performing any of the functions
11 described in AS 29.48 for which revenue sharing is received directly or
12 indirectly by the corporation or on behalf of those nonprofit corpora-
13 tions described in (d) of this section if the borough, city, or non-
14 profit corporation provides its bid form to the director at least
15 10 days before the opening of the bid. The request for bids and the bid
16 proposal shall provide for issuing all or a portion of the bonds based
17 upon the best combination of bids. The bid shall be determined on the
18 basis of the Daily Bond Buyer 20 bond average as follows:

19 (1) 50 points under the average for the first five years
20 maturity;

21 (2) 25 points under the average for the next five years
22 maturity;

23 (3) 0 points under the average for the next five years
24 maturity;

25 (4) 25 points above the average for the next five years
26 maturity;

27 (5) 50 points above the average for the next five years
28 maturity;

29 (6) 75 points above the average for the next five years

1 maturity;

2 (d) A nonprofit corporation is eligible for a loan under this
3 section if

4 (1) it is designated as tax exempt under sec. 501(c)(3) and
5 (4) of the Internal Revenue Code of 1954;

6 (2) it is a public corporation or other municipal instru-
7 mentality under AS 29.59.010; or

8 (3) it is created by statute and performs a state function.

9 (e) The major part of the proceeds of any bond issue purchased by
10 the fund under this section shall be used for purposes which are tax
11 exempt under federal law and regulation in effect at the time the bonds
12 are issued.

13 (f) The limitations in AS 45.96.400 - 45.96.430 do not apply to
14 loans or purchases made under this section.

15 Sec. 45.96.310. DEFAULT ON MUNICIPAL BONDS. (a) Notwithstanding
16 any provision of law, to the extent that a department or agency of the
17 state is the custodian of money payable to a municipality, at any time
18 after written notice to the department or agency head from the commis-
19 sioner of revenue that the municipality is in default on the payment of
20 principal or interest on municipal bonds held or owned by the fund, the
21 department or agency shall withhold the payment of that money from that
22 municipality and pay over the money to the fund for the purpose of
23 paying principal of and interest on bonds of the fund.

24 (b) If money is not available to make any payment of principal and
25 interest when due on a bond issue, the chief executive officer of the
26 municipality which issued the bonds shall notify the commissioner of
27 revenue at least 20 days in advance of the pending default that a de-
28 fault is pending. Failure to give the notice of pending default is
29 grounds for removal of the chief executive officer from office and, if

1 default occurs, the office is forfeited and is filled as provided by law
2 for filling vacancies.

3 Sec. 45.96.320. MUNICIPAL BOND CAPITAL RESERVE ACCOUNT. For the
4 purpose of securing each tax exempt bond issue of municipalities of the
5 state and those bonds on behalf of nonprofit corporations guaranteed or
6 issued under this chapter there is established a special account called
7 the municipal bond capital reserve account. The commissioner of revenue
8 shall pay into that account from the unallocated reserve account upon
9 establishment an amount equal to five per cent of the obligations issued
10 and sold after July 1, 1979 and upon subsequent sales, if any, of obli-
11 gations of the issue secured an additional amount equal to five per cent
12 of the obligations sold. At the end of each fiscal year the commis-
13 sioner of revenue shall withdraw from the municipal bond capital reserve
14 account and pay to the unallocated reserve account any amount in the
15 account in excess of five per cent of the obligations secured or, if the
16 amount in the account is less than five per cent of the obligations
17 secured, pay into the account from the unallocated reserve account the
18 amount necessary to bring the reserve to five per cent. All money held
19 in a municipal bond capital reserve account shall be used as required,
20 when money is not available from the principal and interest account,
21 solely for (1) the payment of the principal of obligations, (2) the
22 purchase or redemption of obligations, (3) the payment of interest on
23 obligations, or (4) the payment of any redemption premium required to be
24 paid when those obligations are redeemed before maturity. Any income or
25 interest earned by the account shall be paid to the unallocated reserve
26 account. Any amount remaining in a municipal bond capital reserve ac-
27 count when the issue the account secures is fully retired shall be paid
28 to the unallocated reserve account.

29 Sec. 45.96.330. INDUSTRIAL DEVELOPMENT LOANS. (a) The director

1 of the division of Alaska loan programs may lend money from the fund to
2 businesses conducting exempt activities under sec. 103(b)(4) and (5) of
3 the Internal Revenue Code of 1954 for those activities either directly
4 or through purchase by the fund of industrial development bonds issued
5 on behalf of the business by the state bond committee.

6 (b) A loan may be made under this section only if upon payment of
7 the loan the project financed by the loan will be the property of

8 (1) the municipality in which the activity is conducted,
9 unless the municipality has provided otherwise by a resolution adopted
10 before approval of the loan; or

11 (2) the state if the activity is not conducted within a
12 municipality.

13 (c) Any corporation, partnership, or firm doing business in the
14 state is eligible for a loan under this section if

15 (1) the governing body of the municipality in which the
16 activity is performed has been given notice of the project and the
17 application for loan or purchase and has approved the project and ap-
18 plication, or has not within 60 days of receipt of notice notified the
19 director in writing that it disapproves the loan; or

20 (2) when the activity to be financed by the loan is not
21 performed within a municipality, the commissioner of community and
22 regional affairs approves the project.

23 (d) A corporation, partnership, or firm which requests a loan of
24 greater than \$5,000,000 for a project under this section may request a
25 special series of bonds for its project. The director of the division
26 of Alaska loan programs may request the state bond committee to issue
27 the special series of bonds on behalf of the corporation, partnership,
28 or firm in place of making a direct loan. A corporation, partnership,
29 or firm is eligible for a special bond series for its project if it has

1 a credit rating of "A" or better.

2 Sec. 45.96.340. PROJECT COSTS ELIGIBLE FOR BONDING. In addition
3 to costs directly related to a project, the sum total of all costs of
4 financing and carrying out a project are eligible for bonding under AS
5 45.96.300 - 45.96.330. These include, but are not limited to, the costs
6 of all necessary studies, surveys, plans and specifications, architec-
7 tural, engineering or other special services, acquisition of real pro-
8 perty, site preparation and development, purchase, construction,
9 reconstruction and improvement of real property and the acquisition of
10 machinery and equipment as may be necessary in connection with a pro-
11 ject; an allocable portion of the administrative and operating expenses
12 of the issuer; the cost of financing the project, including interest on
13 bonds issued to finance the project; and the cost of other items, in-
14 cluding any indemnity and surety bonds and premiums on insurance, legal
15 fees, fees and expenses of trustees, depositaries, financial advisors,
16 and paying agents for the bonds issued as the issuer considers neces-
17 sary.

18 Sec. 45.96.350. EDUCATION. (a) In addition to other powers
19 granted in this chapter, the director of the division of Alaska loan
20 programs may make scholarship loans from the fund to students selected
21 under (b) - (g) of this section.

22 (b) Proceeds from scholarship loans may only be used for trans-
23 portation, books, tuition and required fees, and for room and board.
24 The loans may only be used to attend a career education program approved
25 by the Alaska Commission on Postsecondary Education or a college or
26 university accredited by the accreditation association for the region in
27 which the college or university is located or approved by the commis-
28 sion.

29 (c) To maintain a loan the student must continue to be enrolled as

1 a full-time student in good standing in a work study program approved by
2 the Department of Education, in a career education program, or in a
3 college or university designated under (b) of this section.

4 (d) Loans are noninterest bearing while a student is enrolled
5 under (c) of this section or is receiving a deferment of payments under
6 (g) of this section if appropriated funds are available for payment to
7 the fund of the interest.

8 (e) The repayment period for student loans is 10 years. Unless a
9 deferment of payments has been granted under (g) of this section, re-
10 payment shall commence when the student terminates his studies. In case
11 of hardship, the Alaska Loan Programs Evaluation Committee may extend
12 repayment of a loan for an additional period of up to five years.

13 (f) If, upon completion of the course of study for which the loan
14 was granted, the borrower repays 60 per cent of the principal amount of
15 the loan with interest with no delinquency, the remaining 40 per cent
16 owing shall be forgiven if appropriated funds are available for payment
17 to the fund of the amount forgiven.

18 (g) The Alaska Loan Programs Evaluation Committee shall defer
19 repayment of a loan during any of the following:

20 (1) the first year after a student terminates his studies;

21 (2) return by the student to student status as provided in
22 (c) of this section;

23 (3) performance by the student of military or required alter-
24 native service; or

25 (4) 50 per cent or greater disability of the student, as
26 certified by competent medical authority.

27 Sec. 45.96.360. TOURISM, HISTORICAL AND OPEN SPACE LOANS. (a) In
28 addition to other powers granted in this chapter, the director of the
29 division of Alaska loan programs may make loans from the fund to a

1 business directly involved in the tourist industry.

2 (b) Upon endorsement and plan approval by a local historical
3 district commission established under AS 29.48.108 and the recommend-
4 ation of a majority of the members of the Historic Sites Advisory Com-
5 mittee, loans may be made from the fund to a person, firm, business or
6 municipality subject to applicable laws for the restoration, improve-
7 ment, rehabilitation, or maintenance of a structure which is

8 (1) within the boundaries of an historical district estab-
9 lished under AS 29.48.110;

10 (2) identified as important in state or national history as
11 provided for in AS 29.48.110(b); or

12 (3) another building or structure within an historical dis-
13 trict, and suitable for superficial modification so that it can conform
14 to the period or motif of the surrounding buildings or structures that
15 are the reason for the area's designation as an historical district.

16 (c) Loans may be made from the fund for the nonfederal share of
17 costs of projects to acquire, develop, or extend outdoor recreation
18 sites and facilities.

19 Sec. 45.96.370. ELIGIBILITY. In order to be eligible for a loan
20 under this chapter, other than a loan made under AS 45.96.350, a person
21 must have been a resident of the state for at least five years on the
22 date of application for the loan and must be 18 years of age or older.
23 Except for loans made under AS 45.96.330, a corporation is eligible for
24 a loan if more than 60 per cent of its shareholders have been residents
25 of the state for at least five years on the date of the application for
26 the loan, the chief executive officer and all members of the governing
27 board of the corporation have been residents of the state for at least
28 five years on the date of application for the loan, and the chief
29 executive officer and members of the governing board assume full indi-

vidual liability for repayment of the loan. A loan to a corporation is immediately due and payable if it ceases to meet these eligibility requirements. An individual is ineligible for a loan under this chapter if an earlier loan to the individual from the state or an agency of the state has been discharged in bankruptcy unless the defaulted loan has been repaid in full and 10 years have elapsed from the date of repayment.

Sec. 45.96.380. MAXIMUM LOAN AMOUNTS. (a) Loans made under the authority of AS 45.96.260 for the purchase or construction of residential housing may not exceed: (1) \$90,000 for a single family dwelling; (2) \$130,000 for a duplex; (3) \$170,000 for a triplex; (4) \$210,000 for a fourplex. A loan made for the purchase or construction of residential facilities in excess of four units shall be treated as a commercial building loan subject to the limitations placed on such loans in (b)(1) of this section.

(b) Commercial loans made under the authority of AS 45.96.270 may not exceed:

(1) \$500,000 per individual for business activities; farm development; agricultural irrigation systems; purchase, construction, renovation, or repair of commercial buildings; fish manufacturing and processing; fishing vessels and gear; logging operations and equipment; timber manufacturing and processing; nonrenewable resource extraction; or any other activity not otherwise specifically provided for in this section;

(2) \$350,000 per individual for farm chattel other than for irrigation systems.

(c) Loans for a single project under (b)(1) of this section may exceed \$500,000 but may not exceed \$3,000,000 if

(1) the loan is made to more than one but not more than 10

1 individuals participating in the project and the loan to each individual
2 does not exceed the maximum limit under (b)(1) of this section; or

3 (2) the loan is made to a corporation and no more than 10
4 individuals owning stock in that corporation assume personal liability
5 for the loan in an amount which as to each individual does not exceed
6 the maximum limit under (b)(1) of this section.

7 (d) Educational loans made under the authority of AS 45.96.350 may
8 not exceed:

- 9 (1) \$4,000 per individual per year for undergraduate studies;
10 (2) \$8,000 per individual per year for graduate studies;
11 (3) \$4,000 per individual per year for vocational studies;
12 (4) \$4,000 per individual per year for work studies.

13 (e) No more than three loans may be made to any person for other
14 than educational purposes under this chapter. A loan to an associate of
15 the borrower is considered to be a loan to the borrower. For the pur-
16 poses of this section, "associate of the borrower" means

17 (1) a corporation or other organization of which the borrower
18 is an officer, director or partner, or is, directly or indirectly, the
19 beneficial owner of 10 per cent or more of any class of equity securi-
20 ties;

21 (2) a person who is, directly or indirectly, the beneficial
22 owner of 10 per cent or more of any class of equity securities of the
23 borrower;

24 (3) a trust or other estate in which the borrower has a
25 substantial beneficial interest or as to which the borrower serves as
26 trustee or in a similar fiduciary capacity;

27 (4) a relative or spouse of the borrower or a relative of the
28 spouse, who has the same home as the borrower;

29 (5) a person directly or indirectly controlling, controlled

1 by, or under common control with, the borrower.

2 (f) The maximum loan amounts established in (a) - (d) of this
3 section shall increase in proportion to increases in the consumer price
4 index for Anchorage. The consumer price index for Anchorage for July 1,
5 1979 shall be the basis for determining annual percentage increases in
6 the maximum loan amounts.

7 Sec. 45.96.390. AREA COST DIFFERENTIAL. (a) The maximum loan
8 amounts established in AS 45.96.380(a) and (b) shall be increased by the
9 area cost differential (ACD) determined by the formula $ACD = LCC/BCC \times$
10 $LCOL/BCOL$ where

11 (1) LCC is the cost of construction in the area in which the
12 facility to be financed by the loan is located;

13 (2) BCC is the cost of construction in the city or borough
14 having the lowest cost of construction in the state;

15 (3) LCOL is the cost of living in the area in which the
16 facility to be financed by the loan is located;

17 (4) BCOL is the cost of living in the city or borough having
18 the lowest cost of living in the state.

19 (b) For purposes of this section the Department of Transportation
20 and Public Facilities shall annually determine the cost of construction
21 and the cost of living in each area of the state under regulations
22 promulgated by the department establishing standards for the determi-
23 nation.

24 Sec. 45.96.400. ADDITIONAL LOAN LIMITATIONS. The maximum loan
25 amounts established in AS 45.96.380(b) and 45.96.390 shall be further
26 limited, based upon the actual technical and managerial experience of
27 the borrower relating to the project or activity for which the loan is
28 made, as follows:

29 (1) if the borrower's experience is less than two years, he

1 may receive up to 50 per cent of the maximum amount;

2 (2) if the borrower's experience is two to three years, he
3 may receive up to 70 per cent of the maximum amount;

4 (3) if the borrower's experience is three to four years, he
5 may receive up to 80 per cent of the maximum amount;

6 (4) if the borrower's experience is four to five years, he
7 may receive up to 90 per cent of the maximum amount;

8 (5) if the borrower's experience is five years or more, he
9 may receive 100 per cent of the maximum amount.

10 Sec. 45.96.410. VALUE LIMITATION. The provisions of AS 45.96.-
11 380 - 45.96.400 notwithstanding, no loan made under this chapter, unless
12 it is a loan made under the provisions of AS 45.96.330, may exceed

13 (1) 90 per cent of the appraised value of real property
14 pledged as security for the loan;

15 (2) 95 per cent of the appraised value of real property
16 pledged as security for the loan if the loan is for residential housing
17 in an area where Federal Housing Administration mortgage insurance is
18 not available; or

19 (3) 80 per cent of tangible personal property pledged as
20 security for the loan.

21 Sec. 45.96.420. MAXIMUM TERMS OF LOANS. The term of a loan made
22 under this chapter may not exceed the useful life of the property
23 pledged as security for the loan nor

24 (1) 30 years on a loan secured by real property;

25 (2) 15 years or the life of the equipment on a loan secured
26 by equipment used for production of income;

27 (3) seven years on a loan secured by tangible personal pro-
28 perty.

29 Sec. 45.96.430. RATE OF INTEREST. (a) The rate of interest

1 charged to borrowers under this chapter shall be the amount determined
2 by the commissioner of revenue to be sufficient to cover anticipated
3 cost of money to the fund and, for borrowers other than municipalities,
4 one per cent over the anticipated cost for the loss reserve account plus
5 the amount required for any necessary insurance, but the rate of in-
6 terest charged may be lower if necessary to prevent bonds issued under
7 this Act from being arbitrage bonds under the provisions of and regula-
8 tions under section 103(c) of the Internal Revenue Code of 1954, as
9 amended. The determination of the anticipated cost by the commissioner
10 is conclusive. Rates of interest less than that, except as provided in
11 (b) of this section, may be charged if the renewable resource develop-
12 ment fund or another state fund agrees to pay the difference between
13 cost and the interest rate to be charged or if appropriation for the
14 purpose of paying the difference has been made.

15 (b) The rate of interest determined in accordance with (a) of this
16 section shall be reduced by one per cent if the loan is made to a vet-
17 eran or is made for agricultural purposes. If the loan is made to a
18 veteran, the World War II veterans' revolving fund, created in AS 26.-
19 15.090, shall pay the difference between the rate determined in (a) of
20 this section and the rate charged to the borrower. If the loan is made
21 for agricultural purposes, the agricultural revolving loan fund, created
22 in AS 03.10.040, shall pay the the difference between the rate deter-
23 mined in (a) of this section and the rate charged to the borrower. If
24 the loan is made to a veteran and for agricultural purposes, the rate of
25 interest shall be reduced by two per cent and each fund shall pay one-
26 half the difference.

27 (c) When the World War II veterans' revolving fund's assets become
28 depleted so that it can no longer pay the difference, the provisions of
29 (b) of this section relating to loans made to veterans apply only if

1 appropriation is made for the purpose of paying the difference. When
2 the agricultural revolving loan fund's assets become depleted so that it
3 can no longer pay the difference, the provisions of (b) of this section
4 relating to loans made for agricultural purposes apply only if appro-
5 priation is made for the purpose of paying the difference.

6 Sec. 45.96.440. ELIGIBILITY FOR VETERANS' INCENTIVE. (a) The
7 following persons are eligible for special interest rates for veterans
8 established in AS 45.96.430(b);

9 (1) a person who served in the armed forces of the United
10 States for 90 days or more, or whose service was for less than 90 days
11 because of injury or disability incurred in the line of duty, between
12 April 6, 1917 and November 11, 1918, and beginning September 16, 1940 to
13 six months after termination of hostilities involving United States
14 forces in Indo-China, or in a combat zone during any period of armed
15 conflict, who was separated from the armed forces with a discharge other
16 than dishonorable, and

17 (A) who at the time of induction into the service was a
18 resident of the territory or state, who had been a resident for not
19 less than one year immediately before his induction, and who re-
20 turned to the territory or state after discharge as a resident with
21 the intention of remaining in the territory or state; or

22 (B) who, not being a bona fide resident of the territory
23 or state before his entry into the service, has been a resident of
24 the territory or state for five or more years;

25 (2) a person who was dependent on a member of the armed
26 forces or a veteran of World War II at the time of the member's or
27 veteran's death if

28 (A) the member or veteran was a resident of the terri-
29 tory for one year before induction into the service;

1 (B) he served in the armed forces for at least 90 days
2 between September 16, 1940, and July 25, 1947, but no benefits for
3 loans accrue to dependents of an enlistee or reenlistee for time
4 served after November 1, 1945, regardless of whether the enlistment
5 or reenlistment was before or after November 1, 1945;

6 (C) he died before the official date of the termination
7 of that war; and

8 (D) his discharge was not dishonorable;

9 (3) a person who has served in the Alaska Army National
10 Guard, the Alaska Air National Guard, or the Alaska Naval Militia for
11 not less than six years and who has not received a discharge other than
12 honorable.

13 (b) The provisions of AS 45.96.430(b) are extended to persons who
14 served other than dishonorably on active duty between June 25, 1950, and
15 January 31, 1955, who served other than dishonorably on active duty
16 between August 4, 1964, and six months after termination of hostilities
17 involving forces of the United States, and to dependents of those per-
18 sons, subject to the following provisions and eligibility qualifica-
19 tions:

20 (1) a discharge other than dishonorable from the armed forces
21 of the United States or release to a reserve component;

22 (2) at the time of entry into the service residency in the
23 territory or state for not less than one year before entry into the
24 service, and return to the territory or state within a reasonable length
25 of time after discharge or separation with the intention of remaining in
26 the territory or state; or lacking residency before entry into the
27 service, residency in the territory or state for at least five years
28 following release from active military service; and

29 (3) service in the armed forces of the United States for

1 90 days or more, or service for a lesser period because of injury or
2 disability incurred in line of duty, between June 25, 1950, and Janu-
3 ary 31, 1955, or service in the armed forces of the United States for
4 90 days or more or service for a lesser period because of injury or
5 disability incurred in line of duty, between August 4, 1964, and July 1,
6 1977.

7 (c) A person who is eligible under more than one of the qualifi-
8 cation provisions of (a) and (b) of this section shall have the rate of
9 interest on his loan reduced by one and one-half per cent.

10 Sec. 45.96.450. EMPLOYMENT PRACTICES. (a) In the performance of
11 contracts let by a recipient of a loan under this chapter for construc-
12 tion, repair, preliminary surveys, engineering studies, consulting,
13 maintenance work or any other retention of services necessary to com-
14 plete any project for which the loan was made, 95 per cent residents
15 shall be employed if they are available and qualified. If 10 or fewer
16 persons are employed under the contract, then 90 per cent residents
17 shall be employed if they are available and qualified.

18 (b) The commissioner of commerce and economic development shall
19 incorporate into all lending instruments issued under this chapter the
20 provisions of (a) of this section and a provision calling for immediate
21 foreclosure of the loan for violation of the provisions of (a) of this
22 section.

23 (c) In addition to immediate foreclosure of his loan, as provided
24 in (b) of this section, a borrower who violates the provisions of (a) of
25 this section is ineligible for any loan under this chapter for 10 years
26 following the violation.

27 (d) Municipalities and state agencies and departments when con-
28 tracting for services concerning any aspects of administration and
29 financing of the fund shall comply with AS 36.10.

1 Sec. 45.96.460. COOPERATION WITH OTHER AGENCIES. All departments,
2 agencies and public corporations of the state shall provide information,
3 services and facilities to the fund on its request. The fund shall
4 reimburse the department, agency or corporation for expenses reasonably
5 incurred on the fund's behalf.

6 Sec. 45.96.470. BANK PARTICIPATION. (a) Loans made under the
7 authority of this chapter may be made in participation with financial
8 institutions. The participating financial institution may act as agent
9 for the division of Alaska loan programs in the initial processing of
10 applications for loans. Fees for such services shall be mutually agreed
11 upon.

12 (b) If a financial institution participates in a loan, the fund
13 and the participating institution shall share the same ratable interest
14 in the collateral securing the loan. Loan payments made by the borrower
15 shall be distributed between the financial institution and the fund on a
16 pro rata basis.

17 (c) The participating financial institution shall fix the rate of
18 interest charged by it but may not exceed the legal contract rate of
19 interest prescribed by law.

20 (d) The maximum service fee for administering a loan which may be
21 charged by a participating financial institution shall be set by the
22 director of the division of Alaska loan programs.

23 Sec. 45.96.480. ASSURANCE REQUIRED. (a) For each loan made from
24 the fund the loan agreement shall include an assurance by the borrower
25 that no person who provides services to the borrower in preliminary
26 phases of a project for which the loan is made, including all studies
27 made in connection with the project,

28 (1) may participate in the implementation stages of that
29 project; or

1 (2) may represent more than one interest in connection with
2 the project.

3 (b) A list of all persons performing preliminary services for a
4 loan applicant shall be furnished to the division of Alaska loan pro-
5 grams as part of the loan application, and a list of all persons with
6 whom the borrower has contractual relations in respect to the project
7 after the application for loan shall be submitted to the division at
8 intervals set by the division of Alaska loan programs.

9 Sec. 45.96.490. DEFINITIONS. For purposes of this chapter, "the
10 fund" and "the loan programs fund" mean the Alaska loans program fund
11 created in AS 45.96.020.

12 * Sec. 7. AS 03.10.050 is repealed and re-enacted to read:

13 Sec. 03.10.050. ADMINISTRATION OF FUND. The commissioner shall
14 administer the loan fund.

15 * Sec. 8. AS 14.40.751(a) is amended to read:

16 (a) There is created a scholarship revolving loan fund. [THE FUND
17 SHALL BE USED TO MAKE SCHOLARSHIP LOANS TO STUDENTS SELECTED UNDER
18 AS 14.40.751 - 14.40.806. ALL REPAYMENTS OF PRINCIPAL AND INTEREST ON
19 SCHOLARSHIP LOANS SHALL BE PAID INTO THE SCHOLARSHIP REVOLVING LOAN FUND
20 AND SHALL BE USED TO MAKE NEW SCHOLARSHIP LOANS. IF ESTIMATED FUNDS
21 AVAILABLE FROM SCHOLARSHIP LOAN REPAYMENTS ARE INADEQUATE TO FULLY FUND
22 ESTIMATED SCHOLARSHIP LOANS FOR ANY FISCAL YEAR, ADDITIONAL FUNDING FROM
23 THE GENERAL FUND MAY BE REQUESTED AND APPROPRIATED FOR THAT YEAR.]

24 * Sec. 9. AS 14.40.755(b) is amended to read:

25 (b) A person whose [LOAN OR] grant application is not recommended
26 or presented to the committee by the executive secretary may appeal to
27 the committee through the chairman of the committee and the committee
28 shall consider the application.

29 * Sec. 10. AS 18.100.050 is amended to read:

1 Sec. 18.100.050. ELIGIBILITY FOR GRANTS [LOANS]. Only public or
2 nonprofit private corporations are eligible for grants [LOANS] under
3 this chapter. The nonprofit corporations must be designated as tax
4 exempt under sec. 501(c)(3) and (4) [501(e)(3) AND (4)] of the Internal
5 Revenue Code of 1954.

6 * Sec. 11. AS 18.100.070(a) is amended to read:

7 (a) There is created within the Department of Community and Re-
8 gional Affairs a senior citizens housing development fund. Subject to
9 direct appropriation [OR THROUGH PROCEEDS OF A BONDING ISSUE] the de-
10 partment shall make grants [OR LOANS] to municipalities or to corpora-
11 tions designated as tax exempt under sec. 501(c)(3) and (4) of the
12 Internal Revenue Code of 1954 [ELIGIBLE FOR LOANS UNDER AS 18.100.050]
13 for the purpose of developing senior citizen housing. [A GRANT FROM THE
14 PROCEEDS OF A BOND ISSUE MAY BE MADE ONLY TO MUNICIPALITIES.]

15 * Sec. 12. AS 18.100.070(b) is amended to read:

16 (b) Application for a grant [OR LOAN] under (a) of this section
17 shall be in the form prescribed by the department. The application
18 shall demonstrate the need for senior citizen housing in the area to be
19 served, the feasibility of the proposed project, and an adequate manage-
20 ment plan which shall demonstrate the ability of the eligible recipient
21 to sustain the proposed project.

22 * Sec. 13. AS 29.13.100 is amended by adding a new paragraph to read:

23 (39) AS 29.58.290 (Industrial development bonds)

24 * Sec. 14. AS 29.58 is amended by adding a new section to read:

25 Sec. 29.58.290. INDUSTRIAL DEVELOPMENT BONDS. No municipality,
26 home rule or otherwise, may issue a revenue bond which is an industrial
27 development bond under the provisions of the Internal Revenue Code of
28 1954 (26 U.S.C. 103).

29 * Sec. 15. AS 37.10.050 is amended to read:

1 Sec. 37.10.050. ACCOUNTING FOR STATE MONEY AND PAYMENT TO DIVISION
2 OF TREASURY [DEPARTMENT OF REVENUE] FOR DEPOSIT IN PROPER FUND. (a)

3 Each office, board, commission, or bureau authorized to collect or
4 receive fees, licenses, taxes or other money belonging to the state
5 shall account for and pay the fees, licenses, taxes or other money, less
6 fees to which he is entitled by law to the division of treasury of the
7 Department of Revenue at least once each month.

8 (b) Money collected for the state shall be deposited by the col-
9 lector in the nearest bank to the account of the division of treasury
10 [DEPARTMENT OF REVENUE] when the division of treasury [DEPARTMENT OF
11 REVENUE] directs this to be done.

12 (c) The division of treasury [DEPARTMENT OF REVENUE] in June and
13 December of each year shall publish in at least one newspaper of general
14 circulation in each of the four judicial districts a detailed report in
15 display advertising form of the amount of state money deposited in each
16 named bank or other financial institution. A copy of the semiannual
17 report on bank deposits shall also be sent to the Legislative Affairs
18 Agency for distribution of copies to the members of the legislature.
19 The terms of the deposit may be obtained upon a written request.

20 * Sec. 16. AS 37.10.070(a) is amended to read:

21 (a) When the commissioner of revenue determines that there is in
22 the state treasury a surplus above an amount sufficient to meet current
23 cash expenditure needs, he shall direct the director of the division of
24 treasury to invest the surplus. The director may invest the surplus
25 [THE SURPLUS SHALL BE INVESTED] in any of the following:

26 (1) obligations of, or obligations insured or guaranteed by,
27 the United States or agencies or instrumentalities of the United States;

28 (2) obligations secured by reserves paid in by the United
29 States or agencies or instrumentalities of the United States or obli-

gations of corporations in which the United States is a shareholder or member;

(3) notes issued by Farmer's Home Administration;

(4) bank certificates of deposit which are secured as to the payment of principal and interest in accordance with Alaska law;

(5) corporate obligations of prime or equivalent quality, as rated by a nationally recognized rating organization;

(6) other securities, including corporate securities;

(7) Federal Housing Administration mortgages;

(8) Federal Veterans Administration mortgages;

(9) loans made under the provisions of the Alaska loan programs fund (AS 45.96) [AS 03.10 AND AS 26.15];

(10) conventional residential mortgages if the offering financial institution retains at least 25 per cent of the mortgage;

(11) other secured loans, if the offering financial institution retains at least 33 1/3 per cent of the mortgage;

(12) mortgages of the Alaska Rural Rehabilitation Corporation which secure agricultural loans, agricultural business loans and agricultural processing loans;

(13) bankers acceptances drawn on and accepted by banks with a combined capital and surplus aggregating at least \$200,000,000;

(14) repurchase agreements, reverse repurchase agreements, or any trading practice or instrumentalities that may evolve investment management.

* Sec. 17. AS 37.10.070(f) is repealed and re-enacted to read:

(f) Investment policy shall be formulated by the director of the division of treasury of the Department of Revenue subject to the approval of the commissioner of revenue. In formulating investment policy the director of the division of treasury shall consider maximum income

1 and safety as governed by the prudent-man rule. The investment policy
2 shall be proposed to the legislature during the first 10 days of any
3 regular session. Investment policy only becomes effective 60 days after
4 presentation to the legislature or at the end of that session, whichever
5 is earlier, unless disapproved by a resolution concurred in by a major-
6 ity of the members of each house.

7 * Sec. 18. AS 37.10.070(g) is amended to read:

8 (g) The director of the division of treasury [COMMISSIONER OF
9 REVENUE, WITH THE CONSENT OF THE COMMITTEE,] may enter into contracts
10 for services providing investment advice, custody of securities, and
11 execution of transactions, in or out of Alaska.

12 * Sec. 19. AS 37.10.070(i) is amended to read:

13 (i) The director of the division of treasury [COMMISSIONER] shall
14 purchase notes and mortgages under (a) of this section at a rate con-
15 ducive to develop and benefit Alaska and Alaska residents and this rate
16 may be less than the market rate.

17 * Sec. 20. AS 37.10.070 is amended by adding a new subsection to read:

18 (k) In making investments under (a) of this section, the director
19 of the division of treasury may pool the surplus assets of the state
20 funds but shall maintain separate accounts for each fund.

21 * Sec. 21. AS 37.10.075(a) is amended to read:

22 (a) When the commissioner of revenue determines that there are
23 funds in the state treasury which are not being used for the purposes
24 provided for in AS 37.10.070, he may direct the director of the divi-
25 sion of treasury to deposit the funds [THEY MAY BE DEPOSITED] in finan-
26 cial institutions in the state which offer the highest bid for the
27 state funds. Collateral may be required by the commissioner to secure
28 state deposits provided for under this section.

29 * Sec. 22. AS 39.25.120(2) is amended to read:

1 (2) the directors, division of personnel, division of public
2 health, division of medical assistance, and those other directors of the
3 major divisions of the principal departments of the executive branch as
4 are specifically designated by the governor, except the directors of the
5 division of Alaska loan programs, division of treasury and division of
6 collections are in the classified service and may not be designated as
7 partially exempt;

8 * Sec. 23. AS 41.22.020(a) is amended to read:

9 (a) In addition to uses of fund money authorized in sec. 10 of
10 this chapter, money of the fund shall be utilized to make grants to
11 municipalities, of up to one-half the nonfederal share of costs of pro-
12 jects described in AS 41.22.010 which are initiated by a municipality [,
13 AND LOANS OF AMOUNTS NECESSARY TO ENABLE MUNICIPALITIES TO MAKE OPTION
14 PAYMENTS ON PARKS AND OPEN SPACE LAND FOR THE ACQUISITION OF WHICH
15 FEDERAL FUNDS ARE ANTICIPATED].

16 * Sec. 24. AS 41.35.180(5) is repealed and re-enacted to read:

17 (5) consult with local historical district commissions re-
18 garding the establishment of historical districts under AS 29.48.108 -
19 29.48.110 and recommend, if appropriate, the formulation of additional
20 criteria for the designation of historical districts under AS 29.48.-
21 110(b).

22 * Sec. 25. AS 44.21.020 is amended by adding new paragraphs to read:

23 (13) provide accounting services for the permanent fund (AS
24 37.13.010), the Alaska loan programs fund (AS 45.96), the renewable re-
25 sources development fund (AS 37.11), and all other state funds;

26 (14) provide detailed accounting of state loans outstanding and
27 securities held by the state.

28 * Sec. 26. AS 44.25 is amended by adding a new section to read:

29 Sec. 44.25.025. DIVISION OF TREASURY. (a) There is established

1 within the Department of Revenue the division of treasury. The director
2 of the division is in the classified service under AS 39.25 and shall
3 receive an annual salary within range 27 of the salary schedule estab-
4 lished in AS 39.27.011 or within one range below that on which the
5 highest paid deputy commissioner in the Department of Revenue is paid if
6 that range is higher than range 27.

7 (b) In order to qualify for the position of director of the divi-
8 sion, a person must

9 (1) be graduated from an accredited college with major course
10 work in business administration, accounting, finance, banking, econ-
11 omics, or another closely related field;

12 (2) have 10 years of experience in banking or investment
13 management involving review, analysis, purchase and sell recommenda-
14 tions, and responsibility for performance with at least four of the
15 years in a managerial capacity.

16 (c) The director of the division of treasury shall collect, ac-
17 count for, have custody of, invest, and manage all state funds and all
18 revenues of the state except revenues incidental to a program of licen-
19 sing and regulation carried on by another state department, except that
20 the division shall issue fish and game licenses, collect fish and game
21 license revenues, and do all other acts incidental to the performance of
22 these functions.

23 * Sec. 27. AS 44.33.020 is amended by adding a new paragraph to read:

24 (22) administer the Alaska loan programs fund (AS 45.96).

25 * Sec. 28. AS 18.56.110(a) is amended to read:

26 (a) The corporation, by resolution, may issue bonds and bond
27 anticipation notes in order to provide funds to carry out and effectuate
28 its purposes only if the state bond committee finds that the issuance
29 is consistent with the bond program of the Alaska loan programs fund.

1 * Sec. 29. All state agencies, departments, commissions, corporations,
2 divisions or other instrumentalities administering or having authority over
3 or control of a loan program or loan fund affected by secs. 7 - 12, 23 - 24,
4 and 30 of this Act shall cease accepting applications for loans no later than
5 January 1, 1980. The division of Alaska loan programs shall begin to accept
6 applications for loans from the Alaska loan programs fund no later than
7 January 1, 1980.

8 * Sec. 30. The following laws are repealed: AS 03.10.010; 03.10.020(1),
9 (4), and (5); 03.10.030; 03.10.054; AS 14.40.751(c), 14.40.759 - 14.40.771;
10 AS 16.10.300; 16.10.310(a)(1), (4), (5); 16.10.320; AS 18.100.030(1) and (4),
11 18.100.040 - 18.100.060; AS 26.15.010(b) - (d), 26.15.040 - 26.15.060,
12 26.15.110 - 26.15.160; AS 41.22.020(b) - (c); AS 41.30.010 - 41.30.080;
13 AS 44.33.020(5), 44.33.245(a)(1), 44.33.245(b), 44.33.250 - 44.33.260;
14 AS 44.59.140(7) - (14), 44.59.170, 44.59.190 - 44.59.410, 44.59.430; AS
15 44.60.010, 44.60.130(7) - (13), 44.60.160 - 44.60.260, 44.60.310 - 44.60.320;
16 AS 44.61.010 - 44.61.220; AS 45.86.010 - 45.86.030, 45.86.040(b) - (c),
17 45.86.050 - 45.86.060; AS 45.88.010 - 45.88.040; AS 45.90.020(a)(1), (4),
18 45.90.030; AS 45.95.020 - 45.95.030, 45.95.070; AS 45.98.020 - 45.98.040,
19 45.98.060.

20 * Sec. 31. AS 37.10.065, 37.10.075(b) - (d), 37.10.079; and AS 44.25.-
21 020(2) are repealed.

22 * Sec. 32. Sections 1 - 6, 13 - 22, 25 - 29, and 31 of this Act take
23 effect June 30, 1979. The unobligated general fund surplus as of June 30,
24 1979 shall lapse into the unallocated reserve account created in AS 45.96.125
25 on June 30, 1979.

26 * Sec. 33. Sections 7 - 12, 23, 24 and 30 of this Act take effect June
27 30, 1980.

nuveen

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October 1, 1979

Mr. Peter A. Bushre
Deputy Commissioner
Department of Revenue
Treasury Division
State of Alaska
Pouch SB
Juneau, Alaska 99811

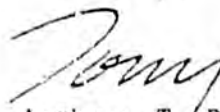
Dear Peter:

Enclosed you will find our draft response to the questions posed in your letter of June 16, 1979 regarding Senate Bill 1. This is a draft so as to afford you and your colleagues an opportunity to comment and suggest additions or revisions prior to our issuing a "final" version to the Bond Committee.

I expect we will want to schedule a review session on my next trip to Juneau. In the interim, don't hesitate to call should you need additional information.

Best regards.

Sincerely,



Anthony T. Dean
Asst. Vice President

ATD:Lmc

cc: Thomas K. Williams
Commissioner of Revenue

bcc: Sterling Gallagher ✓
Elizabeth Reid
Wally Filkin

The Alaska State Bond Committee has asked that, as financial advisor to the State, we analyze provisions of Senate Bill 1 relating to the Alaska Loan Program Fund and that we respond to several specific questions concerning this legislation.

S.B. 1 attempts to provide a consolidated and comprehensive loan program offering low cost loans for the following purposes and/or borrowers:

- (1) Farmers
- (2) Commercial fishermen
- (3) Local development companies
- (4) Statewide development activities
- (5) Childcare facilities
- (6) Small businesses
- (7) Forest products enterprises
- (8) Renewable resources activities
- (9) Municipal projects
- (10) Industrial development by exempt persons
- (11) Tourism facilities
- (12) Historic restoration activities
- (13) Open space acquisition
- (14) Residential housing

The resources with which to fund such loans will be derived from a sale of revenue bonds in the tax-exempt market pursuant to approval by the State Bond Committee. Loan repayments will be structured in such a manner as to provide funds sufficient to service the principal and interest payments on the bonds, meet certain insurance premium expenses, provide for servicing and administrative expenses, and fund certain reserve accounts. The bonds are to be secured by a pledge of the notes evidencing the loans, the revenues to be derived pursuant to repayment of the loans, and amounts in the following reserve accounts:

- (1) Debt service reserve
- (2) Capital reserve
- (3) Loss reserve
- (4) Fire and casualty reserve, and
- (5) Allocated reserve

In addition, the bonds may be secured by a guarantee from the Permanent Fund Corporation to the extent of Permanent Fund income. As currently drafted, S.B. 1 provides that servicing of loans will be handled by a collections division within the Department of Commerce and Economic Development.

S.B. 1, in its current state, represents a preliminary and conceptual attempt to achieve the goal of a consolidated and expanded state loan program. With respect to certain aspects of the program, appropriate

authority is not included in the legislation, whereas in developing loan criteria and other operating procedures, the legislation is entirely too specific and detailed to provide a workable basis for the structuring of a marketable revenue bond. As a result, it may be that the authors of the legislation can resolve many of our concerns by more careful drafting. In any event, our response will deal with the bill as it is now drafted.

STRUCTURE OF AN ALASKA LOAN PROGRAM REVENUE BOND

Pool Structure

At the outset it is important to consider whether the loan program revenue bonds will be issued against a previously originated pool of loans or will fund a blind pool of loans to be originated at some future time in accordance with preestablished credit criteria.

In the former case, investors can evaluate the security represented by the loan agreements, assess the credit-worthiness of the borrowers and evaluate the security enhancements associated with certain third party guarantees or personal guarantees which may further secure the loans in the pool. The use of a blind pool requires that investors place considerable reliance on the administrative skills of those civil servants administering the program and that certain criteria be established for each type of loan category to better ensure that all loans subsequently placed in the loan pool will meet the credit requirements of potential investors.

In addition, if separate series of bonds are issued to finance single purpose loan pools (e.g. single family housing or commercial loans to renewable resource enterprises) a different approach would be appropriate for each type of loan. Residential mortgage loan pools are typically created from bond proceeds in accordance with the criteria established prior to issuance, whereas commercial loans might be better financed as a known pool rather than a blind pool. The Connecticut Development Authority issues its industrial project bonds against a known pool of loans to qualifying business enterprises. The Pennsylvania Industrial Development Authority and the Puerto Rico Industrial Company issue bonds against blind pools which authority staff will originate pursuant to preestablished criteria.

Loan Criteria

In whatever manner the underlying loan pools are assembled, loan criteria will be required to assure potential investors that loans being originated will meet certain minimum standards of credit-worthiness. In addition, because the loan fund is authorized to participate in the financing of such a wide range of activities, no general standards or criteria can be established applying to all potential loan categories.

As a result, it is likely that separate series of revenue bonds will have to be issued to finance loans for each category. Along lines of a broad division between bonds issued to finance residential housing, those issued to finance commercial loans, and those issued to finance municipal improvements, the rating agencies will likely perform separate and distinct analyses, assigning separate and distinct ratings to each such category.

Because of these complicating factors, loan criteria should not be set out in the statutory language, but the agency should be authorized to establish such loan criteria as are consistent with sound financial practices. The rating agencies and the market will dictate the criteria to be incorporated in the underlying legal documents. Such criteria may well include loan to value ratios, maximum loan limits, showings of historic and/or projected loan repayment coverage, limitations on the permitted indebtedness of borrowers, requirements for additional security including pledge of assets not being financed by the loan, personal guarantees or guarantees by third parties and, where available or appropriate, requirements for private mortgage insurance, casualty and special hazard insurance.

Servicing

Servicing the underlying loan agreements will involve considerably more than simply collecting loan repayments as they become due. Of primary importance to potential purchasers of the revenue bonds will be administrative provisions and experience in monitoring a substantial portfolio of diverse loans. The Collections Division must have the administrative flexibility and capability to move promptly to prevent losses. For different types of loans, different servicing arrangements will be appropriate and, where possible, private financial institutions should be used.

Term and Rate

The legislation provides specific direction regarding loan maturities and interest rates, matters which would better be left to the discretion of the commissioner and market. It can be assumed that loan maturities will match the economic life of the facilities being financed. Relatively liberal prepayment provisions and procedures for assumption of debt would be included in most loan agreements. It should be noted, however, that the uncertain repayment schedule for such a loan pool would require mandatory call provisions for the revenue bonds, which in turn may lead to a slight premium in the market.

Loans would bear interest at rates which would vary according to the function, purpose, or issuer served within the broad menu of loan programs to be funded under this legislation. There are substantial differences in financial strength and ability to repay among the universe of borrowers to be served and these distinctions would be reflected in

interest rate and credit rating. Any attempt to pool stronger credits with weaker credits will serve to penalize the stronger credits in order to subsidize weaker credits and do so inefficiently, since investors may well focus on the weaknesses rather than the strengths. In addition, IRS rulings severely limit the policy of industrial development loans. It is for this reason that separate series of bonds would be necessary to accommodate the wide variety of underlying credit standards.

Arbitrage

The relationship of the interest rate on the bonds and the interest rates on the loans is subject to the applicable arbitrage regulations of the Federal Internal Revenue Service and several specific provisions of the proposed statute. Under present arbitrage regulations, the allowable yield on the loans is limited to the cost of borrowing except when bond proceeds are invested in obligations that carry out the purpose of a governmental program. To satisfy the requirements of a "governmental program," the loans purchased with bond proceeds must be loans to a substantial number of persons representing the general public, loans to exempt persons within the meaning Section 501(C)(3), or loans to provide housing and related facilities. Where these requirements are met, the loan may bear an interest rate which is 150 basis points (i.e., 1 1/2%) above the yield on the revenue bonds (as calculated in accordance with IRS regulations). The allowed 150 basis points of arbitrage spread must be sufficient to meet servicing expenses, trustee's fees, administrative expenses charged to the program by state agencies, insurance premiums for policies required by the terms of the revenue bond offering and the funding of any special reserves. These costs cannot be added over and above the 150 basis point spread.

Where the 150 basis point arbitrage spread is not allowed, these same expenses must be met from other sources of revenue. Even should all loan programs presently contemplated by the legislation qualify for the 150 basis point spread, such treatment is not indefinitely assured. Legislation now before the U.S. Congress would severely restrict the use of tax-exempt revenue bonds to finance residential housing and curtail the use of arbitrage to meet program expenses. Legislation or regulation with a similar effect on other types of loan programs may be promulgated in the future.

The legislation allows for rates of interest upon the loans less than those allowed by the arbitrage regulations or less than the yield on the revenue bonds, if the Renewable Resource Development Fund or another state fund agrees to pay the difference between the cost of money for the state and the interest rate to be charged program participants. Agricultural loans are specifically authorized at a rate of 1% below the allowed arbitrage rate with any deficiencies to be made up by the Agricultural Revolving Fund. The effect of these provisions will be to cause investors to look beyond the loan pool securing such a series of

revenue bonds and scrutinize carefully the resources available to the revolving fund or other state funds which have been pledged to meet interest deficiencies.

Security

The revenue bonds, the proceeds of which will fund these different loan programs, will necessarily be issued in different series to reflect the varying financial strength of the participants and the functional uses of the funds as well as to reflect the various structural arrangements which have become customary in each functional area of revenue bond financing. For example, the market will expect a bond issue secured by single family mortgage loans to be structured similarly to other housing issues and would not expect that a bond issue secured by commercial loans have comparable features especially in consideration of IRS small issue limitations. Security provisions certainly will vary according to the strength of the ultimate borrowers.

The legislation provides for a complex set of reserves which are described in brief summary in the following table.

<u>FUND</u>	<u>CONTROL</u>	<u>SOURCES</u>	<u>USES</u>
A. General Fund			
1. Allocated Reserve	Trustee	-1/2 of income from Permanent Fund	-Capital Reserve Account
		-Appropriation from Unallocated Reserve	-Fire & Casualty Insurance Acct. -Loss Reserve Acct.
2. Unallocated Reserve	State of Alaska	-All amounts in General Fund in excess of \$100 million at end of the fiscal year	-By appropriation to fund allocated reserve

<u>FUND</u>	<u>CONTROL</u>	<u>SOURCES</u>	<u>USES</u>
3. Comprehensive Loan Fund Reserve	State of Alaska	-15% of state mineral leases, rentals of state lands, mineral lease bonus and royalty income	-By appropriation to the allocated reserve account or account or to any other purpose
B. Debt Service Reserve Fund	Trustee	-Bond Proceeds (to limit allowed in arbitrage rulings)	-Interest -Principal
C. Capital Reserve	Trustee	-Allocated Reserve Fund (to amount equal to 5% of principal amount of bonds out standing)	-Principal -Interest -Redemption -Premium
D. Loss Reserve	Trustee	-Allocated Reserve Fund -1% arbitrage earnings on loans, if any (Required to equal 5% of principal amount of loans ousstanding)	-To meet losses on loans -To repay allocated reserve from amounts in excess of 5% requirements -To earned income account

<u>FUND</u>	<u>CONTROL</u>	<u>SOURCES</u>	<u>USES</u>
E. Fire & Casualty Reserve	Trustee	-6/10's of 1% from borrowers -Allocated Reserve	-To meet fire and casualty losses on uninsured loan collateral
F. Municipal Bond Capital	Trustee	-Allocated Reserve	-To pay principal and interest -To redeem Bonds

(Equal to 5% of
outstanding Municipal
issues which are
guaranteed or issued
under this chapter)

With respect to each separate issue of bonds, arbitrage regulations would appear to limit the debt service reserve fund (that portion eligible to earn an unrestricted yield) to an amount which when combined with the portion of the Capital Reserve and Loss Reserve allocated to the specific bond issue, would equal 15% of the bond proceeds.

Potential sources of additional security which may be required to enhance marketability of certain series of loan program revenue bonds, include: (1) a Permanent Fund guarantee based on Permanent Fund income, but not principal; (2) a pledge (moral obligation) of the State to replenish the reserve fund accounts by appropriation from the Unallocated Reserve and from the comprehensive loan program reserve account, and (3) purchase of AMBAC or MBIA bond insurance. The value of a Permanent Fund guarantee will be in direct proportion to the relationship between annual income of the Fund, potential liabilities under the state loan program, and the extent of other guarantees written against Permanent Fund income. The security value of the moral obligation pledge will depend on the credit standing of the State, its general financial condition, and the past practices of the State in meeting similar "contingent" liabilities.

Bond insurance, if available, would improve marketability of weaker series of loan program revenue bonds providing a AA or AAA rating for AMBAC and MBIA, respectively. The availability of bond insurance would be enhanced by structuring revenue bond issues against a known pool of loans which could be carefully analyzed by the insurance underwriters. It is also possible that strict loan originations criteria would serve the same purpose.

INTRINSIC SECURITY, THIRD PARTY GUARANTEES, AND
ALASKA'S CREDIT STANDING

In attempting to evaluate the credit underlying a revenue bond issue, analysts and investors will look first to the quality and reliability of the pledged revenues, which are expected to be the primary source of interest and principal payments. It is also possible to augment or substitute security where certain risks may impair the reliability of the revenue flow and where legal and constitutional circumstances allow such additional security. Additional security features such as those described in the preceding section may so strengthen the market perception of the issue that overall borrowing costs are reduced in return for the issuer's accepting certain tangible and intangible costs. Such substitute security is workable to the extent that investors feel confident it will be readily available when needed, sufficient in amount to cover all conceivable types of risks (based on resources not otherwise committed), and subject to quick mechanical implementation not subject to discretion or delay.

Of course, in the event enterprise revenues are insufficient to meet principal and interest payments and additional security features must be called upon to prevent default, expectations and attitudes quickly change. The revenue stream will be severely discounted and security analysis will focus on the substitute security. An aura of mismanagement will attach to the enterprise and may spread to the third party guarantors. Any additional financing or reorganization financing may command extremely high rates even with the substitute security features thus, creating the worst of both worlds: high cost of money, and a general obligation type liability for the State.

The likelihood that the Alaska State Loan Program could stand alone and not call on general state credit, will depend on several factors, the most important of which are the following:

- 1) Adherence to strict loan underwriting criteria supported by thorough fact finding and investigatory procedures and reviewed by an external credit committee.
- 2) Servicing procedures and loan surveillance policies, which insure detailed, timely updates as to the status of each loan and prompt action to handle developing problem loans. Placing these responsibilities with private institutions, is generally better received than creating state agencies to accomplish the same function.

PROPOSED LEGISLATION

In the spring of 1979, several bills were introduced into the U.S. Congress to restrict the use of tax-exempt revenue bonds to finance residential, single-family mortgage loans. One such bill has been reported out of the House, Ways and Means Committee and action is expected during this session. For Alaska, the effect of the Committee bill would be to limit issuance of mortgage subsidy revenue bonds in Alaska to an annual par amount of \$50 million. In addition, a variety of eligibility standards with respect to both the mortgagors and the areas to be served would be imposed. Similar standards and criteria would also affect any multi-family project to be financed through tax-exempt revenue bonds. The overall effect, then, would be to severely curtail the volume of tax-exempt financing for housing generally and to reduce that portion of the Alaska loan program which would be comprised of loans for residential housing.

This legislation was introduced in response to the rapidly growing use of a financing program that was felt to be an abuse of the tax-exempt option. Fears of excessive income tax losses for the Federal treasury and a judgment that such mortgage subsidy programs benefitted a group of our citizens not necessarily deserving of such benefits also motivated the bill's introduction. In addition, the Internal Revenue Service has for many years opposed tax-exempt financing for any purpose. Programs proposed in Senate Bill 1 would not inevitably or even necessarily incite a similar response from either Congress or the IRS. However, were programs of this type to become widespread and constitute a significant portion of tax-exempt bond financing, one can reasonably expect some Federal response.

Coverage

Coverage requirements would be different for each distinct series of bonds. For a pass-through type of financing, e.g. single-family mortgages, municipal purpose, or certain industrial loans, coverage is not as relevant a measure of financial strength as are loan criteria, pool composition, insurance provisions, asset coverage, and the strength of servicing arrangements. In the case of commercial loan programs, where the state has also provided strong back up security, as in Connecticut and New York, coverage is less important than is the magnitude and frequency of loan losses, delinquencies and reserves. In such pool, pass through type financings, the "coverage" is found in the number of times each borrower's cash flow exceeds principal and interest obligations on its loan.

Where a substantial portion of a lending agency's assets have been financed from other than bond proceeds, annual net revenue on the loan portfolio may have to cover maximum annual debt service on the outstanding bonds by a factor of 1.5 to 2.0, as in Pennsylvania and Puerto Rico.

COMPARABLE ISSUES

Market reaction to the proposed Alaska Loan Program Revenue Bond will be determined by both an analysis of the intrinsic characteristics of the bonds and a comparative analysis of similar issues. For purposes of illustration, we have selected four issuers whose activity and market standing cover a wide range. These include the Puerto Rico Industrial Development Company, the Connecticut Development Authority, the Pennsylvania Industrial Development Authority, and the New York Job Development Authority.

Puerto Rico Industrial Development Company

Purpose: The Puerto Rico Industrial Development Company was created in 1942 to stimulate the development of local industry and to encourage mainland and foreign firms to establish operations in Puerto Rico. To accomplish this goal, PRIDCO builds and purchases facilities for lease or sale to qualified private industrial investors and makes loans to and investments in private industrial enterprises.

Funding: PRIDCO obtains funds for capital improvements from various sources in addition to borrowings. Such sources include Federal and Commonwealth grants, retained earnings, and appropriations. As of the end of 1977, total capitalization of approximately \$360,000,000 was composed of \$122,000,000 in long-term debt, \$171,000,000 in contributed capital and \$65,000,000 in retained earnings.

Lending Experience: As of June 30, 1977, the loan portfolio amounted to \$41,216,790 of which 84% was secured by senior or junior mortgages on real property or equipment. At that date, the total reserve for loan losses was \$8,850,796. PRIDCO has a policy of including in its appropriation request to the Commonwealth legislature any amounts necessary to reimburse it for losses previously incurred from local industrial loans and investments. Historically, the legislature has approved such appropriations for PRIDCO and as of February 28, 1978, \$5.6 million had been appropriated, but undisbursed by the legislature for the losses incurred through fiscal year 1977.

Bond Security: The bonds are payable from the gross revenues received by PRIDCO from certain of its revenue-producing real properties, machinery or other equipment, first mortgages on real property or first mortgage bonds, all of which are specified by PRIDCO to be trustee properties. The gross revenues from trustee properties are deposited with the trustee without deduction for any other expenses or charges. From such gross revenues the trustee makes deposits into the various accounts sufficient to meet its semi-annual debt service requirements and to maintain the debt service reserve account. Any remaining balance is available for any lawful corporate purpose.

Protective Covenants: If the gross revenues from the trustee properties, during any consecutive 12 months, are less than 150% of the maximum annual debt service requirements on all the bonds then outstanding, PRIDCO will immediately designate as trustee properties such other of its properties eligible to be trustee as may be necessary in order that the gross revenues of the trustee properties will be at least 150% of the maximum annual debt service requirements.

Additional parity bonds may be issued provided that gross revenues from the trustee properties during the most recent 12 preceding months are equal to not less than 150% of the maximum annual debt service requirements on all bonds then outstanding plus those proposed to be issued.

Coverage: Historical debt service coverage by gross revenues on a cash basis received from trustee properties and properties eligible to be trustee, equalled 2.70 times as of the end of 1977. At no time during the period 1973 through 1977 did this coverage drop below 2.0 times. Projected revenues are estimated to equal, or slightly exceed, 2.0 times. During the most recent 12 months, gross revenues from trustee properties only (excluding properties eligible to be trustee) provided 1.64 times coverage.

Ratings: A \$40,000,000 issue, dated April 1, 1978, was assigned a rating of BAA 1 by Moody's and a BBB by Standard and Poor's.

The Connecticut Development Authority

Purpose: The Authority was created in 1973 as a subdivision within the Department of Commerce of the State of Connecticut for the purpose of stimulating industrial and commercial development within the state through various financial assistance and other programs. The Authority is authorized to assist in financing the cost of acquiring, constructing, and improving and equipping plants and other facilities, for the furnishing of water available for public use, for the control of pollution, for the acquisition of ferryboats or for the development of recreational facilities. The Authority has, to date, established three separate programs. Through its umbrella program, the Authority makes financial assistance available to qualified applicants only for the financing of facilities or machinery and equipment to be used for manufacturing, warehousing, research and pollution control.

Under its insurance program, the Authority insures loans by lending institutions to companies for qualified projects located within the state. Insurance claims are payable from a special insurance fund created by the Act for the funding of which general obligations bonds of the state may be issued. All loans financed under the umbrella program are also eligible for insurance under the insurance program. The Authority has also implemented its self-sustaining program through which it provides assistance to companies through the issuance of special obligation bonds which are payable solely from revenues derived from the assisted project.

Funding: Loans under the umbrella program are funded from bond proceeds. The insurance fund currently has assets in excess of \$2.5 million and the State Bond Commission has authorized the issuance of general obligation bonds in the aggregate amount of \$35,000,000 when required to satisfy claims against the insurance funds.

Lending Experience: Since the establishment of the umbrella program in 1972, 470 firms have submitted applications for financing; 173 of these firms have submitted formal applications of which 86 have been approved and of which 67 have closed loans. It has been the Authority's policy in connection with all loans closed to date, to provide loans to industrial real property only in the form of a first mortgage loan with a maturity not exceeding 25 years and to provide loans for machinery and equipment with a maturity not exceeding 10 years only upon receipt of prior perfected security interest. The Authority generally requires further security such as life insurance payable to the Authority, a personal note or guarantee of the loan or a first or second mortgage on other property of the applicant, although the Act would permit the Authority to make loans on an unsecured basis in appropriate circumstances.

Applicants for financing must prepare preliminary applications which are screened for legal eligibility and financial viability. Upon determination of eligibility, a formal application is filed, reviewed and inspected by Authority staff; the business premises of each applicant are inspected; management is interviewed; the project site is visited, and an appraisal of the underlying value of all real estate projects is prepared. The summary report on the project is submitted to an independent credit committee consisting of three persons chosen on a rotating basis from a group of 13 current or former senior loan officers of Connecticut financial institutions. In addition to the recommendation of the credit committee, the Authority currently orders two investigative reports (one from a credit service and one from a general investigative agency) in connection with each application. The Authority has no delinquent umbrella program loans and is not aware of any other default with respect to its umbrella program loans.

Bond Security: The bonds are general obligations of the Authority secured by pledged receipts, including loan payments and advance payments, various funds and accounts, including the insurance fund and a special capital reserve fund. This special capital reserve fund is funded from bond proceeds in an amount not less than the maximum amount of principal and interest becoming due in any succeeding calendar year. Should there be any deficiency in the capital reserve fund, there shall be appropriated from the State General Fund such funds as are necessary to restore the reserve fund to its minimum requirement. Such appropriations, in the opinion of Bond Counsel do not require further legislative approval.

Ratings: The Series 1975 A through Series 1975 X Bonds were rated Aa by Moody's Investor's Service and AA by Standard and Poor's. The 1977 A through Series 1977 L bonds were rated A 1 by Moody's and AA by Standard and Poor's. Subsequently, Moody's upgraded the rating to Aa. Bonds issued in 1977 carried an average interest rate of 6%.

The Pennsylvania Industrial Development Authority

Purpose: The Pennsylvania Industrial Development Authority was created in 1956 to alleviate unemployment and economic stagnation within the Commonwealth by the promotion and development of industrial and manufacturing enterprise and research and development facilities in those areas of the state where conditions of critical unemployment exist. The Authority is authorized to make loans to local non-profit industrial development agencies which are to be used with other local monies to finance industrial development projects which are sold or leased to responsible buyers or responsible tenants.

Funding: In addition to approximately \$85 million in outstanding revenue bonds, the program has been financed by nearly \$210,000,000 of direct legislative appropriations. As of June 30, 1978, the Authority had over \$280,000,000 of loans outstanding in addition to approximately \$30 million of investment securities. Authority activities are also supported by surplus revenues generated by the Authority's Loan and Investment portfolio.

Lending Experience: As of June 30, 1978, the Authority had \$280,000,000 of loans outstanding. The Authority loan loss experience has been small relative to the total amount of loans made since 1956, but the amount of write-offs has increased substantially in the last two years. Prior to 1976, the total amount of loans written off was \$50,790, but since 1975 \$1.1 million in loans have been written off. In addition, approximately \$4.8 million of loans were 90 days or more delinquent as of June 30, 1978. The Authority has also granted moratoriums with respect to either principal or principal and interest on loans having a remaining principal due of \$11,803,000.

The Authority makes loans to local industrial development agencies which in turn make loans approved by the Authority for an industrial development project. Generally, the Authority's loans to the agencies are secured by a second mortgage on the agency's freehold interest in the industrial development project. The first mortgagee would generally be a local bank or group of banks. The loans made by the Authority are restricted by the Act depending on the type of project to be financed. Generally, the Authority is limited to a certain percentage of the total project cost, and commitments are required to be in place for the remainder of the financing.

Bond Security: All revenues received from loans made by the Authority are pledged to the payment of the bonds. Each bond issue is divided into bond lots of no more than \$1 million each. Repayments of loans made from each bond lot are pledged solely for the payment of bonds of that lot; in addition, all bonds are secured by the pledged of repayments from loans made from any funds other than bond proceeds. The Authority reserves the right to merge all accounts and secure all bonds from all of its revenue regardless of bond lot, if the applicable Internal Revenue Service regulations are amended to permit the Authority to do so.

Protective Covenants: Additional parity bonds may be issued, provided that revenues estimated to be received in future years are at least equal to 200 percent of annual debt service requirements on all series of bonds. The Authority also covenants that its revenues shall at all times be sufficient to meet principal and interest requirements on its bonds, to meet all sinking fund installments, and to make all required reserve fund payments.

Coverage: Interest rates on loans made by the Authority range from 7/8 of 1% to 4% per annum below the rates paid on the Authority's bonds. The negative interest spread is made up by the cash flow generated from the loans made with funds provided from State appropriations. The revenues which were expected to be received from loans made under the program were well in excess of the 20 times coverage required by the bond resolution. At the time the 1978 Series bonds were sold, coverage was projected to be approximately 2.4 times maximum annual debt service on the bonds then outstanding and to be issued.

Ratings: All recent series of the Authority's bonds have been rated A by both Moody's and Standard and Poor's.

New York Job Development Authority

Purpose: The Authority was created in 1962 to improve employment opportunities within the State by making secured loans to local development corporations, which in turn lend to industrial manufacturing and research and development firms and other eligible business enterprises. Funds borrowed from the Authority are utilized to finance the construction of new plants, the acquisition, rehabilitation or improving of existing plants and the acquisition of machinery and equipment.

Funding: As of May, 1979, the Authority had issued \$108 million bonds and \$18 million bond anticipation notes of which obligations, \$84,715,000 are currently outstanding.

Lending Experience: Since its creation, the Authority has approved 959 loans in original principal amounts totaling \$151,186,807, of which 885 have been disbursed with original principal amounts totaling \$133,845,322. During the Authority's 17- year history, it has had total

net losses of \$1,812,670 representing a total of 1.4% of all loans disbursed by the Authority. As of March 31, 1979, 32 loans were delinquent 60 days or more, with a principal amount outstanding of \$4,077,615 and representing 4.9% of total loans outstanding.

Bond Security: Each series of bonds constitutes an issue of special obligations of the Authority payable solely from (1) pledged revenue with respect to such series and (2) to the extent that such revenues are insufficient other available special purpose funds of the Authority. Each series of bonds is additionally secured by a debt service reserve fund equal to approximately 11% of the aggregate principal of the underlying loans for each such series. Recoveries of principal with respect to any loan are to be used to make additional loans, the payments on which will be applied to the payment of debt service on the series of bonds authorized by such resolution. The punctual payment of the bonds is fully and unconditionally guaranteed by the State of New York as to both principal and interest. The guarantee by the State is authorized by the Act and Section 8 of Article 10 of the Constitution of the State of New York.

Coverage: In compliance with the requirements of the Internal Revenue Code, the interest on each loan except during any applicable temporary period, must not exceed the yield on notes or bonds of the Authority issued to finance the loans by more than 1 1/2%.

Ratings: For the most recent issue of the Authority, Moody's assigned a rating of A and Standard and Poor's assigned a rating of AA.

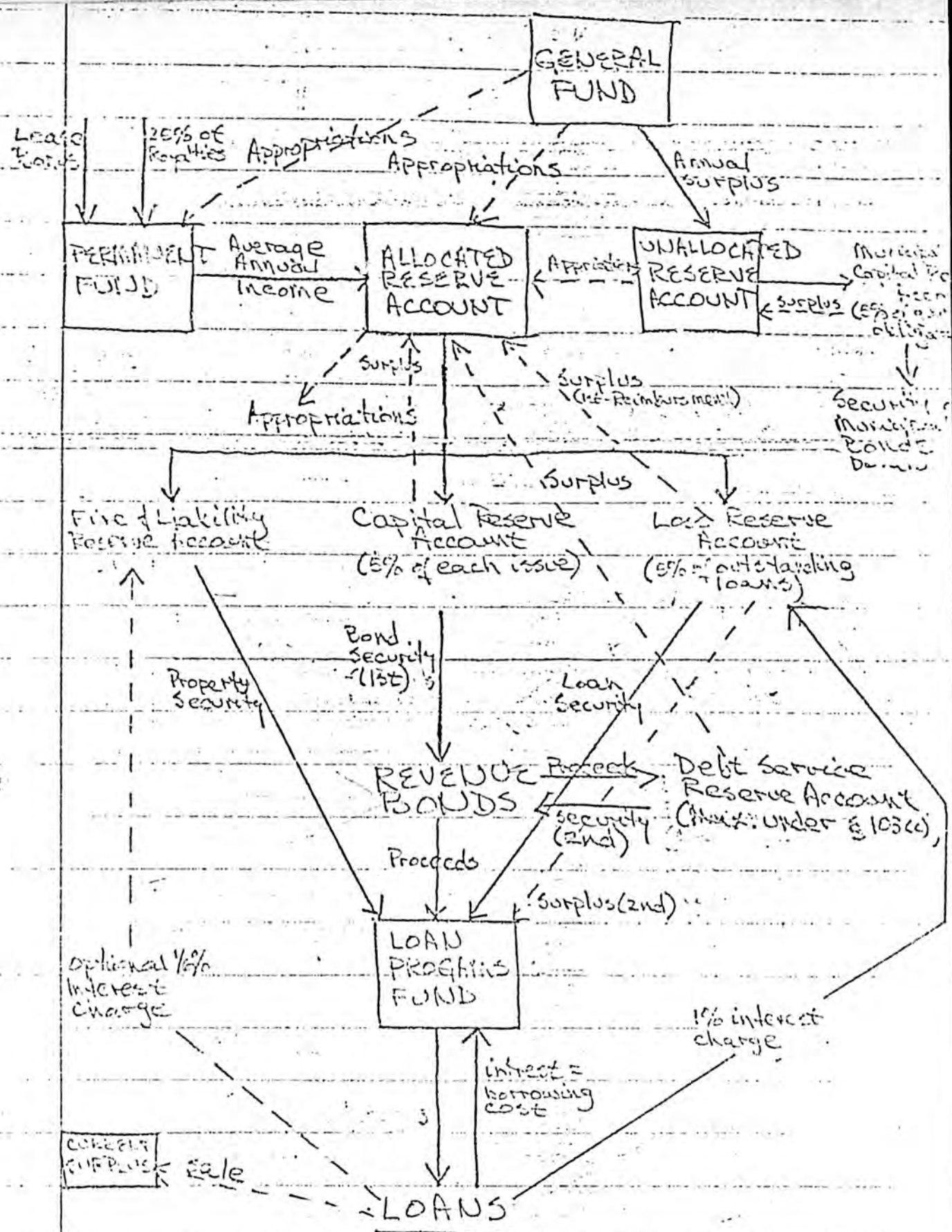
CONCLUSIONS AND RECOMMENDATIONS

1. While access to tax-exempt financing will benefit certain Alaska residents, a pooling of all types of financing is neither feasible nor desirable since stronger credits and established programs would pay higher interest costs with little, if any, reduction in the borrowing costs for the weaker credits and more risk oriented programs.
2. State guarantees and similar security devices can be effectively employed to improve market acceptance and thereby reduce borrowing costs. However, guarantees for economically marginal projects will accurately be viewed as a contingent liability against the State's general credit with an above average probability of becoming a direct liability. To the extent these pessimistic expectations are confirmed by events, investors will discount any security value in the pledged revenues and look exclusively to the State's General Fund for repayment.
3. Industrial development financing with tax-exempt bonds has been restricted and thoroughly regulated. Legislation now before the Congress proposes to accomplish similar ends with regard to

tax-exempt financing of residential housing. Senate Bill 1 will not invite retaliatory national legislation, but continuing Federal opposition to all forms of tax-exempt financing may restrict the program's operations at some future date.

4. With the possible exception of housing, all programs to be financed would qualify for the full 1 1/2% arbitrage margin authorized for "governmental programs." Arbitrage for housing programs will be limited to 1% under proposed legislation. These amounts have been sufficient in the past to meet costs of servicing, insurance and administration, but certain costs may exceed prior experience in which case the State and the program participants would be required to assume the additional charges.
5. Debt Service coverage is only one measure of financial strength. For a program of this type, adequate asset relationships and access to the resources of third parties would be important prerequisites for market acceptance.
6. In reaching these conclusions, we have consulted with the rating agencies and major underwriters of Alaska securities.

For the reasons enumerated above, we would not support SB 1 in its current form.



Commercial	Housing	Municipal
Farming	Construction/Mortgage	Small Issues
Fishing	Single Family/Multi-Family	Nonprofit Corporations (except only)
Forestry		
Resources		
Tourism		
Business		
Spa/Travel Soc.	Scholarship	Historical
Child Care		Public/Private
Exempt Activities	Outdoor Recreation	

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PERMANENT FUND QUESTIONS TO PUBLIC

I. As you know the Constitution provides for two funds: a)The General Fund b)The Permanent Fund

1. The constitution permits the withdrawal of monies from the general fund only when authorized by law - by the legislature.
2. The constitution prevents the withdrawal of monies from the Permanent Fund. The Legislature cannot appropriate monies from the permanent fund.
3. The earnings from the Permanent Fund constitutionally shall be deposited in the general fund and handled accordingly.

So do you think the Permanent Fund should be handled with extra care?

II. a)Would you be willing to give someone else the full authority to use your money or even earnings from your money for loans to projects you know will fail and force default on the loan?

b)Are you willing to give someone else the full authority to select the quality of loan or investment for which to use your money?

Or do you want to reserve that right?

c)If you reserve that right - would you put your money in secure investments or in investments with little if any chance of paying you back?

III. Do you think the Permanent Fund should become a bank which will provide for poor quality-low interest loans with a high risk of default.?

IV. All revenue projections indicate the General Fund balance will be two or three times greater than the Permanent Fund balance. If you knew you could get the low interest loans from the General Fund - would that be enough? - or would you want the Permanent Fund to also be able to secure loans?

V. Why should the State Government have both a General Fund and a Permanent Fund? Or should we propose a constitutional amendment to repeal the Permanent Fund?

VI. Do you have an opinion on how the earnings from the Permanent Fund are used? Should it be distributed to the people? Should it all go into the General Fund? or should it all go into the Permanent Fund?

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INVESTING MONTANA'S MINERAL SEVERANCE TRUST FUNDS

During the past decade, Montanans have shown an acute awareness of the transient nature of our nonrenewable natural resources. The best proof of this awareness is the four trust funds that were created during these years to save a portion of the severance taxes collected.

In 1973, the legislature enacted a 1/2 of 1% tax on the gross value of all minerals extracted in the state and dedicated the funds collected to the resource indemnity trust. The purpose of the trust is, in the legislature's words, "to provide security against loss or damage to our environment from the extraction of nonrenewable natural resources...in order that the people and resources of Montana may long endure." In 1975, the legislature allocated portions of the newly enacted coal severance tax to two trust funds:

- 1) 10% to the education trust fund for the support of Montana's public schools and universities; and
- 2) 2 1/2% to a parks and cultural projects trust fund, 2/3 of the interest from which may be used to purchase and maintain state parks and 1/3 of which is used for various cultural projects.

The citizens of Montana have shared with the legislature this concern over extraction of nonrenewable resources. In 1976, 179,000

voters (63% of those voting) approved a constitutional amendment creating a permanent coal tax trust fund. The amendment provided that the legislature would appropriate not less than 25% and beginning January 1, 1980, not less than 50% of the severance tax collected to a trust fund. The principal of the trust was to remain "forever inviolate" unless appropriated by a 3/4 vote of the members of each house. However, the interest earned from the fund could be appropriated during each legislative session.

Supporters of the amendment argued that the trust would:

- 1) free the state from undue dependence on coal production by:
 - a) allowing research and development of alternative, renewable energy sources; and
 - b) encouraging a diversified, stable economy in the state.
- 2) allow us to share Montana's heritage of nonrenewable natural resources with future generations, who would have no such legacy. In other words, something would remain when the coal was gone.

Montana voters evidently concurred in these goals and created the trust fund. Thus, beginning January 1, 1980, 62.5% of Montana's coal severance tax goes into trust funds.

The funds in these trusts have mounted steadily over the past several years. To date, \$12 million has been deposited in the resource indemnity trust fund, \$25 million in the education trust fund, and \$3 million in the parks and cultural projects trust. By far the largest account is, however, the coal tax trust fund.

Currently, there is nearly \$300 million in the trust. By the end of 1985, the trust should - by conservative estimates - contain \$300 million. Those who are brave enough to project long-range energy production have estimated the fund may contain between \$3 and \$4 billion by the year 2000.

These staggering sums make clear that Montanans of this decade face a new task. In the 1970's the Montana legislature and citizens exercised great foresight in creating these trust funds and research accounts. Now, in the 1980's we must exercise equal foresight in determining how these funds should be invested or spent to insure a lasting legacy remains when the coal and other nonrenewable resources are gone.

Two questions central to this task are:

- 1) How can we foster a stable, diversified economy through investment and spending?
- 2) How can we share our heritage of natural resources with future generations?

As those who have observed the last two sessions of the Montana legislature know, the prospective answers to these questions are diverse, representing a whole range of philosophical and political positions. Bills were introduced in 1977 to require that all coal tax trust funds be invested in Montana financial institutions, that the funds be used to subsidize home mortgages and promote energy conservation for lower income Montanans, that a state bank be created to house the trust and other state funds, and that the

interest from the trust be reinvested until the year 2000 when the next generation could vote on how the funds should be spent.

After much debate, the 1977 legislature rejected all these bills and voted to place the trust funds in the state's unified investment plan for investment under the modified prudent man statute.

Since most states invest public funds under a modified prudent man statute, many of you are no doubt familiar with its provisions. Montana statutes require the citizen board and professional staff that invest state funds to consider two guidelines:

1) a list of permissible investments.

Montana law contain a lengthy list of types of securities in which the Board may invest public funds. The list is varied enough to give the Board considerable latitude.

One notable exception is, however, common and preferred corporate stock. The Board of Investments may invest only state retirement funds in stock, not any trust funds.

2) the prudent man rule.

Montana law further directs the Board to invest public funds

...with that degree of judgement and care...which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income.

This, of course, is a restatement of a famous 1830 Massachusetts Supreme Court case that has come to be called the prudent man rule and which forms the basis of 40 states' investment programs.

The importance of the rule is that it gives trustees discretion to use their judgement and react to changes in the investment field, allowing an aggressive, dynamic investment program.

However, critics of the rule have objected to some of its features. One, it places great emphasis on two elements of an investment: its security and its rate of return. Investments to subsidize social projects, direct investment in businesses, or venture capital loans have no place under this investment rule. Two, the modified prudent man rule limits the amount of state funds that can be invested in Montana. Although the 1974 legislature passed a bill requiring the Board of Investments to seek in-state investments as much as possible and the Board has made efforts to increase the number of Montana mortgages and CD's it buys, only 16% of all state funds are currently invested in Montana. [This figure construes Montana investment narrowly, counting only those investments in corporations headquartered in Montana, mortgages on Montana real property, and CD's in Montana banks and savings, and loans. If investments in corporations having offices in Montana - like Beneficial Finance or Continental Oil - were included, the percentage would be higher.]

The Board of Investments notes that specific provisions of state law limit increased in-state investment:

1) Eligibility

The statutory list of permissible investments allows the Board to invest in only those corporate bonds rated among the top third of their quality category and in the

commercial paper of corporations having net income averaging \$1 million or more for each of the past five years. Very roughly, this translates into corporations listed in Fortune's 500 and only one or two firms of this size are incorporated in Montana.

2) Return.

Historically, treasury notes and utility bonds have produced more income and had no more risk than Montana mortgages and certificates of deposit. The Board argues that under the prudent man rule, a trustee would be remiss to choose the less profitable investment.

3) Diversification.

The Board has argued that large scale investment in Montana would increase risk for the funds because a statewide catastrophe - such as a sustained drought - could jeopardize all in-state bonds, CD's, or mortgages. Investments throughout the U.S. and Canada lessen these risks. ''

Because of these considerations, the Board has invested less than 10% of the coal tax trust fund and the resource indemnity trust fund in-state. As of June 30, 1979, 80% of the funds were invested in bonds issued by corporations, utility companies, and financial institutions headquartered outside the state and 10% in federal securities. The only in-state investment is the approximately 9% invested in Montana CD's.

The Board of Investments has defended the current method of investment before the legislature - and won many supporters - with the following arguments:

- 1) The interest rate earned in recent years on the state's unified investment program is one of the highest in the nation and adds nearly \$70 million a year to the state's general fund. During this biennium, over \$5 million in interest will be earned on the coal tax trust fund alone. These funds can be used for tax relief or to finance new state programs.
- 2) The state's aggressive investment program imports capital into the state, thereby improving our economy and our rating in national bond markets.
- 3) Since the Board seeks to purchase more Montana mortgages and CD's than are offered to it, Board members question whether capital gaps or lack of capital really existed in Montana. Existing financial institutions and federal programs such as SBA and FmHA are fulfilling the needs for capital.

These arguments were discussed at some length in 1977-78 when the Coal Tax Oversight Committee of the Montana Legislature undertook an in-depth study of various alternatives for investing the coal tax trust fund and other state funds. The 1977 Legislature, which voted to invest the coal tax trust fund under the prudent man rule, requested and funded this study to explore whether alternative methods of investment could be used to increase the supply of lower-income housing in the state and help young Montanans get a start in business or agriculture.

For over a year, the Coal Tax Oversight Committee analyzed the current investment policy, solicited testimony on capital needs in the state, studied other states' and other countries' experience with investment

programs, and considered various economic theories on the topic. As a result of this work, the Committee concluded:

- 1) Need does exist in the state for investment capital for product development, small-scale manufacturing, and farm ownership loans. Existing programs do not meet these needs.
- 2) While the Board of Investments is doing a commendable job of investing under the prudent man statute, this statute is too narrow to meet the state's needs as it seeks to promote a diversified state economy and independence from nonrenewable natural resources. In other words, the current investment program may import capital into the state, but that capital does not seem to get to where it is most needed.

Therefore, the Committee proposed a three-tiered program to the 1979 Legislature:

- 1) Amend the prudent man rule to require in-state investment if the investment a) has an interest rate within 1% of an out-of-state investment and b) would not have a higher risk.
- 2) Establish direct loan programs to stimulate product development and farm ownership. This proposal would leave the trust funds under the prudent man investment program, but use the interest it generates to support two programs.

a) Montana Product Development Corporation

This bill would have created a nonprofit corporation with the authority to advance funds to inventors and developers of new products in return for a percentage of any profits later earned on the product. The bill was patterned on

Connecticut's Product Development Corporation and the British National Research and Development Council, which has existed for over 30 years and become self-sustaining.

While the Committee's bill would have appropriated \$2 million of the interest from the coal tax trust fund to the program, members hoped that the corporation would eventually become self-sufficient and, in fact, return to the state the original \$2 million investment.

b) Homestead Land Program

Senator Towe, a Coal Tax Oversight Committee member, introduced an individual bill to establish a lease and loan program for young farmers. Under this program, the state would have purchased agricultural land and leased it to qualified young farmers for periods up to 15 years. If a qualified farmer chose to purchase the land, the state would allow him a mortgage of up to 60 years at a low rate of interest.

As introduced, the bill would have funded this program by state general obligation bonds backed by interest from the coal tax trust fund.

- 3) Increase investment in secondary loan markets. In its research, the Committee received extensive testimony that Farmers Home Administration and the Small Business Administration could increase the number of loans made in the state if the Board of Investments purchased their guaranteed loans and participated in FmHA real estate mortgages. The Committee sponsored two joint resolutions urging the Board to increase its investment in the secondary loan market.

As many of you know, this three-tiered program did not fare well in the 1979 Legislature. The bills to increase in-state investment and establish direct loan programs were killed. Opponents of the bills expressed real concern at the thought of state involvement in real estate, product development, and other private markets. Several argued that increased public investment in-state would simply drive out private funds and, thus, weaken the state's economy. These legislators and citizens said they were satisfied with the current investment plan under the prudent man rule. The only part of the Committee's program that passed were the resolutions urging the Board to invest more funds in Montana's secondary law market. The Board is currently preparing a policy and procedure for implementing these resolutions.

The defeat of the Committee's bills does not mean, however, that debate on this topic is over. As the amount of money in the coal tax and indemnity trust funds grows, the interest they produce increases and supplies of fossil fuel energy decrease, legislators will face increasing pressure to invest and spend these funds for a variety of purposes.

Wise investment of these funds depends, I think, on two elements: continued research into alternative methods of investment and economic development and increased public discussion and analysis of these alternatives. Detailed study of the extent of capital gaps in Montana, the segments of the economy most in need of capital infusions, and the best means of stimulating stable, diversified growth will enable

legislators to refine the current investment program or design new programs that will achieve these ends. Public involvement in the study and analysis of alternatives is vital if the investment program is to meet the needs of Montana society and economy as they grow and mature. Gatherings such as the conference today are a vital first step in accomplishing these tasks.

A handwritten signature in cursive script, reading "Teresa Olcott Cohea".

Teresa Olcott Cohea, Staff Researcher
Coal Tax Oversight Committee
Revenue Oversight Committee

Speech delivered at Conference on Alternative
State and Local Policies Meeting in Billings,
February 9, 1980

SCOMM

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STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU 99801

TO: Honorable Bill Miles
Co-Chairman
House Resources Committee

DATE: February 14, 1979

FROM: Milt Barker ^{MB}
Fiscal Analyst

SUBJECT: Reserve for
Energy Facilities

Chapter 168 SLA 1978, which created the reserve for energy facilities took effect on October 15, 1978.

The Department of Natural Resources is following a practice of making monthly deposits. They made their first deposit on October 30, 1978 of September royalties. On this basis the reserve is estimated to total \$11.3 million on June 30, 1979. It totaled \$3.5 million on January 31, 1979.

However, because the wording, now codified as AS 37.05.158(b), identifies the reserve as "five per cent of the annual receipts from mineral lease bonuses and rentals for state land and royalties", one could argue that an allocation should be made to the account on June 30, 1978 of 5% of the total receipts for the fiscal year. On this basis, the account would total \$15.1 million on June 30, 1979. In any event, the FY 80 allocation is estimated at \$18.2 million, these estimates being based on the Department of Revenue's "Revenue Sources" booklet.

There is no mention of the reserve for energy facilities in the Governor's budget. The Governor has chosen not to comply with AS 37.05.158(c) (attached) which says "plans for expenditures from the account shall be submitted by the Governor in accordance with the Executive Budget Act (AS 37.07) as part of his annual budget presentation." His reasons for not doing so seem to be:

- 1) The state can't spare the funds. The administration points out that the FY 79 and 80 allocations for capital outlay would be \$75 and 91 million and that for energy facilities \$15 and 18 million. Yet according to AS 37.05.157(c) (attached) there is no requirement for the executive to include the capital outlay account in his budget, only the energy facilities.

Honorable Bill Miles
February 14, 1979
Page 2

The Governor has submitted a capital budget request that includes \$3 million for the power project revolving loan fund from general funds. Certainly this could have been funded from the energy facilities account, as well as the proposed Susitna special appropriation of \$8,178,000 and possibly other items, without affecting the state's general fund balance;

- 2) The account is not a dedication of funds which would be unconstitutional if it were. See page 3 of attached memo of July 12 and related comments in attached memo of October 12; and
- 3) The Legislature can't tell the Governor how to submit his budget. See page 2, paragraph 3 of July 12 memo which seems to relate.

§ 37.05.157

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§ 37.05.158

PUBLIC FINANCE

§ 37.05.180

Sec. 37.05.158. General fund; "reserve for energy facilities development" account. (a) There is created within the general fund the "reserve for energy facilities development" account.

(b) Five per cent of the annual receipts paid the state from mineral lease bonuses and rentals for state land and royalties derived from minerals produced on state land shall be allocated to the reserve for energy facilities development account.

(c) The proceeds of the reserve for energy facilities development account shall be subject to annual appropriation by the legislature. Plans for expenditures from the account shall be submitted by the governor in accordance with the Executive Budget Act (AS 37.07) as part of his annual budget presentation. (§ 11 ch 168 SLA 1978)

Sec. 37.05.160. Property records. The Department of Administration shall direct the use of inventory records by all state agencies to show all fixed and movable property of the state. The records shall be based on a physical inventory and charged with all subsequent purchases and shall be reduced by all property traded in, condemned, or disposed of. The accuracy of the property record shall be verified periodically by actual inspection of the property by the department. The state agencies may be required to take physical inventory of properties annually and at other times as the department directs. (§ 4 art III ch 82 SLA, 1955; am § 5 ch 186 SLA 1957)

Sec. 37.05.170. Obligations. No payment may be made and no obligation incurred against any fund unless the Department of Administration certifies that its records disclose that there is a sufficient unencumbered balance available in the fund and that an appropriation or expenditure authorization has been made for the purpose for which it is intended to incur the obligation. (§ 5 art III ch 82 SLA 1955; am § 5 ch 186 SLA 1957)

Am. Jur. and ALR references. — 42 Am. Jur., Public Funds, § 56.

Power of state to incur indebtedness for relief of distress due to unemployment or other unusual conditions, 73 ALR 699; 87 ALR 371.

Power of board or officials to depart from literal requirements in respect of deposits or loans of public funds in their control. 104 ALR 623.

Sec. 37.05.180. Two-year limitation on payment of warrants. No warrant upon the state treasury is paid unless presented at the office of the commissioner of revenue within two years of the date of its issuance. All warrants not presented within that time are considered paid and money held at the expiration of that time in a special fund or account for the payment of the warrant shall be transferred to the general fund, except where transfer is prohibited by the federal government for state participation in a federal program. (§ 3 ch 130 SLA 1951; am § 1 ch 128 SLA 1960; am § 1 ch 7 SLA 1961)

Sec. 37.05.150. Funds and accounts. The accounting system shall be in accordance with accepted principles of governmental (fund) accounting and shall include both budgetary and property accounts. The system shall provide records showing at all times by funds, accounts, and other pertinent classifications the amounts appropriated, the estimated revenues, actual revenues or receipts, the amounts available for expenditure, the total expenditures, the unliquidated obligations, actual balances on hand, and the unencumbered balances of appropriations for each state agency. (§ 3 art III ch 82 SLA 1955; am § 5 ch 186 SLA 1957)

Sec. 37.05.155. Special funds. (a) The following funds shall be treated for accounting purposes as accounts in the general fund:

- (1) FICA administration fund (AS 39.30.050);
- (2) special revolving fund — surplus property (AS 44.71.030(c));
- (3) Repealed by § 49 ch 32 SLA 1971.
- (4) second injury fund (AS 23.30.040);
- (5) the vocational rehabilitation small business enterprises revolving fund (AS 23.15.130);
- (6) fishermen's fund (AS 23.35.060).

(b) There shall be created in the general fund for each of the funds designated in (a) of this section a reserve equal to the excess of revenues received by each fund over expenditures made from that fund. (§ 1 ch 5 SLA 1968; am § 49 ch 32 SLA 1971)

Legislative committee report. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

"General fund". — The general fund is not specifically created by statute. Its existence is noted in this section which provides that certain enumerated funds shall be treated for accounting purposes as accounts in the general fund. 1969 Op. Att'y Gen., No. 5.

The general fund in Alaska consists of money received from state taxes and

licenses and money received from non-tax or license sources, such as oil and gas royalty payments. 1969 Op. Att'y Gen., No. 5.

All public moneys and revenue coming into the state treasury constitute the general fund of the state. 1969 Op. Att'y Gen., No. 5.

Quoted in *Thomas v. Rosen*, Sup. Ct. Op. No. 1504 (File No. 3073), 569 P.2d 793 (1977).

Sec. 37.05.157. General fund; "reserve for capital outlay" account. (a) There is created within the general fund the "reserve for capital outlay" account.

(b) Twenty-five per cent of the annual receipts paid the state from mineral lease bonuses and rentals for state land and royalties derived from minerals produced on state land shall be allocated to the reserve for capital outlay account.

(c) The proceeds of the reserve for capital outlay account are subject to annual appropriation by the general appropriation act. (§ 10 ch 168 SLA 1978)

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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH X - STATE CAPITOL
JUNEAU 99811

July 12, 1978

The Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: FCCS SCS HB 222 (e. date failed)
(planning and funding of capital
construction projects)
Our File: J-88-164-78

Dear Governor Hammond:

We have as you requested reviewed the subject bill. It presents several problems. The first is with its title.

The constitution requires that every bill be confined to one subject and that the subject be expressed in the title. Alaska Const., art. II, sec. 13. While a stringent application of the first part of this rule has been obviated by the Alaska Supreme Court in Gellert v. State, 522 P.2d 1120 (Alaska 1974), it may yet retain some vitality.

The bill at hand is an amalgam of three bills: HB 222 (Malone and Gardiner), the subject of which was "public scrutiny of the budget formulation process"; SB 510 (Senate Special Permanent Fund Committee), the subject of which was "the state budget and state bonding"; and SB 539 (Senate Special Permanent Fund Committee), the subject of which was the "eligible costs for state grants for capital improvement projects."

As it now stands, the bill is in possible violation of both the single-subject and descriptive-title rule.

On the one hand, the bill is not confined to one subject but rather pertains to at least two and possibly three distinct subjects. Nevertheless, the bill's subjects are sufficiently related to meet the rather loose standards set in Gellert.

The Honorable Jay S. Hammond
Governor

July 12, 1978

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On the other hand, by not referring in the slightest to the many substantive provisions of the bill which relate to matters not indicated by the term "planning and funding of capital construction projects", the bill's title fails to express its subject. We are inclined to the view that this failing is not an indication of sloppy drafting, but rather a confession that the bill is not confined to one subject; i.e., if the three subjects covered by the bill were expressed in the title, it would be obvious that the bill is not confined to one subject. To avoid this, the bill's title is made about as vague and all-inclusive as is possible while still retaining some reference to the subject matter.

The better reasoned opinion is that, as a general rule, the interrelated requirements of confining bills to a single subject and expressing that subject in the title are reasonable and prudent safeguards against the abuse of power by legislative committees or blocs which piggyback unrelated or loosely related subject matter onto other bills to secure their enactment. Where, as here, the practice is not guarded against, there is no opportunity for determining whether a given measure on a subject would have been adopted on its own merits and, had it been so adopted, in what form it might have emerged from the legislative process. The package either goes or it does not. No one questions the legitimacy of legislative packages on a single subject. It is the packages which mix diverse subjects which offend the constitutional restriction. We do not believe that this bill will be the vehicle for the court's overruling Gellert, but certainty of prediction is not possible.

The bill provides for a number of capital budgeting and capital planning procedures which we are inclined to believe are impracticable, if not impossible. It provides in great detail how these matters will be accomplished and makes those details mandatory. In doing so, the bill appears to tread upon the executive's plenary power over the preparation of the state budget. Alaska Const., art. IX, sec. 12. For the most part, it should not have the effect of impairing that power, but to the extent that it may have that effect, it should be unconstitutional. In other words, the legislature cannot so hamstring the executive's preparation of the budget that it is no longer his but rather another's budget. The constitution places both the authority and the responsibility for the budget's preparation on one person, the chief executive.

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Governor

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The bill sets up special "accounts" for capital improvements and energy development, utilizing mineral-resource revenues for funding. No dedication is made of the money. It is merely accounted for and is available for appropriation for those purposes and for any other purpose. Accordingly, there is no violation of the prohibition against dedicated funds on the face of the bill. Alaska Const., art. IX, sec. 7. As a practical matter, if the actual effect of the bill were to result in a dedication, then it would likely be held to be unconstitutional. That is, if succeeding legislatures never used the money for other purposes and used it only for capital improvements and energy facilities, even though the funds held a surplus and other needs were going unmet, then there would be, in effect, a prohibited dedication.

The most ambitious -- probably overly ambitious -- part of the bill relates to the "State Public Facilities Plan." Sec. 14, pp. 7-9. It makes it mandatory for the commissioner of the Department of Transportation and Public Facilities to "develop and annually revise a statewide comprehensive facility procurement plan for public facilities of the state and its municipalities." It then goes on to detail how this "shall" be done. One is reminded of Mort Sahl's well known, late 1950's dictum on government: "If they didn't know what they were doing, they wouldn't be in Washington [pause], and they're not there." There is also the lesser known Rod Pegues-Joe Matyi dictum from the same era on borough government in Alaska: "We have seen the future [pause], and that doesn't work either." Both seem appropriate here.

~~It is possible that the proposed new system will work.~~ It is its mandatory nature which concerns us. If the commissioner is under a duty to perform as prescribed, our court will likely find that his duty runs to some member of the public and that any significant failure on his part to perform that duty will allow the person to whom the duty runs to block any governmental action until the duty has been performed. That is the underlying rule in United States Smelting Ref. & Mining Co. v. Local Boundary Comm., 489 P.2d 140 (Alaska 1971); State v. Aleut Corp., 541 P.2d 730 (Alaska 1975); and State v. Lewis, 559 P.2d 630 (Alaska 1977). Hence, this new legislation can furnish the grounds for legal guerilla warfare against state and local capital construction projects. From a policy standpoint, that may or may not be a good thing. From a legal standpoint, it is -- on the whole -- pretty much a bad thing.

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The courts, in effect, will be brought into what should be a joint legislative-executive formulation of policies and programs.

Finally, the bill amends the several statutes relating to state financial assistance to local governments, villages, and nonprofit corporations for various public or quasi-public facilities. The principal effect of the amendments is to allow any and all conceivable costs, without limitation as to their reasonableness, to be eligible for matching or supporting grants.

Most of the aid is to be made available at the discretion of the head of the state agency involved. This provides some safeguard for the public treasury. But once a project is approved, there is no additional discretion, as a general rule, by which the cost may be limited, unless it has been limited either by regulation or by terms of the grant. We will discuss each program in turn. The references are to sections, pages, and lines on the pages of the engrossed version of the bill.

1. Secs. 17-19 (p. 13, lines 1-29, p. 14, lines 1-8) (aid to airports). The program is discretionary; therefore, there should be no problem. However, once the state agrees to provide a match grant, the grantee appears to be eligible, i.e., to have a right, to receive as much money as is necessary to match his costs as defined under the new AS 02.15.155.

2. Secs. 20-21 (p. 14, lines 9-29, p. 15, line 1) (aid to agricultural and industrial fairs). This program is also discretionary; therefore, it too should present no problem. The capital improvement aid, AS 03.20.035, is closely controlled by the commissioner's discretion, so it appears to be no problem. However, the definition provided by new AS 03.20.080 could well cause runaway costs.

3. Sec. 22 (p. 15, lines 2-17) (urban renewal as disaster assistance). This is subject to discretion and should cause no problem. Again, however, once the decision to make the grant is made, runaway costs may occur and the state will be stuck with them.

4. Sec. 23 (p. 15, lines 18-29, p. 16, lines 1-4) (access roads). This should present no problem because it is subject to discretion, to availability of funds, and

The Honorable Jay S. Hammond
Governor

July 12, 1978

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to a \$50,000 maximum. In addition, AS 19.30.040(d) makes the developer liable for costs in excess of those agreed upon. That kind of provision should be in all of these.

5. Sec. 24 (p. 16, lines 5-20) (aid for various municipal purposes). Under AS 43.18.010(j), state aid continues for construction of health care facilities until it "equals 25 per cent of the total project cost." The new material would allow Dr. Mike Beirne or any future Dr. Mike Beirne to justify pretty much all of his claims. AS 43.18.020 limits these to the funds available, declares that there is no debt of the state, and requires pro rata distribution when eligible claims exceed available money. The problem is that, if the money has been appropriated, the developers will make their score.

6. Sec. 25 (p. 16, lines 21-29, p. 17, lines 1-8) (school construction). This has the same safeguards.

7. Sec. 26 (p. 17, lines 9-25) (convention and recreation facilities). This has the same safeguards.

8. Sec. 27 (p. 17, lines 26-29, p. 18, lines 1-13) (sports facilities). These are subject to a direct appropriation; and therefore, require legislative approval as a safeguard.

9. Secs. 28-29 (p. 18, lines 14-29, p. 19, lines 1-16) (visitor information centers). These are made "within the limits of . . . appropriations and considering the needs of other qualified applicants."

10. Secs. 30-31 (p. 19, lines 17-29, p. 20, lines 1-17) (municipal water and sewer systems). There are no safeguards for non-federally funded projects, except that the projects must be constructed in accordance with plans and specifications approved by DEC.

11. Sec. 32 (p. 20, lines 18-29, p. 21, lines 1-4) (village wastewater systems). There are no local costs and no safeguards whatsoever. The new amendment opens the door to a total ripoff. The department can control it only by self-enforcing contractual provisions -- which are usually nonexistent -- in the grants. However, having to take over the ownership and operation locally imposes some restraint on misadventures.

The Honorable Jay S. Hammond
Governor

July 12, 1978
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12. Secs. 33-34 (p. 21, lines 5-29, p. 22, lines 1-4) (alcoholism facilities). These have a \$50,000 single-grant maximum and departmental discretion not to fund.

The basic danger the amendments create is that local developers will overcharge for their own goods and services which they place into a project, claiming an offsetting amount from the state. This can be avoided, at least in part, by grant conditions (or agency regulations) which delimit the amount of those kinds of charges by making them conform to the rates and amounts charged for the same or similar goods and services on similar projects. All in all, however, the legislature's definition of "costs" is an invitation, if not to steal, at least to be wasteful. We are not at all sure that the state agencies involved are equipped to prevent either result.

More than most, this bill has its share of good and bad points. From a legal standpoint, i.e., from how it can and probably will affect the state's legal relationships and problems, we would prefer another version and would just as soon that this one were vetoed. For us, it simply has too many uncertainties and unknowns which, if answered wrong, will work against the public interest. We admit, however, that if they are answered correctly, no harm will occur and -- with respect to operational and capital budgeting -- a more rational approach may be developed.

*Please note, however, that you have authority as the state's budget officer to effect almost all, if not all, those budgeting and procurement changes on your own with respect to the state government's budgeting and capital planning. Hence, this is not an all-or-nothing proposition.

Sincerely yours,

Avrum M. Gross
Attorney General

by Arthur H. Peterson

AMG:pjg:RWP

Administrative Committee on
Renewable Resources Development

October 12, 1977

AVRUM M. GROSS
ATTORNEY GENERAL

Renewable Resources
Funds

By:

Rodger W. Pegues
Assistant Attorney General

This confirms our recent discussions on this subject.

First, "renewable resources" are whatever the Alaska Supreme Court says they are. It is our best judgment that, as with "capital improvements," the court would not adopt a general definition but rather would judge each proposition on its own merits. Cf., City of Juneau v. Hixson, 373 P.2d 743 (Alaska 1962). As will be explained later, however, we doubt any ruling will ever be made. The administration, however, should use the same ad hoc test as the court would.

Second, investments are governed by the prudent man rule, i.e., to make money. AS 37.11.020, 060 and AS 37.10.070 (investment of surplus funds).

Third, expenditures may be made only by way of the budget-appropriation process. AS 37.11.030, 070.

The Alaska Renewable Resources Development Fund and Permanent Fund are not true dedications of revenues, i.e., there is no fund which is actually dedicated for a special purpose. There is a conditional, standing appropriation of surpluses, if any, from the development fund to the permanent fund. AS 37.11.040, 060. But that merely moves money from one fund to another, without expending it on a special purpose. Except for replacement of losses of principal from fund income (also a conditional, standing appropriation), that is the only source of income for the latter fund. If there is no surplus in a given year, there is no income to the fund for that year. A true dedicated fund has a regular source of income and the authority to expend money, without further appropriation, on its special purpose, e.g., education.

Additionally, there is no legal impediment against any legislature's appropriating from either fund for any public purpose whatsoever, without regard to its contributing to the development or management of a renewable natural resource. No legislature, with an exception not applicable here, may bind another to a given law or policy. With or without an express

Administrative Committee on
Renewable Resources Development
October 12, 1977
Page #2

amendment to AS 37.11, any future legislature may appropriate as it sees fit, subject only to an item veto. That includes appropriations from the principal of the permanent fund.

Legally, the funds may be viewed as special accounts to facilitate a legislative policy. So long as succeeding legislatures are in accord with the policy, the funds afford a way of providing fairly substantial amounts of money for the management of renewable natural resources without having to overcome the annual inertial resistance of the budget-appropriation process. The executive is bound by the policy as long as it remains law. But each and every legislature possesses the plenary power to annul the policy -- expressly by repeal or impliedly by not following it.

If the legislature changes the policy by not following it, e.g., appropriates from the development fund to build a road to exploit mineral resources of the Seward Peninsula, we doubt that a court would overturn the legislature's action. We believe, rather, that it would rule that the establishment of the fund and its terms by the Eighth State Legislature does not bind, say, the Eleventh State Legislature. There is a rule to the effect that the constitutional limitation of appropriation bills to appropriations precludes their being used to enact or amend other substantive law. E.g., Opinion to the Governor, 239 So.2d 1, 11 (Fla. 1960). However, we apprehend this rule to apply solely to conditions or restrictions attached to appropriations and not to the appropriations themselves.

Accordingly, it is unlikely -- so long as expenditures require an appropriation -- that the courts will ever rule on what is or is not a "renewable natural resource." Of course, if AS 37.11 were amended so as not to require appropriations for future expenditures, then it probably would be a true dedication of revenues and become unconstitutional. Alaska Const., art. IX, §7; Op. Atty. Gen., Dedication of Revenues Derived from Lease or Sale of State Natural Resources (May 2, 1975).

RWP/pjg

ALLOCATIONS OF PROJECTED OIL & GAS ROYALTIES
(\$ millions)

Fiscal Year	Oil & Gas Royalty 1/	Permanent Fund 25%	Renewable Resources 2/ Development Fund 2-1/2%	Investment Fund 2-1/2%	Reserve for Energy Facilities 5%	Reserve for Capital Outlay 25%	Native ^{3/} Claims 16%	Mental Health Trust 1-1/2%	University Trust 1/2%	Public School Fund 1/2%	Unallocated Balance
79	297.6	74.4	7.4	7.4	14.9	74.4	47.6	4.5	1.5	1.5	63.9
80	360.3	90.1	9.0	9.0	18.0	90.1	57.6	5.4	1.8	1.8	77.5
81	425.7	106.4	10.6	10.6	21.3	106.4	68.1	6.4	2.1	2.1	91.6
82	476.4	119.1	11.9	11.9	23.8	119.1	76.2	7.1	2.4	2.4	102.4
83	529.7	132.4	13.2	13.2	26.5	132.4	84.7	7.9	2.6	2.6	113.9
84	587.3	146.8	14.7	14.7	29.4	146.8	94.0	8.8	2.9	2.9	126.3
85	648.1	162.0	16.2	16.2	32.4	162.0	46.6	9.7	3.2	3.2	196.6
86	713.6	178.4	17.8	17.8	35.7	178.4		10.7	3.6	3.6	267.5
87	783.4	195.8	19.6	19.6	39.2	195.8		11.7	3.9	3.9	293.7
88	858.1	214.5	21.4	21.4	42.9	214.5		12.9	4.3	4.3	321.7
89	937.6	234.4	23.4	23.4	46.8	234.4		14.0	4.7	4.7	351.5
90	1022.3	255.5	25.5	25.5	51.1	255.5		15.3	5.1	5.1	383.3
TOTAL CONTRIBUTIONS:		1909.8	190.7	190.7	382.0	1909.8	474.8	114.4	38.1	38.1	2389.9
FY 78 BALANCE:		54.5					25.2				
FY 90 BALANCE:		1964.3					500.0				

FOOTNOTES: 1. Based on assumptions of no gas line, Sadlerochit production at 1.16 million barrels per day, 6.5% annual increase in oil prices, and no new fields produced, and no lease bonuses.

2. Allocations to both Renewable Resources Funds cease when the Investment Fund reaches \$250,000,000.

3. Payments cease when \$500,000,000 has been paid.

PREPARED BY:

LEGISLATIVE FINANCE
March 8, 1979

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Article 1. Alaska Renewable Resources Development Fund.

Section

10. Alaska renewable resources develop-
ment fund

20. Fund authorization level

Section

30. Fund utilization

40. Fund balances

Sec. 37.11.010. Alaska renewable resources development fund. There is established as a separate fund the Alaska renewable resources development fund. Funds apportioned by § 20 of this chapter for deposit in the Alaska renewable resources development fund are to guarantee the enhancement and development of the state's renewable resources. (§ 1 ch 130 SLA 1974)

Editor's note. — Section 2, ch. 130, SLA 1974, provides: "On June 30 of the fiscal year in which the balance in the Alaska renewable resources permanent fund (AS 37.11.050) reaches the sum of \$250,000,000,

AS 37.11.010 — 37.11.040 are repealed and the unexpended and unobligated balance in the Alaska renewable resources development fund (AS 37.11.010) lapses into the general fund."

Sec. 37.11.020. Fund authorization level. Not less than five per cent of the receipts paid the state from mineral lease bonuses and rentals for state land and royalties derived from minerals produced on state land shall be deposited in the Alaska renewable resources development fund. These deposits shall be invested in accordance with AS 37.10.070 (investment of surplus state funds) and the resulting interest shall accrue to the fund. (§ 1 ch 130 SLA 1974)

Editor's note. — Section 2, ch. 130, SLA 1974, provides: "On June 30 of the fiscal year in which the balance in the Alaska renewable resources permanent fund (AS 37.11.050) reaches the sum of \$250,000,000,

AS 37.11.010 — 37.11.040 are repealed and the unexpended and unobligated balance in the Alaska renewable resources development fund (AS 37.11.010) lapses into the general fund."

Sec. 37.11.030. Fund utilization. Appropriations from this fund shall provide funding for capital and operating expenditures for the rehabilitation, enhancement and development of renewable resources programs. Plans for expenditures from this fund shall be submitted by the governor in accordance with the Executive Budget Act (AS 37.07) as part of his annual budget presentation to the legislature. (§ 1 ch 130 SLA 1974)

Editor's note. — Section 2, ch. 130, SLA 1974, provides: "On June 30 of the fiscal year in which the balance in the Alaska renewable resources permanent fund (AS 37.11.050) reaches the sum of \$250,000,000,

AS 37.11.010 — 37.11.040 are repealed and the unexpended and unobligated balance in the Alaska renewable resources development fund (AS 37.11.010) lapses into the general fund."

Sec. 37.11.040. Fund balances. Unappropriated or otherwise unencumbered balances remaining in the Alaska renewable resources development fund at the close of each fiscal year shall be transferred

to the Alaska renewable resources investment fund. (§ 1 ch 130 SLA 1974; am § 4 ch 179 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "investment fund" for "permanent fund" at the end of the section.

Editor's note. — Section 2, ch. 130, SLA 1974, provides: "On June 30 of the fiscal year in which the balance in the Alaska

renewable resources permanent fund (AS 37.11.050) reaches the sum of \$250,000,000, AS 37.11.010 — 37.11.040 are repealed and the unexpended and unobligated balance in the Alaska renewable resources development fund (AS 37.11.010) lapses into the general fund."

Article 2. Alaska Renewable Resources Permanent Fund.

Section

50. Alaska renewable resources investment fund
60. Fund principal

Section

70. Utilization of fund income
80. Protection of principal
90. Investments

Cross reference. — As to the Alaska Renewable Resources Corporation, see AS 37.12.

Sec. 37.11.050. Alaska renewable resources investment fund. There is established as a separate fund the Alaska renewable resources investment fund. Funds apportioned by § 60 of this chapter for deposit in the investment fund are to be held perpetually in trust for the benefit of both present and future generations of Alaskans. (§ 1 ch 130 SLA 1974; am § 5 ch 179 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "investment fund" for "permanent fund" in the first and second sentences.

Sec. 37.11.060. Fund principal. Unappropriated or otherwise unencumbered balances remaining in the Alaska renewable resources development fund at the close of each fiscal year shall be deposited in the investment fund. These deposits shall be considered fund principal and shall be invested in perpetuity in accordance with § 91 of this chapter. (§ 1 ch 130 SLA 1974; am § 6 ch 179 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "investment fund" for "permanent fund" at the end of the first sentence and "§ 90 of this chapter" for "AS 37.10.070 (investment of surplus state funds)" at the end of the second sentence.

Sec. 37.11.070. Utilization of fund income. (a) Income received from investment of investment fund principal shall not be held in trust, but shall be used to provide funding for capital and operating appropriations for the rehabilitation, enhancement and development of renewable

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PUBLIC FINANCE

§ 37.11.100

resources programs. The primary purpose of the programs shall be to restore the renewable resources of the state for common beneficial uses.

(b) Plans for expenditures from fund income shall be prepared in detail by the cooperative efforts of the Departments of Natural Resources, Fish and Game, Environmental Conservation, and Commerce and Economic Development, and shall be submitted by the governor in accordance with the Executive Budget Act (AS 37.07) as part of his annual budget presentation to the legislature. Not less than 80 per cent of the total plan submitted each year shall be apportioned for direct capital expenditures or investments (§ 1 ch 130 SLA 1974; am § 7 ch 179 SLA 1978)

Effect of amendment. — The 1978 amendment designated provisions of this section as subsection (a), substituted "investment fund" for "permanent fund" in the first sentence of subsection (a), rewrote the second sentence of subsection (a), and added subsection (b).

Sec. 37.11.080. Protection of principal. A transaction involving investment fund principal which results in an actual dollar loss of principal shall be reimbursed in full from fund income before any additional income is expended. (§ 1 ch 130 SLA 1974; am § 8 ch 179 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "investment fund" for "permanent fund."

Sec. 37.11.090. Investments. Investment responsibility for the Alaska renewable resources investment fund shall reside with the treasury division of the Department of Revenue. The treasury division may invest the Alaska renewable resources investment fund in any investments authorized in AS 39.35.110 so long as its investment policy is consistent with the prudent-man rule. (§ 9 ch 179 SLA 1978)

Article 3. Alaska Economic Disaster Impact Fund.

Section

100. Alaska economic disaster impact fund

Sec. 37.11.100. Alaska economic disaster impact fund. (a) There is established a separate fund known as the Alaska economic disaster impact fund which shall be administered by the Department of Commerce and Economic Development. Funds designated in this section and apportioned by statute for deposit in the Alaska economic disaster impact fund are for grants or loans to assist economically impacted communities within areas designated by a proclamation under AS 44.33.285. The Department of Community and Regional Affairs, in

Sec. 37.12.020. Allocation. (a) There shall be allocated to the corporation from the receipts described in AS 37.11.020 five per cent of the total receipts paid the state from mineral lease bonuses and rentals for state land and royalties derived from minerals produced on state land. Payments of the amount allocated by this section shall be made to the corporation by the Department of Revenue on a monthly basis.

(b) Fifty per cent of all actual receipts of the corporation, from whatever source except receipts from the corporation's investments, shall be deposited into the renewable resources investment fund (AS 37.11.050). (§ 3 ch 179 SLA 1978)

Sec. 37.12.025. Board of trustees. A board of trustees of the corporation is established as its governing body. (§ 3 ch 179 SLA 1978)

Sec. 37.12.030. Composition of the board of trustees. The board of trustees consists of three members appointed by the governor and confirmed by a majority of the members of the legislature in joint session. The board shall annually elect a chairman from among its members. A chairman may not succeed himself. (§ 3 ch 179 SLA 1978)

Sec. 37.12.035. Term of office. The members of the board of trustees shall be appointed for terms of four years, and they may be reappointed. Terms shall be staggered. The initial terms shall be one member serving for two years, one member serving for three years, and one member serving for four years. (§ 3 ch 179 SLA 1978)

Sec. 37.12.040. Removal and vacancies. (a) The governor may remove a board member from office by and with the consent of a majority of the members of the legislature in joint session. A removal by the governor shall be in writing and state the reason for removal. If the legislature is not in session, the governor may suspend a member of the board. Upon suspension, a board member may not participate in board business and may not be counted for the purpose of establishing a quorum. A suspended member shall continue to receive his salary as a board member until the legislature in joint session consents to his removal. The joint session shall be held within 30 days from the date of removal if the removal occurs while the legislature is in session or within 30 days of convening of the legislature if the legislature is not in session. If the legislature refuses to consent to his removal, the board member shall be reinstated to his position.

(b) A vacancy on the board shall be promptly filled by appointment by the governor and confirmation by a majority of members of the legislature in joint session. An appointee to fill a vacancy shall hold office for the balance of the term for which his predecessor on the board was appointed. If a vacancy arises on the board while the legislature is not in session, the governor may appoint an interim board member until such time as the legislature in joint session fails to confirm the interim member's appointment.

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Revisor's note (1978). — Both § 4, ch. 181, SLA 1978 and § 4, ch. 182, SLA 1978 enacted chapters designated AS 37.14 establishing a mental health fund. As chapter 182, SLA 1978 is both the later enacted law and contains additional material and more comprehensive treatment of trust funds, the chapter contained in § 4, ch. 182, SLA 1978 has been treated as superceding the one contained in § 4, ch. 181, SLA 1978.

Effective date of chapter. — Section 27, ch. 182, SLA 1978, makes article 2 effective on the date that the Board of Regents votes to approve the matters under consideration as provided in § 24 of the act. Section 28 of ch. 182, makes articles 1, 3, and 4 effective July 1, 1978.

Editor's note. — Section 24, ch. 182, SLA 1978, effective July 19, 1978, provides: "ELECTION BY BOARD OF REGENTS. The Board of Regents shall hold a special meeting not later than September 1, 1978 to determine whether it is in the best interests of the University of Alaska to relinquish the authority to approve of the management and disposal of university land by the Department of Natural Resources, and to accept the benefits of the university fund established in AS 37.14.060 — 37.14.100 contained in sec. 4 of this Act. The Act of approval or disapproval shall be recorded by resolution of the Board of Regents. A majority of the whole board shall determine whether the matter under consideration is approved or disapproved."

Article 1. Mental Health Fund.

Section

- 10. Mental health fund established
- 20. Mental health fund advisory board created

Section

- 30. Powers and duties of board
- 40. Fund utilization
- 50. Contributions

Effective date. — See effective date note following the chapter analysis.

Sec. 37.14.010. Mental health fund established. (a) There is established as a separate fund the mental health fund.

(b) The principal of the fund established in (a) of this section consists of sums transferred under § 50 of this chapter.

(c) The income of the fund established in (a) of this section consists of the interest and dividends earned from investments of the principal of that fund under § 170 of this chapter. (§ 4 ch 181 SLA 1978; § 4 ch 182 SLA 1978)

Sec. 37.14.020. Mental Health Fund Advisory Board created. (a) There is created in the Department of Revenue the Mental Health Fund Advisory Board composed of the director of the division of mental health, the chairman of the Mental Health Advisory Council, and the commissioner of the Department of Revenue.

(b) The board created in (a) of this section shall elect a chairman from the membership of that board. Members serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards. (§ 4 ch 181 SLA 1978; § 4 ch 182 SLA 1978)

Sec. 37.14.030. Powers and duties of board. The board created in § 20 of this chapter has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the total principal and income of the fund established in § 10 of this chapter; and

(3) to prepare long-range investment plans for the fund established in § 10 of this chapter. (§ 4 ch 181 SLA 1978; § 4 ch 182 SLA 1978)

Sec. 37.14.040. Fund utilization. The principal of the fund established in § 10 of this chapter shall be retained in that fund for investment as specified in § 170 of this chapter. The income of the fund may not be appropriated for a purpose other than the support of the state mental health program. (§ 4 ch 181 SLA 1978; § 4 ch 182 SLA 1978)

Sec. 37.14.050. Contributions. During each fiscal year, subject to legislative appropriation of sufficient funds, the commissioner of the Department of Revenue shall transfer to the fund established in § 10 of this chapter a sum equal to one and one-half per cent of the total revenue derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses. (§ 4 ch 181 SLA 1978; § 4 ch 182 SLA 1978)

Article 2. University Fund.

Section

60. University fund established

70. University fund advisory board created

Section

80. Powers and duties of board

90. Fund utilization

100. Contributions

Effective date of article. — Section 27, ch. 182, SLA 1978, makes article 2 effective on the date that the Board of Regents votes to approve the matters under consideration as provided in § 24 of the act.

Editor's note. — See editor's note following chapter analysis.

Sec. 37.14.060. University fund established. (a) There is established as a separate fund the university fund.

(b) The principal of the fund established in (a) of this section consists of

(1) the balance of the trust fund established in AS 14.40.400 on July 1, 1978; and

(2) sums transferred under § 100 of this chapter.

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(c) The income of the fund established in (a) of this section consists of the interest and dividends earned from investments of the principal of that fund under § 170 of this chapter. (§ 4 ch 181 SLA 1978; § 4 ch 182 SLA 1978)

Sec. 37.14.070. University Fund Advisory Board created. (a) There is created in the Department of Revenue the University Fund Advisory Board composed of two members appointed by the Board of Regents of the University of Alaska from the membership of the Board of Regents, and the commissioner of the Department of Revenue.

(b) The board created in (a) of this section shall elect a chairman from the membership of that board. Members serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards. (§ 4 ch 181 SLA 1978; § 4 ch 182 SLA 1978)

Sec. 37.14.080. Powers and duties of board. The board created in § 70 of this chapter has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the total principal and income of the fund established in § 60 of this chapter; and

(3) to prepare long-range investment plans for the fund established in § 60 of this chapter. (§ 4 ch 181 SLA 1978; § 4 ch 182 SLA 1978)

Sec. 37.14.090. Fund utilization. (a) The principal of the fund established in § 60 of this chapter shall be retained in the fund for investment as specified in § 170 of this chapter.

(b) The income from the fund established in § 60 of this chapter may not be appropriated for a purpose other than the support of programs of the University of Alaska.

(c) No part of the principal and income of the fund established in § 60 of this chapter may be used for the support of a sectarian or denominational college or school. (§ 4 ch 182 SLA 1978)

Sec. 37.14.100. Contributions. During each fiscal year the commissioner of the Department of Revenue shall transfer to the fund created in § 60 of this chapter a sum equal to one-half of one per cent of the total receipts derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses. (§ 4 ch 182 SLA 1978)

Article 3. Public School Fund.

Section

110. Public school fund established

120. Public school fund advisory board
created

Section

130. Powers and duties of board

140. Fund utilization

150. Contributions

Effective date. — See effective date note following chapter analysis.

Sec. 37.14.110. Public school fund established. (a) There is established as a separate fund the public school fund.

(b) The principal of the fund established in (a) of this section consists of

(1) the balance of the public school permanent fund on July 1, 1978; and

(2) sums transferred under § 150 of this chapter.

(c) The income of the fund created in (a) of this section consists of the interest and dividends earned from investments of the principal of that fund under § 170 of this chapter. (§ 4 ch 182 SLA 1978)

Sec. 37.14.120. Public School Fund Advisory Board created. (a) There is created in the Department of Revenue the Public School Fund Advisory Board composed of the commissioner of the Department of Education, three members elected by the Board of Education from among its membership, and the commissioner of the Department of Revenue.

(b) The board created in (a) of this section shall elect a chairman from the membership of the board. Members serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards. (§ 4 ch 182 SLA 1978)

Sec. 37.14.130. Powers and duties of board. The board created in § 120 of this chapter has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the principal and income of the fund established in § 110 of this chapter; and

(3) to prepare long-range investment plans for the fund established in § 110 of this chapter. (§ 4 ch 182 SLA 1978)

Sec. 37.14.140. Fund utilization. The principal of the fund established in § 110 of this chapter shall be retained in the fund for investment as specified in § 170 of this chapter. The income of the fund may not be appropriated for a purpose other than for the support of public education programs. (§ 4 ch 182 SLA 1978)

Sec. 37.14.150. Contributions. During each fiscal year the commissioner of the Department of Revenue shall transfer to the fund created in § 110 of this chapter a sum equal to one-half of one per cent of the total receipts derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds,

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and federal mineral revenue-sharing payments or bonuses. (§ 4 ch 182 SLA 1978)

Article 4. Custody and Investment of Trust Funds.

Section

160. Duties of commissioner of revenue

170. Investments

Effective date. — See effective date note following chapter analysis.

Sec. 37.14.160. Duties of commissioner of revenue. The commissioner of revenue is the treasurer of the funds created in §§ 10, 60, and 110 of this chapter and shall

(1) act as official custodian of the cash and securities belonging to those funds and provide adequate safe deposit facilities for each of them;

(2) receive cash belonging to those funds;

(3) collect the principal on securities acquired for each fund established under §§ 10, 60, and 110 of this chapter and credit each fund accordingly;

(4) collect interest and dividends earned on investments of the funds established under §§ 10, 60, and 110 of this chapter and credit the income reserve account of each fund accordingly;

(5) invest and reinvest the principal of each fund in accordance with § 170 of this chapter. (§ 4 ch 182 SLA 1978)

Sec. 37.14.170. Investments. (a) The commissioner of revenue, with the approval of each advisory board created in §§ 20, 70, and 120 of this chapter, may invest the principal of the funds created in §§ 10, 60, and 110 of this chapter in the same manner as specified for the investment of surplus pension funds under AS 39.35.110.

(b) The commissioner of revenue may

(1) invest and reinvest the principal of the funds;

(2) sell, exchange, convey, transfer, or otherwise dispose of investments of the funds by private contract or at public auction;

(3) vote upon a stock, bond, or other security; give a general or special proxy or power of attorney with or without power of substitution; exercise a conversion privilege, subscription right, or other option and make payments incidental to it; consent to or participate in a corporate reorganization or other change affecting corporate securities, delegate discretionary power, pay an assessment or charge in connection with the delegation; and generally exercise any of the powers of an owner with respect to stocks, bonds, securities, or other investments held in the funds;

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MEMORANDUM

Linger
18:22ATO: [Frances A. Ulmer, Director
Div. of Policy Development & Planning

DATE: April 11, 1979

FILE NO: J-66-614-79

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERALSUBJECT: Use of Permanent
Fund income as debt
guarantee, HB 414

By:

Rodger W. Pegues
Assistant Attorney General *Dei*

You have asked us to review HB 414, and to advise whether the legislature may provide for the use of the income from the Permanent Fund to guarantee bonds, notes, and other indebtedness issued to finance public power projects.

While HB 414 will require substantive amendment, the income from the permanent fund probably can be used for this purpose.

The constitutional amendment establishing the permanent fund provides in pertinent part that "[a]ll income from the permanent fund shall be deposited in the general fund unless otherwise provided by law." Alaska Const., art. IX, § 15. */ The concluding clause: "unless otherwise provided by law" was intended to give the legislature maximum flexibility in using the fund. 1976 H. Jour. 684-685. It may be that the record of proceedings before the several committees which considered the amendment and of proceedings on the floor of the legislature would show its purpose in more detail. Its purpose is not discussed in the ballot summary or voter's pamphlet. Both simply advised the electorate that the income would go into the general fund and be available for appropriation unless otherwise provided by law. The title of the joint resolution by which the legislature proposed the amendment makes no reference to the disposition of the Permanent Fund's income. Disposing of it so as to establish still another dedicated fund probably encompasses a whole new and different subject from establishing the

*/ The clause, "unless otherwise provided by law" was added to the proposed constitutional amendment by a House Judiciary Committee Substitute. Compare SSHJR 39, 1/15/76, with CSSS HJR 39, 3/24/76. It was dropped by SCS CSSS HJR 39, 4/7/76 (which would have authorized additional dedications), and restored by SCS CSSS HJR 39 (Res), 5/21/76. It remained in SCS CSSS HJR 39 (Res) am S, 5/21/76, the final version.

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Alaska Permanent Fund. As a general rule, separate subjects must be treated separately in adopting constitutional amendments, and each must be summarized for the voters. Our conclusion is, therefore, that the clause does not exempt the fund's income from the prohibition against dedicated funds.

We turn to the question of whether the clause permits the legislature to provide for the Permanent Fund's income to be pledged as a guarantee for financing public power projects. While we doubt that the clause exempts the fund's income from the prohibition against dedications for a special purpose, we believe that neither repaying debts nor guaranteeing their repayment comes within the constitution's prohibition against dedicated funds and that, therefore, the income can be used as a security to repay or guarantee the repayment of a debt for a given capital improvement. */

The next question is whether an appropriation is required to make payments on the debt as may become necessary.

The relevant provisions of the constitution provide as follows:

No money shall be withdrawn from the treasury except in accordance with appropriations made by law.

Alaska Const., art. IX, § 13. **/

It appears that an appropriation would be necessary either to make the guaranty at the outset or subsequently to make payments. A guaranty is a promise that payment will be made in accordance with its terms. ~~Aside from those taxes, proceeds~~

*/ This conclusion is based on a reading of the Minutes of the Constitutional Convention and the files of the Convention's Committee on Finance and Taxation. The wording, "proceeds of any tax or license," in article IX, section 7, of the constitution was intended to allow exemptions for pension fund payments, bond proceeds, sinking fund receipts, and the like. 1975 Op. Atty. Gen. No. 9, 6-9.

**/ A related provision, article II, § 13, requires appropriations to be made in bills that are confined to appropriations.

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April 11, 1979
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the promise is unconditional. However, any promise to pay made by the state is necessarily conditioned on the appropriation of the monies to be paid. Id. In order to meet this constitutionally imposed condition, an appropriation is necessary. It can be made at the outset as a conditional appropriation, e.g., "\$x million is appropriated annually to pay the guaranty on the condition that it becomes due." It can be made, as is done for general obligation bonds, as the payments become due, i.e., in the case of a guaranty, an annual, conditional appropriation.

While there is authority that no money can be paid from the treasury even on a judgment, United States v. Commonwealth, 288 S.W.2d 664 (Ky. 1956), the better view is that the provisions of a state constitution requiring an appropriation to be made by law must give way under the combined effect of the federal constitution's contracts and supremacy clauses. */ Cf., Virginia v. West Virginia, 246 U.S. 565 (1918). A guaranty is a contract and cannot be impaired. The legislature's refusal to honor it would constitute its impairment. A court would render judgment for the debtor and levy on the fund's income to enforce the judgment. Therefore, no appropriation would be required in order to enforce payment. Nevertheless, to avoid the necessity for obtaining a judgment, an appropriation should be made.

It appears that the concluding clause of the 1976 amendment authorizes the legislature to make an appropriation from the income on a continuing basis for the purpose of paying or guaranteeing payment of a debt for a public power project, i.e., provide in a single Act for a given sum of monies to be expended annually from the income of the fund. Thus, a conditional appropriation could be made at the time the guaranty is made, and no further appropriations would be required. With respect to a guaranty, our best guess is that a continuing appropriation would probably be upheld. The guaranty would probably include a promise not to repeal the appropriation so long as the guaranteed debt remains outstanding. Any repeal would then be invalidated by a court.

*/ U.S. Const., art. VI, cl. 2; Amend. V, XIV, § 1.

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The next question is whether the guaranty must be made by law and approved by the voters. Because the guaranty would be a contract for a conditional debt which could result in the state's being, in effect, in debt to the creditor, it appears that the approval of the electorate would be required to make the guaranty. Article IX, section 7, of the Alaska Constitution prohibits contracting debt unless it is for a capital improvement and is ratified by the electorate. The court places a great premium on this ratification. Thomas v. Rosen, 522 P.2d 1120 (Alaska 1974). The constitutional exceptions from the requirement of ratification do not expressly apply to a guaranty. Alaska Const., art. IX, § 11. Our best guess is that the requirement, therefore, applies to guaranties and that any proposed guaranty would have to be presented to the voters as a ballot proposition. It would almost certainly, therefore, require as well that, as with a bond issue, the guaranty be authorized by law in the first instance and then submitted to the voters. Enactment of a law is what the language of the 1976 amendment requires on its face.

We do not believe that a one-time-only ratification by the voters of an Act generally authorizing the Permanent Fund's managers to guarantee debts for public power projects would satisfy the constitutional requirement for contracting debt. However, it might aid the court in deciding that those requirements do not apply to a guaranty which is based solely on the Permanent Fund's income. There is a line of cases which hold that debt restrictions similar to those contained in article IX, section 8, of the Alaska Constitution apply solely to debts which the state's full faith and credit is pledged to pay. The likelihood that the rationale of these cases would be applied by the Alaska Supreme Court to a guaranty based solely on the income from the Permanent Fund could possibly be increased by the voter's having ratified the concept. Nothing prevents the legislature from making the statutory authorization for guaranties contingent on voter approval. Accordingly, while we do not believe it will be valid, a general authorization for the Permanent Fund managers to make guaranties could be enacted and then tested in court.

Finally, the constitution provides that the "public credit [cannot] be used except for a public purpose." Alaska Const., art. IX, § 6. We believe that only the most

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irrational of power projects would be barred under this provision. E.g., Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970). We assume that the projects would be public works. Whether the income from the Permanent Fund could be used to guarantee financing for private works is an entirely different question which involves entirely different issues.

RWP/pjg

cc: Jerry Reinwand
Office of the Governor

Ron Lind
Div of Budget & Management

Keith Specking
Office of the Governor

bcc: Tom Singer
Div of Policy Development
& Planning

MEMORANDUM

March 10, 1980

SUBJECT: Eligibility for state benefits determined by durational residency

TO: Representative Hugh Malone

FROM: James L. Baldwin
Legislative Counsel

You have asked if the state and federal constitutions permit the enactment of a law which conditions the payment of state benefits on the length of time a person has been a resident of the state.

This type of durational residency requirement creates separate classes of state residents who participate unequally in the benefits provided by the state. The federal constitution provides that a state may not deny a person within its jurisdiction the equal protection of the law. Section I of Amendment XIV, Constitution of the United States. The state constitution provides

"...that all persons are equal and entitled to equal rights, opportunities, and protection under the law."

Article I, section 1, Constitution of the State of Alaska.

Federal Equal Protection Determinations

A federal court determines the validity of a durational residency requirement by isolating the right impaired by the challenged state statute. If the federal court finds that the right impaired is fundamental to state or federal citizenship, the durational residency requirement is valid only if the state has a compelling interest which requires the discrimination based on length of residency. See, Oregon v. Mitchell, 400 U.S. 112 (1970). Alternatively, if the federal court finds that the right impaired is not fundamental to state or federal citizenship, the durational residency requirement is valid only if the legislature had a rational