

SCOMM

#18:16

<u>Funding Information</u>	
General Fund	\$115,500,000
Other Funds	9,000,000
Total	\$124,500,000

Introduced: 3/15/79
 Referred: Special Permanent
 Fund Committee and Finance

1 IN THE HOUSE

BY MALONE AND ROGERS

2 HOUSE BILL NO. 400

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making special appropriations to the Department
 7 of Transportation and Public Facilities, the power
 8 project revolving fund, the Alaska Renewable Resources
 9 Corporation, the mental health fund, and the public
 10 school fund; and providing for an effective date."

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

12 * Section 1. The sum of \$90,100,000 is appropriated from the reserve for ²⁵⁷⁰
 13 capital outlay account in the general fund (AS 37.05.157) to the Department
 14 of Transportation and Public Facilities for capital projects.

15 * Sec. 2. The sum of \$18,000,000 is appropriated from the reserve for ⁴⁹⁰
 16 energy facilities development account in the general fund (AS 37 05.158) to
 17 the power project revolving fund (AS 44.56.170) for loans to projects
 18 approved under AS 44.56.170(b).

19 * Sec. 3. The sum of ^{12000000.0} \$9,000,000 is appropriated from the Alaska renewable
 20 resources development fund (AS 37.11.010) to the Alaska Renewable Resources
 21 Corporation for financial assistance to projects approved under AS 37.12.080.

22 * Sec. 4. The sum of \$5,400,000 or a sum equal to one and one-half per
 23 cent of the total revenue derived during fiscal year 1980 from the management
 24 of state land, including amounts paid to the state as proceeds of sale or
 25 annual rent of surface rights, mineral lease rentals, royalties, royalty sale
 26 proceeds, and federal mineral revenue-sharing payments or bonuses, whichever
 27 is greater, is appropriated from the general fund to the mental health fund
 28 (AS 37.14.010).

29 * Sec. 5. The sum of \$1,800,000 or a sum equal to one-half of one per

1 cent of the total receipts derived from the management of state land, in-
2 cluding amounts paid to the state as proceeds of sale or annual rent of
3 surface rights, mineral lease rentals, royalties, royalty sale proceeds, and
4 federal mineral revenue-sharing payments or bonuses, whichever is greater, is
appropriated from the general fund to the public school fund (AS 37.14.110).

6 * Sec. 6. If 25 per cent of the total receipts paid the state during
7 fiscal year 1980 from mineral lease bonuses and rentals for state land and
8 royalties derived from minerals produced on state land falls short of the
9 estimate appropriated in sec. 1 of this Act, the appropriation made in sec. 1
10 of this Act is reduced by the amount of the shortfall.

11 * Sec. 7. If five per cent of the total receipts paid the state during
12 fiscal year 1980 from mineral lease bonuses and rentals for state land and
13 royalties derived from minerals produced on state land falls short of the
14 estimate appropriated in sec. 2 of this Act, the appropriation made in sec. 2
15 of this Act is reduced by the amount of the shortfall.

16 * Sec. 8. If 50 per cent of five per cent of the total receipts paid the
17 state during fiscal year 1980 from mineral lease bonuses and rentals for
18 state land and royalties derived from minerals produced on state land falls
19 short of the estimate appropriated in sec. 3 of this Act, the appropriation
20 made in sec. 3 of this Act is reduced by the amount of the shortfall.

21 * Sec. 9. The unexpended and unobligated portion of the appropriation
22 made in sec. 1 of this Act lapses into the renewable resources development
23 fund (AS 37.11.010) on June 30, 1980.

24 * Sec. 10. This Act takes effect July 1, 1979.
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subdivision of the state; however, the authority may make payments in place of taxes in amounts equal to the real and personal property taxes which would be assessed on its real and personal property by each political subdivision in which its property is located to the same extent as if that property were private property and the authority were a non-public corporation. All bonds issued under this chapter are issued by a body corporate and public of this state and for an essential public and governmental purpose and the bonds and the interest and income on and from the bonds and all income of the authority are exempt from taxation except for transfer, inheritance and estate taxes. (§ 1 ch 278 SLA 1976; am § 15 ch 156 SLA 1978)

Effect of amendment. — The 1978 authority may make payments" to the end amendment, effective July 13, 1978, added of the first sentence. the language beginning "however, the

Article 4. Power Project Revolving Fund.

Section

170. Power project fund

Sec. 44.56.170. Power project fund. (a) There is established as a separate fund the power project revolving fund which shall be administered by the authority as a trust fund separate and distinct from any other money or funds of the authority, and which shall be composed of appropriated funds and interest earned on loans by the fund.

(b) The authority may make loans from the fund to electric utilities, regional electric authorities, cities, boroughs, regional and village corporations, village councils, and nonprofit marketing cooperatives to pay the costs of

(1) feasibility studies, preconstruction engineering, and design of any power projects;

(2) constructing, equipping, modifying, and expanding small-scale power production facilities or conservation facilities, limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar energy production and waste energy conservation facilities; and

(3) reconnaissance studies, preconstruction engineering, design, construction, equipping, modification, and expansion of potable water supply including surface storage and groundwater sources and transmission of water from surface storage to existing distribution systems.

(c) Before making any loans, except loans made under (f) of this section, from the power project revolving fund, the authority shall by regulation specify the standards for those loans with respect to the following:

(1) criteria regarding the eligibility of borrowers and of types of projects;

(2) standards regarding the technical and economic viability and revenue self-sufficiency of eligible projects;

(3) interest rates and other terms and conditions, and collateral or any other security required for loans; and

(4) other relevant criteria, standards, or procedures.

(d) Any loan made by the authority must be made according to the standards, criteria, and procedures established by regulation under this section.

(e) Repayment of the loans shall be secured in such manner as the authority determines is feasible to assure prompt repayment under a loan agreement entered into with the borrower. The authority may forgive repayment of loans made for reconnaissance studies if the study shows that a project is not feasible. Under a loan agreement, repayment may be deferred for 10 years or until the project for which the loan is made has achieved earnings from its operations sufficient to pay the loan, whichever is earlier.

(f) Projects for which loans are outstanding from the water resources revolving loan fund (AS 45.86) on July 13, 1978 may receive additional funding from the power project revolving loan fund for a term not exceeding 50 years and at an interest rate of not less than three nor more than five per cent a year on the unpaid balance. Repayment of loan principal and interest shall commence on the date of commercial operation of the project funded by the loan or 10 years from the date the loan is granted, whichever is earlier. (§ 1 ch 278 SLA 1976; am § 16 ch 156 SLA 1978)

Effect of amendment. — The 1978 amendment, effective July 13, 1978, added the language beginning "and which shall be composed" to the end of subsection (a), rewrote subsections (b) and (c), redesignated subsection (d) as subsection (e), added present subsection (d), added the present second sentence of present subsection (e), and in the present third

sentence of subsection (e), inserted "for 10 years or", substituted "for which the loan is made" for "with respect to which a loan is made," and added "whichever is earlier" to the end. The amendment also deleted former subsection (e), which defined "eligible borrower," and added subsection (f).

Article 5. General Provisions.

<p>Section 180. Assessment, proposal, and construction of projects 210. Appropriations and reports</p>	<p>Section 224. Long-term plan 230. Definitions</p>
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Sec. 44.56.180. Assessment, proposal, and construction of projects.
(a) The authority shall, for each new project, determine the most appropriate means by which to finance a project which may include, but is not limited to,

- (1) the issuance of revenue bonds;
- (2) a guarantee of indebtedness by the Alaska Permanent Fund Corporation in accordance with AS 37.13.200;
- (3) an appropriation from the general fund; or

(4) any combination of (1), (2), and (3) of this subsection.

(b) Upon completion of the reconnaissance study, the authority shall submit to the governor and the legislature a statement of its recommendations for financing each new project. The financing plan may include a recommendation for a guarantee of indebtedness or a general fund appropriation only when necessary to supplement private financing in order to make a project financially feasible. If the recommended financing for the project includes a guarantee of indebtedness by the permanent fund or an appropriation from the general fund, the legislature must first give its approval by joint resolution before the authority may proceed with the engineering or design phase of the project. The legislative approval required in this subsection may not be considered the approval required under AS 37.13.230 for granting of a permanent fund guarantee.

(c) The authority shall submit a statement outlining the general design, demonstration of financial feasibility, and maximum amount of bonds and appropriations estimated to be necessary for each new project to the governor and the legislature, together with a statement that the authority intends to design, acquire, construct or finance the project itself or that it intends that the project be designed, acquired, constructed or financed by the United States or another person under agreement with the authority which may provide for ownership of all or a portion of the project by the authority or of a right to the capacity of it. If the legislature adopts a joint resolution approving the general design and maximum amount of bonds, the authority shall, in accordance with the terms of the joint resolution, (1) proceed to design, acquire and construct the new project, or (2) agree with the United States or other person for design, acquisition and construction of the project by the United States, for payments to the United States or other person for such design, acquisition and construction, reimbursement by the United States or other person in certain events, and otherwise on the terms and conditions as may be set out in such agreement.

(d) If the new project is to be designed, acquired and constructed by the authority, it shall be designed, acquired and constructed as a public work of the state. For the purpose of this section a new project does not include (1) an addition or modification to an existing project if the total cost of the addition or modification does not exceed \$1,000,000; (2) any repair or reconstruction of a project; or (3) any design, acquisition or construction necessary to complete a project for which bonds previously authorized by the legislature have been issued. Any such addition, modification, repair, reconstruction, design, acquisition or construction may be undertaken by the authority without any of the approvals necessary for a new project.

(e) Any power project proposal requiring approval by the legislature under this chapter, except on projects with a complete reconnaissance study on July 13, 1978, together with supporting data, analyses, and

findings of the authority, shall be submitted to the governor for review. The governor shall make an evaluation of the proposal which shall include, but not be limited to, an analysis of the balance of benefits and costs to Alaska, including environmental and social costs, and the ability of the project to generate sufficient revenues to be self-supporting. The governor shall submit the results of the evaluation, his recommendations, if any, and a statement as to whether the project is consistent with the long-term plan to the legislature. (§ 1 ch 278 SLA 1976; am §§ 17, 18 ch 156 SLA 1978)

Effect of amendment. — The 1978 amendment, effective July 13, 1978, designated the former first and second sentences as subsection (c) and the former third through fifth sentences as subsection (d), added subsections (a) and (b), and in the first sentence of subsection (c), inserted "and appropriations" and substituted "the governor and the legislature" for "the legislature and the commissioner of commerce and economic development," "construct or finance" for "and construct," "constructed or financed" for "or constructed," and "which may provide" for "providing." In subsection (d), the amendment also deleted "except that public bidding shall not be required, if the

authority so determines on projects in excess of \$50,000,000" from the end of the first sentence, added the item designations in the second sentence, and deleted "to" preceding "any repair" in item (2) and preceding "any design" in item (3), in the second sentence. The amendment also added subsection (e).

Editor's note. — Section 24, ch. 156, SLA 1978, effective July 13, 1978, provides: "The requirements of AS 44.56.180(e), enacted in § 18 of this Act, do not apply to any project which the authority has determined to finance and in which it will not maintain an ownership interest upon completion and for which the Tenth Legislature has adopted a joint resolution of approval."

Sec. 44.56.210. Appropriations and reports. (a) Notwithstanding any other provision in this chapter, the authority is subject to the provisions of the Executive Budget Act (AS 37.07).

(b) The authority shall, by the 15th day of each regular legislative session, present to the legislature a report detailing project status, original costs and projected costs, particularly highlighting any costs in excess of the original cost estimates submitted for each project when that project was originally approved by the legislature. (§ 1 ch 278 SLA 1976; am § 19 ch 156 SLA 1978)

Effect of amendment. — The 1978 amendment, effective July 13, 1978, rewrote this section.

Sec. 44.56.224. Long-term plan. The Department of Commerce and Economic Development, assisted by the authority, shall prepare, after public hearings, and, as appropriate, revise a long-term electrical power development plan for meeting projected electrical energy demand in Alaska at the lowest reasonable cost, including environmental and social costs, consistent with acceptable standards of reliability. The plan must include, but is not limited to, considerations specified in § 180(e) of this chapter. The plan and any revision of it shall be submitted to the governor for his approval and shall be reviewed by all appropriate state

agencies. After approval by the governor the plan shall be submitted to the legislature. (§ 20 ch 156 SLA 1978)

Effective date. — Section 25, ch. 156, 13, 1978, in accordance with AS SLA 1978, makes this section effective July 01.10.070(c).

Sec. 44.56.230. Definitions. In this chapter, unless the context requires otherwise,

(4) "power project" or "project" means a plant, works, system, facility, water rights, fuel deposits or sources, and real estate and personal property of any nature whatsoever, together with all facilities and appurtenances related to them or necessary for the purposes of them used or useful in power production limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar energy production and waste energy conservation and the transmission, purchase, sale, exchange and interchange of power, and shall include any interest in them, whether divided or undivided, or any right to the capacity of them;

(6) "person" includes a public agency in addition to the entities set out in AS 01.10.060(7);

(7) "reconnaissance study" means a study conducted for the purpose of establishing, with reasonable certainty, the economic merit of developing a certain project and includes, without relying on costly data collection, an environmental assessment so as to insure that no adverse environmental impacts exist of such magnitude as to render the project inadvisable, an assessment of a community's present economy and power needs, an estimate of the community's future economy and power needs, a determination of alternative energy costs, and an estimate of the project cost.

(am §§ 21, 22 ch 156 SLA 1978)

Effect of amendment. — The 1978 amendment, effective July 13, 1978, in paragraph (4), substituted the language beginning "power production limited" and ending "and waste energy conservation" for "the generation by means of water or fossil fuel of electric power" and deleted

"production" preceding "transmission, purchase" and "electric" preceding "power, and shall include." The amendment also added paragraphs (6) and (7).

As the rest of the section was not affected by the amendment, it is not set out.

Chapter 57. Alaska Toll Bridge Authority.

Editor's note. — Section 9, Executive Order No. 39 (1977), effective July 1, 1977, provides: "(a) The Department of Transportation and Public Facilities is vested with the duties and powers formerly held by the Department of Public Works relating to planning, construction, maintenance and operation of transportation facilities, including state ferries, airports and water and harbor facilities, and for design and construction

of buildings and appurtenant structures, and specifically including all powers and duties formerly held by the Department of Public Works under AS 02, AS 30.05, AS 30.15, AS 35, AS 41.20 and AS 44.65.

The Department of Transportation and Public Facilities is vested with the duties and powers formerly held by the Department of Highways relating to planning, construction, maintenance and operation of state transportation facilities

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

Fiscal Year	Oil & Gas Royalty ^{1/}	Permanent Fund 2%	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	646.1	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	856.1	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	Section
10. Alaska renewable resources develop- ment fund	30. Fund utilization
20. Fund authorization level	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	Section
50. Alaska renewable resources investment fund	70. Utilization of fund income
60. Fund principal	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 § 90 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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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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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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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	Section
60. University fund established	80. Powers and duties of board
70. University fund advisory board created	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	Section
110. Public school fund established	130. Powers and duties of board
120. Public school fund advisory board created	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 percent 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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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;

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU 99501

TO: Honorable Bill Miles
Co-Chairman
House Resources Committee

DATE: February 14, 1979

FROM: Milt Barker ^{MS}
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 \$1.3 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.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH X - STATE CAPITOL
JUNE 23 9311

July 12, 1978

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

Re: FCCS SCS HB 222 (a. 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.

The Honorable Jay S. Hammond
Governor

July 12, 1978
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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.

July 12, 1978

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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

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, 050 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

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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