

**ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672**

**1340 SCOMM 50: HOUSE SPECIAL COMMITTEE ON STATE LOANS 1985-86**

Merrill Lynch  
State General Obligation Bonds  
Comparative Value Trading Chart  
A/O 1/4/84

|                                       | <u>Moody's</u> | <u>S&amp;P</u> |                | <u>5 Years</u> | <u>10 Years</u> | <u>15 Years</u> | <u>20 Years</u> |
|---------------------------------------|----------------|----------------|----------------|----------------|-----------------|-----------------|-----------------|
| <u>Group 1</u>                        | Aaa            | AA             | Georgia        | -.10           | -.10            | -.10            | -.05            |
|                                       | Aaa            | AAA            | Missouri*      | -.10           | -.10            | -.10            | -.05            |
|                                       | Aaa            | AAA            | North Carolina | -.10           | -.10            | -.10            | -.05            |
|                                       | Aaa            | NR             | Oklahoma*      | -.10           | -.10            | -.10            | -.05            |
|                                       | Aaa            | AAA            | South Carolina | -.10           | -.10            | -.10            | -.05            |
|                                       | Aaa            | AAA            | Texas          | -.10           | -.10            | -.10            | -.05            |
|                                       | Aaa            | AAA            | Utah           | -.10           | -.10            | -.10            | -.05            |
|                                       | Aaa            | AAA            | Virginia       | -.10           | -.10            | -.10            | -.05            |
| <u>Group 2</u><br><u>(BASE GROUP)</u> | Aa1            | AA             | Montana*       | 7.40           | 8.40            | 9.10            | 9.35            |
|                                       | Aaa            | AAA            | Maryland       | 7.40           | 8.40            | 9.10            | 9.35            |
|                                       | Aa             | AA             | North Dakota*  | 7.40           | 8.40            | 9.10            | 9.35            |
|                                       | Aaa            | AA+            | Tennessee      | 7.40           | 8.40            | 9.10            | 9.35            |
|                                       | Aaa            | AAA            | New Jersey     | 7.40           | 8.40            | 9.10            | 9.35            |
| <u>Group 3</u>                        | A              | A+             | New York       | 7.50           | 8.50            | 9.20            | 9.40            |
| <u>Group 4</u>                        | Aa             | AA             | Alabama        | +.10           | +.10            | +.10            | +.15            |
|                                       | Aa             | AA             | California     | +.10           | +.10            | +.10            | +.15            |
|                                       | Aa             | AA-            | Connecticut    | +.10           | +.10            | +.10            | +.15            |
|                                       | Aa             | AA             | Kentucky       | +.10           | +.10            | +.10            | +.15            |
|                                       | Aa             | AA             | Louisiana      | +.10           | +.10            | +.10            | +.15            |
|                                       | Aa             | AA-            | Mississippi*   | +.10           | +.10            | +.10            | +.15            |
|                                       | Aa1            | AA             | New Mexico*    | +.10           | +.10            | +.10            | +.15            |
| <u>Group 5</u>                        | Aa             | AA-            | Alaska         | +.15           | +.15            | +.15            | +.25            |
|                                       | Aa             | AA             | Delaware       | +.15           | +.15            | +.15            | +.25            |
|                                       | Aa             | AA             | Florida        | +.15           | +.15            | +.15            | +.25            |
|                                       | Aaa            | AA+            | Illinois       | +.15           | +.15            | +.15            | +.25            |
|                                       | Aa1            | AAA            | Maine          | +.15           | +.15            | +.15            | +.25            |
|                                       | Aa             | AA             | Minnesota      | +.15           | +.15            | +.15            | +.25            |
|                                       | Aa             | AA             | Ohio           | +.15           | +.15            | +.15            | +.25            |
|                                       | Aa             | AA+            | Wisconsin      | +.15           | +.15            | +.15            | +.25            |
| <u>Group 6</u>                        | Aa             | AA             | Hawaii         | +.20           | +.25            | +.25            | +.35            |
|                                       | Aa             | AA             | Nevada         | +.20           | +.25            | +.25            | +.35            |
|                                       | Aa             | AA-            | Rhode Island   | +.20           | +.25            | +.25            | +.35            |
|                                       | Aa             | NR             | Vermont        | +.20           | +.25            | +.25            | +.35            |
|                                       | A1             | AA+            | West Virginia  | +.20           | +.25            | +.25            | +.35            |
| <u>Group 7</u>                        | A1             | AA-            | Massachusetts  | +.30           | +.45            | +.40            | +.50            |
|                                       | A1             | AA-            | New Hampshire* | +.30           | +.45            | +.40            | +.50            |
| <u>Group 8</u>                        | A1             | AA             | Oregon         | +.45           | +.60            | +.70            | +.55            |
|                                       | A              | A+             | Pennsylvania   | +.30           | +.50            | +.50            | +.55            |
| <u>Group 9</u>                        | A              | AA-            | Washington     | +.50           | +.75            | +.80            | +.80            |
| <u>Group 10</u>                       | Baal           | A+             | Michigan       | +.75           | +1.00           | +1.00           | +1.10           |
| <u>Group 11</u>                       | Baal           | A              | Puerto Rico    | +1.25          | +1.40           | +1.30           | +1.15           |

\* Yield is estimated because of thin secondary market supply. Estimate is based on previous trading characteristics.

\*\* Arizona, Arkansas, Colorado, Idaho, Indiana, Iowa, Kansas, Nebraska, South Dakota, and Wyoming have little or no outstanding state general obligation debt.

\*\*\* NR = not rated.

\*\*\*\* State comparative trading relationships are subject to change at any moment due to extreme market volatility and heavy supply of new issue state general obligation debt in the primary market.

Merrill Lynch  
State General Obligation Bonds  
Comparative Value Trading Chart  
A/O 1/5/83

|                                | Moody's | S&P |                | 5 Years | 10 Years | 15 Years | 20 Years |
|--------------------------------|---------|-----|----------------|---------|----------|----------|----------|
| <u>Group 1</u>                 | Aaa     | AA  | Georgia        | -.10    | -.10     | -.15     | -.15     |
|                                | Aa      | AA  | Idaho*         | -.10    | -.10     | -.15     | -.15     |
|                                | Aaa     | AAA | Missouri*      | -.10    | -.10     | -.15     | -.15     |
|                                | Aa1     | AA  | Montana*       | -.10    | -.10     | -.15     | -.15     |
|                                | Aaa     | AAA | North Carolina | -.10    | -.10     | -.15     | -.15     |
|                                | Aa      | AA  | North Dakota*  | -.10    | -.10     | -.15     | -.15     |
|                                | Aaa     | NR  | Oklahoma*      | -.10    | -.10     | -.15     | -.15     |
|                                | Aaa     | AAA | South Carolina | -.10    | -.10     | -.15     | -.15     |
|                                | Aaa     | AA+ | Tennessee*     | -.10    | -.10     | -.15     | -.15     |
|                                | Aaa     | AAA | Texas*         | -.10    | -.10     | -.15     | -.15     |
|                                | Aaa     | AAA | Utah*          | -.10    | -.10     | -.15     | -.15     |
|                                | Aaa     | AAA | Virginia*      | -.10    | -.10     | -.15     | -.15     |
| <u>Group 2</u><br>(BASE GROUP) | Aaa     | AAA | Maryland       | 6.30%   | 7.50%    | 8.50%    | 8.75%    |
|                                | Aaa     | AAA | New Jersey     | 6.30    | 7.50     | 8.50     | 8.75     |
| <u>Group 3</u>                 | Aa      | AA  | Alabama*       | +.10    | +.10     | +.10     | +.10     |
|                                | Aa      | AA  | Kentucky       | +.10    | +.10     | +.10     | +.10     |
|                                | Aa      | AA  | Louisiana*     | +.10    | +.10     | +.10     | +.10     |
|                                | Aa      | AA- | Mississippi*   | +.10    | +.10     | +.10     | +.10     |
|                                | Aa1     | AA  | New Mexico*    | +.10    | +.10     | +.10     | +.10     |
| <u>Group 4</u>                 | Aa      | AA- | Alaska         | +.20    | +.20     | +.20     | +.20     |
|                                | Aa      | AA+ | California     | +.20    | +.20     | +.20     | +.20     |
|                                | Aa      | AA  | Florida        | +.20    | +.20     | +.20     | +.20     |
|                                | Aaa     | AAA | Illinois       | +.20    | +.20     | +.20     | +.20     |
|                                | Aa1     | AAA | Maine          | +.20    | +.20     | +.20     | +.20     |
|                                | Aa      | AA  | Minnesota*     | +.20    | +.20     | +.20     | +.20     |
|                                | Aa      | AA  | Nevada         | +.20    | +.20     | +.20     | +.20     |
|                                | Aa      | AA+ | Wisconsin      | +.20    | +.20     | +.20     | +.20     |
| <u>Group 5</u>                 | Aa      | AA- | Connecticut    | +.25    | +.30     | +.35     | +.35     |
|                                | Aa      | AA  | Delaware       | +.25    | +.30     | +.35     | +.35     |
|                                | Aa      | AA  | Hawaii         | +.25    | +.30     | +.35     | +.35     |
|                                | Aa      | AA  | Ohio           | +.25    | +.30     | +.35     | +.35     |
|                                | Aa      | AA- | Rhode Island   | +.25    | +.30     | +.35     | +.35     |
|                                | Aa      | NR  | Vermont        | +.25    | +.30     | +.35     | +.35     |
|                                | A1      | AA+ | West Virginia  | +.25    | +.30     | +.35     | +.35     |
| <u>Group 6</u>                 | A1      | NR  | New Hampshire* | +.40    | +.40     | +.50     | +.65     |
|                                | A1      | AA  | Oregon         | +.50    | +.50     | +.50     | +.65     |
| <u>Group 7</u>                 | A       | A+  | Pennsylvania   | +.40    | +.40     | +.50     | +.75     |
| <u>Group 8</u>                 | A1      | AA- | Massachusetts  | +.50    | +.50     | +.60     | +.85     |
|                                | A       | AA- | Washington     | +.50    | +.50     | +.60     | +.85     |
| <u>Group 9</u>                 | A       | A+  | New York       | +1.95   | +1.40    | +1.00    | +1.00    |
| <u>Group 10</u>                | Baa1    | A+  | Michigan       | +1.00   | +1.10    | +1.00    | +1.25    |
| <u>Group 11</u>                | Baa1    | A   | Puerto Rico    | +2.70   | +3.25    | +2.50    | +2.50    |

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\*\*\* NR = not reviewed.

\*\*\*\* State comparative trading relationships are subject to change at any moment due to extreme market volatility and heavy supply of new issue state general obligation debt in the primary market.

Marilyn Madden  
 Sr. Fixed Income Analyst  
 Fixed Income Research Department

Merrill Lynch  
State General Obligation Bonds  
Comparative Value Trading Chart  
A/O 1/6/82

|                                | <u>Moores</u> | <u>S&amp;P</u> | <u>Merrill Lynch</u><br><u>Trading Equivalent</u> |                 | <u>5 Years</u> | <u>10 Years</u> | <u>15 Years</u> | <u>20 Years</u> |
|--------------------------------|---------------|----------------|---------------------------------------------------|-----------------|----------------|-----------------|-----------------|-----------------|
| <u>Group 1</u>                 | Aa            | Aa             | NR                                                | Idaho*          | -.10           | -.15            | -.20            | -.20            |
|                                | Aaa           | AAA            | High-Range Triple A                               | Missouri*       | -.10           | -.15            | -.20            | -.20            |
|                                | Aa1           | AA             | Low-Range Triple A                                | Montana*        | -.10           | -.15            | -.20            | -.20            |
|                                | Aaa           | AAA            | Mid-Range Triple A                                | North Carolina* | -.10           | -.15            | -.20            | -.20            |
|                                | Aaa           | NR             | NR                                                | North Dakota*   | -.10           | -.15            | -.20            | -.20            |
|                                | Aaa           | NR             | NR                                                | Oklahoma*       | -.10           | -.15            | -.20            | -.20            |
|                                | Aaa           | AAA            | High-Range Triple A                               | Texas*          | -.10           | -.15            | -.20            | -.20            |
|                                | Aaa           | AAA            | Mid-Range Triple A                                | Utah*           | -.10           | -.15            | -.20            | -.20            |
|                                | Aaa           | AAA            | High-Range Triple A                               | Virginia*       | -.10           | -.15            | -.20            | -.20            |
| <u>Group 2</u>                 | Aa            | AA             | NR                                                | Alabama*        | -.05           | -.05            | -.10            | -.10            |
|                                | Aaa           | AA             | NR                                                | Georgia         | -.05           | -.05            | -.10            | -.10            |
|                                | Aa            | AA             | NR                                                | Kentucky*       | -.05           | -.05            | -.10            | -.10            |
|                                | Aa            | AA             | NR                                                | New Mexico*     | -.05           | -.05            | -.10            | -.10            |
|                                | Aaa           | AAA            | High-Range Double A                               | South Carolina* | -.05           | -.05            | -.10            | -.10            |
|                                | Aaa           | AA+            | NR                                                | Tennessee*      | -.05           | -.05            | -.10            | -.10            |
| <u>Group 3</u><br>(BASE GROUP) | Aa            | AA             | Mid-Range Double A                                | Louisiana*      | 10.00%         | 11.10%          | 11.90%          | 12.30%          |
|                                | Aaa           | AAA            | High-Range Double A                               | Maryland        | 10.00          | 11.10           | 11.90           | 12.30           |
|                                | Aaa           | AA+            | Mid-Range Double A                                | Minnesota*      | 10.00          | 11.10           | 11.90           | 12.30           |
|                                | Aa            | AA-            | Mid-Range Double A                                | Mississippi*    | 10.00          | 11.10           | 11.90           | 12.30           |
|                                | Aaa           | NR             | High-Range Double A                               | New Hampshire*  | 10.00          | 11.10           | 11.90           | 12.30           |
|                                | Aaa           | AAA            | NR                                                | New Jersey      | 10.00          | 11.10           | 11.90           | 12.30           |
|                                | Aaa           | AA+            | High-Range Double A                               | Wisconsin       | 10.00          | 11.10           | 11.90           | 12.30           |
| <u>Group 4</u>                 | Aaa           | AAA            | Mid-Range Double A                                | Illinois        | +.10           | +.10            | +.10            | +.10            |
| <u>Group 5</u>                 | Aa            | AA-            | Mid-Range Double A                                | Alaska          | +.10           | +.10            | +.15            | +.15            |
|                                | Aa            | AA+            | Low-Range Double A                                | California      | +.10           | +.10            | +.15            | +.15            |
| <u>Group 6</u>                 | Aa            | AAA            | High-Range Double A                               | Maine           | +.10           | +.15            | +.20            | +.20            |
|                                | Aa            | AA             | Mid-Range "Aa/AA"                                 | Nevada          | +.10           | +.15            | +.20            | +.20            |
|                                | Aa            | AA+            | NR                                                | Ohio            | +.15           | +.15            | +.20            | +.20            |
|                                | Aa            | AA             | NR                                                | Rhode Island    | +.10           | +.15            | +.20            | +.20            |
|                                | Aa            | Nh             | Low-Range Double A                                | Vermont         | +.10           | +.15            | +.20            | +.20            |
| <u>Group 7</u>                 | A1            | AA+            | Low-Range Double A                                | West Virginia   | +.15           | +.15            | +.20            | +.30            |
| <u>Group 8</u>                 | Aa            | AA-            | High-Range "A1/A+"                                | Connecticut     | +.20           | +.20            | +.30            | +.40            |
|                                | Aa            | AA             | Low-Range Triple A                                | Florida         | +.10           | +.15            | +.25            | +.40            |
| <u>Group 9</u>                 | A             | AA-            | Mid-Range "A1/A+"                                 | New York        | +1.50          | +1.15           | +.60            | +.45            |
|                                | Aa            | AA             | High-Range Double A                               | Oregon          | +.20           | +.30            | +.40            | +.45            |
| <u>Group 10</u>                | A1            | AA             | High-Range Single A                               | Delaware        | +.40           | +.60            | +.60            | +.70            |
|                                | Aa            | AA             | Mid-Range "A1/A+"                                 | Hawaii          | +.40           | +.60            | +.60            | +.70            |
| <u>Group 11</u>                | A             | A+             | Low-Range "A1/A+"                                 | Pennsylvania    | +.60           | +.65            | +.65            | +.85            |
|                                | A1            | AA             | High-Range "A1/A+"                                | Washington      | +.60           | +.65            | +.65            | +.85            |
| <u>Group 12</u>                | A1            | AA-            | Low-Range "A1/A+"                                 | Massachusetts   | +.75           | +.75            | +.75            | +1.00           |
|                                | A             | A+             | Mid-Range "Baa1/BBB+"                             | Michigan        | +.75           | +.75            | +.75            | +1.00           |
| <u>Group 13</u>                | Baa1          | A              | Mid-Range "Baa1/BBB+"                             | Puerto Rico     | +2.00          | +3.15           | +2.60           | +2.20           |

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Marilyn Madden  
 Sr. Fixed Income Analyst  
 Fixed Income Research Department

Alex J. Marcinkiewicz  
 Asst. Vice President  
 Municipal Bond Department

TABLE 1.21 (DRAFT FOR ALASKA PUBLIC DEBT 1986)

Debt of Alaska Municipalities  
6-30-85  
(Dollars)

| <u>Boroughs</u>            | <u>G.O. Debt</u>  | <u>Revenue<br/>Debt</u> | <u>Total<br/>Debt</u> | <u>School<br/>G.O.<br/>Debt</u> | <u>% of<br/>School<br/>Debt Paid<br/>by State</u> | <u>Net<br/>G.O. Debt</u> | <u>Total Net<br/>Debt</u> |
|----------------------------|-------------------|-------------------------|-----------------------|---------------------------------|---------------------------------------------------|--------------------------|---------------------------|
| ANCHORAGE, MUNICIPALITY OF | 358,799,900       | 347,080,000             | 705,879,900           | 139,965,000                     | 94 %                                              | 227,232,800              | 574,312,800               |
| BRISTOL BAY                | 3,535,000         | -                       | 3,535,000             | 3,535,000                       | 90                                                | 353,500                  | 353,500                   |
| FAIRBANKS NORTH STAR       | 80,700,000        | -                       | 80,700,000            | 79,900,000                      | 92                                                | 7,192,000                | 7,192,000                 |
| Fairbanks City             | 9,010,000         | 61,170,000              | 70,180,000            | -                               | -                                                 | 9,010,000                | 70,180,000                |
| North Pole                 | 1,218,550         | -                       | 1,218,550             | -                               | -                                                 | 1,218,550                | 1,218,550                 |
| TOTAL                      | 90,928,500        | 61,170,000              | 152,098,500           | 79,900,000                      | 92                                                | 17,420,550               | 78,591,050                |
| HAINES                     | 555,000           | -                       | 555,000               | 500,000                         | 100                                               | -                        | -                         |
| Haines City                | 745,000           | -                       | 745,000               | -                               | -                                                 | 745,000                  | 745,000                   |
| TOTAL                      | 1,300,000         | -                       | 1,300,000             | 500,000                         | 100                                               | 800,000                  | 800,000                   |
| JUNEAU, CITY & BOROUGH     | 47,651,000        | 27,480,000              | 75,131,000            | 30,209,018                      | 91                                                | 20,160,794               | 47,640,794                |
| KENAI PENINSULA            | 119,324,005       | -                       | 119,324,005           | 100,120,000                     | 90                                                | 29,216,005               | 29,216,005                |
| Homer City                 | 2,113,000         | 1,025,000               | 3,138,000             | -                               | -                                                 | 2,113,000                | 3,138,000                 |
| Kenai City                 | 5,835,000         | 235,000                 | 6,070,000             | -                               | -                                                 | 5,835,000                | 6,070,000                 |
| Seldovia City              | 378,000           | 43,000                  | 421,000               | -                               | -                                                 | 378,000                  | 421,000                   |
| Seward City                | 10,000            | 7,672,000               | 7,682,000             | -                               | -                                                 | 10,000                   | 7,682,000                 |
| Soldotna City              | 2,800,000         | -                       | 2,800,000             | -                               | -                                                 | 2,800,000                | 2,800,000                 |
| TOTAL                      | 130,460,005       | 8,975,000               | 139,435,005           | 100,120,000                     | 90                                                | 40,352,005               | 49,327,005                |
| KETCHIKAN GATEWAY          | 21,090,000        | 410,000                 | 21,500,000            | 16,445,000                      | 92                                                | 5,960,600                | 6,370,600                 |
| Ketchikan City             | 10,840,000        | 23,280,000              | 34,120,000            | -                               | -                                                 | 10,840,000               | 34,120,000                |
| TOTAL                      | 31,930,000        | 23,690,000              | 55,620,000            | 16,445,000                      | 92                                                | 16,800,600               | 40,490,600                |
| KODIAK ISLAND              | 25,815,000        | -                       | 25,815,000            | 25,515,000                      | 91                                                | 2,596,350                | 2,596,350                 |
| Kodiak City                | 2,455,000         | 3,298,000               | 5,753,000             | -                               | -                                                 | 2,455,000                | 5,753,000                 |
| TOTAL                      | 28,270,000        | 3,298,000               | 31,568,000            | 25,515,000                      | 91                                                | 5,051,350                | 8,349,350                 |
| MATANUSKA-SUSITNA          | 110,160,000       | -                       | 110,160,000           | 95,120,000                      | 90                                                | 24,552,000               | 24,552,000                |
| Palmer City                | 2,048,000         | 290,000                 | 2,338,000             | -                               | -                                                 | 2,048,000                | 2,338,000                 |
| TOTAL                      | 112,208,000       | 290,000                 | 112,498,000           | 95,120,000                      | 90                                                | 26,600,000               | 26,890,000                |
| NORTH SLOPE                | 1,155,680,000     | -                       | 1,155,680,000         | 207,220,000                     | 97                                                | 954,676,600              | 954,676,600               |
| SITKA, CITY & BOROUGH      | 12,400,000        | 53,675,000              | 66,075,000            | 2,052,258                       | 100                                               | 10,347,742               | 64,022,742                |
| <br>TOTAL BOROUGHs         | <br>1,973,162,405 | <br>525,658,000         | <br>2,498,820,405     | <br>700,581,276                 | <br>93 %                                          | <br>1,319,795,941        | <br>1,845,453,941         |

TABLE 1.21 (continued)

| <u>Cities</u>        | <u>G.O. Debt</u> | <u>Revenue Debt</u> | <u>Total Debt</u> | <u>School G.O. Debt</u> | <u>% of School Debt Paid by State</u> | <u>Net G.O. Debt</u> | <u>Total Net Debt</u> |
|----------------------|------------------|---------------------|-------------------|-------------------------|---------------------------------------|----------------------|-----------------------|
| Bethel               | 556,505          | 535,000             | 1,091,505         | -                       | - %                                   | 556,505              | 1,091,508             |
| Cordova              | -                | 1,456,000           | 1,456,000         | -                       | -                                     | -                    | 1,456,000             |
| Craig                | 35,646           | 87,000              | 128,646           | -                       | -                                     | 35,646               | 120,646               |
| Dillingham           | -                | 286,000             | 286,000           | -                       | -                                     | -                    | 286,000               |
| Galena               | 900,000          | -                   | 900,000           | -                       | -                                     | 900,000              | 900,000               |
| Hoonah               | -                | -                   | -                 | -                       | -                                     | -                    | -                     |
| Hydaburg             | -                | -                   | -                 | -                       | -                                     | -                    | -                     |
| Kake                 | -                | 86,000              | 86,000            | -                       | -                                     | -                    | 86,000                |
| King Cove            | -                | -                   | -                 | -                       | -                                     | -                    | -                     |
| Klawock              | -                | -                   | -                 | -                       | -                                     | -                    | -                     |
| Kotzebue             | -                | -                   | -                 | -                       | -                                     | -                    | -                     |
| Nenana               | 397,356          | 2,320,000           | 2,717,356         | 190,000                 | 100                                   | 207,356              | 2,527,356             |
| Nome                 | 2,161,250        | -                   | 2,161,250         | -                       | -                                     | 2,161,250            | 2,161,250             |
| Pelican              | -                | -                   | -                 | -                       | -                                     | -                    | -                     |
| Petersburg           | 6,195,000        | 4,367,835           | 10,562,835        | 4,826,500               | 96                                    | 1,561,560            | 5,929,395             |
| St. Mary's           | -                | -                   | -                 | -                       | -                                     | -                    | -                     |
| Sand Point           | -                | -                   | -                 | -                       | -                                     | -                    | -                     |
| Skagway              | 820,000          | -                   | 820,000           | -                       | -                                     | 820,000              | 820,000               |
| Tanana               | -                | -                   | -                 | -                       | -                                     | -                    | -                     |
| Unalaska             | 3,299,032        | 429,216             | 3,728,248         | 925,000                 | 90                                    | 2,466,532            | 2,895,748             |
| Valdez               | 75,833,000       | 7,650,000           | 83,483,000        | 22,585,000              | 94                                    | 54,603,100           | 62,253,100            |
| Whittier             | -                | -                   | -                 | -                       | -                                     | -                    | -                     |
| Wrangell             | 10,750,000       | 812,600             | 11,562,600        | 9,385,777               | 82                                    | 3,053,663            | 3,866,263             |
| Yakutat              | 235,193          | 490,476             | 725,669           | -                       | -                                     | 235,193              | 725,669               |
| TOTAL CITIES         | 101,182,982      | 18,520,127          | 119,703,109       | 37,912,277              | 91                                    | 66,600,805           | 85,120,932            |
| TOTAL MUNICIPALITIES | 2,074,345,387    | 544,178,127         | 2,618,523,514     | 738,493,553             | 93 %                                  | 1,386,396,746        | 1,930,574,873         |

Sources: Alaska Department of Education and Alaska Taxable 1985, Alaska Department of Community and Regional Affairs.

TABLE 1.22

Alaska Municipal Debt Ratios (DRAFT FOR ALASKA PUBLIC DEBT 1986)  
6-30-85

| <u>Boroughs</u>            | <u>Full Value</u>            | <u>Population</u> | <u>GO Debt<br/>Per Capita</u> | <u>Ratio of<br/>GO Debt to<br/>Full Value</u> | <u>Net<br/>GO Debt<br/>Per Capita<sup>1/</sup></u> | <u>Ratio of Net<br/>GO Debt to<br/>Full Value<sup>1/</sup></u> |
|----------------------------|------------------------------|-------------------|-------------------------------|-----------------------------------------------|----------------------------------------------------|----------------------------------------------------------------|
| ANCHORAGE, MUNICIPALITY OF | \$15,755,411,000             | 248,263           | \$1,445                       | 2.28%                                         | \$915                                              | 1.44%                                                          |
| BRISTOL BAY                | 101,798,800                  | 1,271             | 2,781                         | 3.47                                          | 278                                                | .35                                                            |
| FAIRBANKS NORTH STAR       | 2,564,966,300                | 46,340            |                               |                                               |                                                    |                                                                |
| Fairbanks City             | 1,458,574,300                | 27,099            | 332                           | .62                                           | 332                                                | .62                                                            |
| North Pole                 | 187,457,100                  | 1,640             | 742                           | .65                                           | 742                                                | .65                                                            |
| TOTAL                      | 4,210,997,700                | 75,079            | 1,211                         | 2.16                                          | 232                                                | .41                                                            |
| HAINES                     | 49,029,200                   | 768               |                               |                                               |                                                    |                                                                |
| Haines City                | 44,916,300                   | 1,079             | 690                           | 1.66                                          | 690                                                | 1.66                                                           |
| TOTAL                      | 93,945,500                   | 1,847             | 703                           | 1.38                                          | 433                                                | .85                                                            |
| JUNEAU, CITY & BOROUGH     | 1,613,388,900                | 29,370            | 1,622                         | 2.95                                          | 686                                                | 1.25                                                           |
| KENAI PENINSULA            | 2,417,376,100                | 22,321            |                               |                                               |                                                    |                                                                |
| Homer City                 | 215,845,000                  | 3,817             | 553                           | .98                                           | 553                                                | .98                                                            |
| Kenai City                 | 282,950,000                  | 6,434             | 906                           | 2.06                                          | 906                                                | 2.06                                                           |
| Seldovia City              | 16,451,300                   | 678               | 557                           | 2.30                                          | 557                                                | 2.30                                                           |
| Seward City                | 142,170,600                  | 2,072             | 5                             | .01                                           | 5                                                  | .01                                                            |
| Soldotna City              | 215,425,400                  | 3,597             | 778                           | 1.30                                          | 778                                                | 1.30                                                           |
| TOTAL                      | 3,290,219,200                | 38,919            | 3,352                         | 3.97                                          | 1,037                                              | 1.23                                                           |
| KETCHIKAN GATEWAY          | 284,545,100                  | 5,900             |                               |                                               |                                                    |                                                                |
| Ketchikan City             | 391,440,000                  | 8,414             | 1,288                         | 3.81                                          | 1,288                                              | 3.81                                                           |
| TOTAL                      | 675,985,100                  | 14,314            | 2,230                         | 4.72                                          | 1,174                                              | 2.49                                                           |
| KODIAK ISLAND              | 180,536,600                  | 7,146             |                               |                                               |                                                    |                                                                |
| Kodiak City                | 391,834,100                  | 6,602             | 371                           | .63                                           | 371                                                | .63                                                            |
| TOTAL                      | 572,370,700                  | 13,748            | 2,056                         | 4.94                                          | 367                                                | .88                                                            |
| MATANUSKA-SUSITNA          | 2,225,993,800                | 38,077            |                               |                                               |                                                    |                                                                |
| Palmer City                | 141,412,400                  | 3,016             | 679                           | 1.45                                          | 679                                                | 1.45                                                           |
| TOTAL                      | 2,367,406,200                | 41,093            | 2,730                         | 4.74                                          | 647                                                | 1.12                                                           |
| NORTH SLOPE                |                              | 12,342            | 93,638                        |                                               | 77,352                                             |                                                                |
| AS 29.53.045(b) Tax Limit  | 12,876,786,900               |                   |                               | 8.97                                          |                                                    | 7.41                                                           |
| AS 29.53.045(c) Tax Limit  | 2,397,118,779                |                   |                               | 48.21                                         |                                                    | 39.83                                                          |
| SITKA, CITY & BOROUGH      | 396,227,900                  | 8,221             | 1,508                         | 3.13                                          | 1,259                                              | 2.61                                                           |
| TOTAL BOROUGHs             | 41,954,537,900 <sup>2/</sup> | 484,467           | 4,073                         | 4.70                                          | 2,724                                              | 3.15                                                           |

TABLE 1.22 (continued)

| <u>Cities</u>             | <u>Full Value</u>           | <u>Population</u> | <u>GO Debt<br/>Per Capita</u> | <u>Ratio of<br/>GO Debt to<br/>Full Value</u> | <u>Net<br/>GO Debt<br/>Per Capita<sup>1/</sup></u> | <u>Ratio of Net<br/>GO Debt to<br/>Full Value<sup>1/</sup></u> |
|---------------------------|-----------------------------|-------------------|-------------------------------|-----------------------------------------------|----------------------------------------------------|----------------------------------------------------------------|
| Bethel                    | \$182,296,900               | 3,681             | \$151                         | .31%                                          | \$151                                              | .31%                                                           |
| Cordova                   | 120,673,000                 | 2,520             |                               |                                               |                                                    |                                                                |
| Craig                     | 34,707,400                  | 1,167             | 31                            | .10                                           | 31                                                 | .10                                                            |
| Delta Junction            | 30,870,500                  | 1,207             |                               |                                               |                                                    |                                                                |
| Dillingham                | 94,669,900                  | 2,100             |                               |                                               |                                                    |                                                                |
| Eagle                     | 9,104,500                   | 194               |                               |                                               |                                                    |                                                                |
| Galena                    | 19,149,500                  | 942               | 955                           | 4.70                                          | 955                                                | 4.70                                                           |
| Hoonah                    | 27,845,200                  | 906               |                               |                                               |                                                    |                                                                |
| Hydaburg                  | 12,688,900                  | 463               |                               |                                               |                                                    |                                                                |
| Kake                      | 11,608,000                  | 633               |                               |                                               |                                                    |                                                                |
| King Cove                 | 23,230,800                  | 547               |                               |                                               |                                                    |                                                                |
| Klawock                   | 5,563,000                   | 600               |                               |                                               |                                                    |                                                                |
| Kotzebue                  | 93,245,100                  | 2,981             |                               |                                               |                                                    |                                                                |
| Nenana                    | 12,881,500                  | 542               | 733                           | 3.08                                          | 383                                                | 2.10                                                           |
| Nome                      | 116,712,900                 | 3,876             | 558                           | 1.85                                          | 558                                                | 1.85                                                           |
| Pelican                   | 10,155,400                  | 213               |                               |                                               |                                                    |                                                                |
| Petersburg                | 161,219,300                 | 3,137             | 1,975                         | 3.84                                          | 498                                                | .97                                                            |
| St. Mary's                | 4,239,400                   | 563               |                               |                                               |                                                    |                                                                |
| Sand Point                | 71,086,800                  | 900               |                               |                                               |                                                    |                                                                |
| Skagway                   | 58,447,100                  | 790               | 1,038                         | 1.40                                          | 1,038                                              | 1.40                                                           |
| Tanana                    | 11,195,400                  | 425               |                               |                                               |                                                    |                                                                |
| Unalaska                  | 105,309,400                 | 1,922             | 1,716                         | 3.13                                          | 1,283                                              | 2.34                                                           |
| Unalakleet                | 19,714,500                  | 787               |                               |                                               |                                                    |                                                                |
| Valdez                    |                             | 3,687             | 20,581                        |                                               | 14,810                                             |                                                                |
| AS 29.53.045(b) Tax Limit | 1,740,431,900               |                   |                               | 4.36                                          |                                                    | 3.14                                                           |
| AS 29.53.045(c) Tax Limit | 716,105,732                 |                   |                               | 10.59                                         |                                                    | 7.63                                                           |
| Whittier                  | 19,419,200                  | 338               |                               |                                               |                                                    |                                                                |
| Wrangell                  | 111,757,000                 | 2,376             | 4,524                         | 9.62                                          | 1,285                                              | 2.73                                                           |
| Yakutat                   | 17,679,400                  | 462               | 509                           | 1.33                                          | 509                                                | 1.33                                                           |
| TOTAL CITIES              | 3,125,901,900 <sup>2/</sup> | 37,959            | 2,666                         | 3.24                                          | 1,755                                              | 2.13                                                           |
| TOTAL MUNICIPALITIES      | 45,080,439,800              | 522,426           | 3,971                         | 4.61                                          | 2,654                                              | 3.08                                                           |
| TOTAL STATEWIDE           | 48,915,237,900              | 566,657           |                               |                                               |                                                    |                                                                |

Source: Alaska Taxable 1985, Alaska Department of Community & Regional Affairs<sup>1/</sup> Net of school debt.<sup>2/</sup> Includes the higher full value under tax limits.

PROPOSED DRAFT LANGUAGE  
FOR MUNICIPAL SCHOOL DEBT SECTION OF  
ALASKA PUBLIC DEBT 1986

As of June 30, 1985, \$738 million of municipal school debt was outstanding. Under a program enacted in 1970 (Alaska Statutes 14.11.100) the State will reimburse the municipalities for debt service on certain portions of that debt. On June 30, 1985, the aggregate total percentage of municipal school debt to be reimbursed by the State was 93%. The State share of municipal school debt was thus \$687 million.

Because the statute which provides for reimbursement of a portion (100, 90 or 80 percent) of debt service on municipal school debt specifies a two year lag between payment by the municipality and reimbursement by the State for debt incurred prior to January 1, 1982, some principal and interest paid during the fiscal years ending June 30, 1984 and June 30, 1985 has not yet been reimbursed. The State share of municipal school debt outstanding on June 30, 1985 plus the State share of municipal school debt principal payments made by the municipalities during prior years but not yet reimbursed by the State amounted to a total of \$754 million. If added to the total of State and State supported debt, the amount of the State's principal outstanding on that debt would have been \$1,686 million.

On October 1, 1985 voters in six municipalities approved the issuance of an additional \$303 million of general obligation school debt. Most of that debt will have been issued by June 30, 1986. Voters in the City of Sitka approved the issuance of \$22.6 million of general obligation school debt in a special election on January 27, 1986. Voters in the Kodiak Island Borough will decide on the issuance of almost \$10 million of general obligation school debt in a special election on March 25, 1986. If issued, current statute provides for State reimbursement of up to eighty percent of the debt service on that debt during the year in which the payments are made.

38

178,000

## SEVEN PERCENT CAP

| Borough           | FULL<br>VALUE       | G. D.<br>DEBT      | % OF<br>FULL VALUE | PERCENT<br>OF G.D.<br>DEBT/CAP | CURRENT<br>PERCENT<br>DEBT |
|-------------------|---------------------|--------------------|--------------------|--------------------------------|----------------------------|
| Anchorage         | \$15,755,411,000.00 | \$358,799,900.00   | \$1,102,878,770.00 | 32.53%                         | 2.28%                      |
| Bristol Bay       | \$101,798,800.00    | \$3,535,000.00     | \$7,125,916.00     | 49.61%                         | 3.47%                      |
| Fairbanks         | \$4,210,997,700.00  | \$90,928,500.00    | \$294,769,839.00   | 30.85%                         | 2.16%                      |
| Haines            | \$93,945,500.00     | \$1,300,000.00     | \$6,576,185.00     | 19.77%                         | 1.39%                      |
| Juneau            | \$1,613,388,900.00  | \$47,651,000.00    | \$112,937,223.00   | 42.19%                         | 2.95%                      |
| Kenai Peninsula   | \$3,290,219,200.00  | \$137,929,000.00   | \$230,315,344.00   | 59.69%                         | 4.19%                      |
| Ketchikan Gateway | \$675,985,100.00    | \$31,930,000.00    | \$47,318,957.00    | 67.48%                         | 4.72%                      |
| Kodiak            | \$572,370,700.00    | \$28,270,000.00    | \$40,065,949.00    | 70.56%                         | 4.94%                      |
| Mat-Su            | \$2,367,406,200.00  | \$112,208,000.00   | \$165,718,434.00   | 67.71%                         | 4.74%                      |
| North Slope       | \$12,876,786,900.00 | \$1,155,680,000.00 | \$901,375,083.00   | 128.21%                        | 8.97% ←                    |
| Sitka             | \$396,227,900.00    | \$12,400,000.00    | \$27,735,953.00    | 44.71%                         | 3.13%                      |
| Total Boroughs    | \$41,954,537,900.00 | \$1,980,631,400.00 | \$2,936,817,653.00 | 67.44%                         | 4.72%                      |

## CITIES

|                |                    |                 |                  |         |         |
|----------------|--------------------|-----------------|------------------|---------|---------|
| Bethel         | \$182,296,900.00   | \$556,500.00    | \$12,760,783.00  | 4.36%   | 0.31%   |
| Brooks         | \$120,673,000.00   | \$0.00          | \$8,447,110.00   | 0.00%   | 0.00%   |
| Crater         | \$34,707,400.00    | \$0.00          | \$2,429,518.00   | 0.00%   | 0.00%   |
| Delta Junction | \$30,870,500       | \$0             | \$2,160,935.00   | 0.00%   | 0.00%   |
| Ellingsham     | \$94,669,900.00    | \$0.00          | \$6,626,893.00   | 0.00%   | 0.00%   |
| Esch           | \$9,104,500.00     | \$0.00          | \$637,315.00     | 0.00%   | 0.00%   |
| Galena         | \$19,149,500.00    | \$900,000.00    | \$1,340,465.00   | 67.14%  | 4.70%   |
| Hoonah         | \$27,845,200.00    | \$0.00          | \$1,949,164.00   | 0.00%   | 0.00%   |
| Hydaburg       | \$12,688,900.00    | \$0.00          | \$888,223.00     | 0.00%   | 0.00%   |
| Ika            | \$11,605,000.00    | \$0.00          | \$812,560.00     | 0.00%   | 0.00%   |
| King Cove      | \$23,230,800.00    | \$0.00          | \$1,626,156.00   | 0.00%   | 0.00%   |
| Klawock        | \$5,563,000.00     | \$0.00          | \$389,410.00     | 0.00%   | 0.00%   |
| Kotzebue       | \$93,245,100.00    | \$0.00          | \$6,527,157.00   | 0.00%   | 0.00%   |
| Nenana         | \$12,881,500.00    | \$396,300.00    | \$901,705.00     | 43.95%  | 3.06%   |
| Nome           | \$116,712,900.00   | \$2,161,200.00  | \$8,169,903.00   | 26.45%  | 1.85%   |
| Pelican        | \$10,155,400.00    | \$0.00          | \$710,878.00     | 0.00%   | 0.00%   |
| Petersburg     | \$161,219,300.00   | \$6,195,000.00  | \$11,285,351.00  | 54.89%  | 3.84%   |
| Sand Point     | \$71,086,800.00    | \$0.00          | \$4,976,076.00   | 0.00%   | 0.00%   |
| Skagway        | \$58,447,100.00    | \$820,000.00    | \$4,091,297.00   | 20.04%  | 1.40%   |
| St. Mary's     | \$4,239,400.00     | \$0.00          | \$296,758.00     | 0.00%   | 0.00%   |
| Tanana         | \$11,195,400.00    | \$0.00          | \$783,678.00     | 0.00%   | 0.00%   |
| Unalakleet     | \$19,714,500       | \$0             | \$1,380,015.00   | 0.00%   | 0.00%   |
| Unalaska       | \$105,309,400.00   | \$3,299,000.00  | \$7,371,658.00   | 44.75%  | 3.13%   |
| Valdez         | \$1,740,431,900.00 | \$75,833,000.00 | \$121,830,233.00 | 62.24%  | 4.36%   |
| Whittier       | \$19,419,200.00    | \$0.00          | \$1,359,344.00   | 0.00%   | 0.00%   |
| Wrangell       | \$111,757,000.00   | \$10,750,000.00 | \$7,822,990.00   | 137.42% | 9.62% ← |
| Yakutat        | \$17,679,400.00    | \$235,200.00    | \$1,237,558.00   | 19.01%  | 1.33%   |

|              |                    |                  |                  |        |       |
|--------------|--------------------|------------------|------------------|--------|-------|
| TOTAL CITIES | \$3,125,901,900.00 | \$101,146,200.00 | \$218,813,133.00 | 46.22% | 3.24% |
|--------------|--------------------|------------------|------------------|--------|-------|

|       |                     |                  |                    |        |       |
|-------|---------------------|------------------|--------------------|--------|-------|
| STATE | \$48,915,237,900.00 | \$816,100,000.00 | \$3,424,066,653.00 | 23.83% | 1.67% |
|-------|---------------------|------------------|--------------------|--------|-------|

|                |                     |                    |                    |        |       |
|----------------|---------------------|--------------------|--------------------|--------|-------|
| Total Boroughs | \$41,954,537,900.00 | \$1,980,631,400.00 | \$2,936,817,653.00 | 67.44% | 4.72% |
|----------------|---------------------|--------------------|--------------------|--------|-------|

A M E N D M E N T

Offered in the HOUSE

By Sund

TO: CSHB 521 (Loans)

~~Page 2, line 8:~~

~~Delete "seven" and insert "five"~~

Page 3, line ~~11~~ 11;

Delete "." and insert ";

Page 3, after line ~~11~~ <sup>11</sup> insert the following new paragraph to read:

"<sup>7</sup>(~~8~~) school construction debt for which reimbursement by the state is authorized under AS 14.11.100."

138  
84  
282

Introduced: 1/27/86  
Referred: House Special Committee on State Loans  
Community & Regional Affairs and Finance

IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 521

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the issuance of  
municipal general obligation bonds; and  
providing for an effective date."

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

\* Section 1. AS 29.47.190(b) is amended to read:

(b) Before a general obligation bond issue election,  
the governing body shall have published a notice of the  
total existing bond indebtedness at least once a week for  
three consecutive weeks. The first notice must (SHALL) be  
published at least 20 days before the date of the  
election. A notice must (SHALL) include

(1) the current total general obligation bonded  
indebtedness, including authorized but unsold bonds, of the  
municipality and the current total general obligation  
bonded indebtedness, including authorized but unsold bonds,  
of any other municipalities which may be payable from taxes  
on taxable property in the municipality;

(2) the cost of the debt service on the current

indebtedness;

(3) the total assessed value of taxable property  
in the municipality;

in the municipality

(4) the full value of taxable property, as  
determined by the Department of Community and Regional  
Affairs. ~~[under AS 14.17.140.]~~

\* Sec. 2. AS 29.47 is amended by adding a new section to  
read:

Sec. 29.47.195. LIMITATION ON MUNICIPAL DEBT. (a) No  
general obligation bond authorization shall be finally  
adopted by a municipality unless the net debt of the  
municipality at the time of adoption of the bond  
authorization does not exceed 7 percent of average assessed  
valuation.

(b) Notwithstanding the provisions in (a) of this  
section, a bond authorization may be finally adopted if the  
bond authorization authorizes obligations solely for one of  
the following:

- (1) to meet an expenditure which is the result  
of a natural disaster;
- (2) to meet an expenditure which is necessary to  
protect the public health;
- (3) for a purpose which is self-liquidating; or
- (4) to refund existing debt.

(c) For purposes of this section the following terms  
shall have meanings as follows:

(1) "average assessed valuation" means the average of the full value of taxable property for the last two years as determined by the Department of Community and Regional Affairs under AS 14.17.140.

(2) "bond" or "debt" means bonds, notes, or other obligations.

(3) "bond authorization" means the action completed after the bond election by the governing body of the municipality which authorizes a specific amount of general obligation debt of the municipality for a specified purpose but need not include action to fix the rate or rates of interest on the debt or include action to fix further details of the debt or action to sell the debt.

(4) "self liquidating debt" is debt for which the cash receipts from fees, rents, or other charges (other than taxes) ~~[in a fiscal year]~~ pledged to pay the debt ~~[are]~~ <sup>in each fiscal year since issuance of the debt</sup> have been sufficient <sup>to meet operating and maintenance costs</sup> (exclusive of depreciation and obsolescence) and interest and ~~[debt]~~ redemption charges <sup>on the debt</sup> payable or accruing in such year without recourse to general taxation.

(5) "net debt" means all general obligation debt issued, and all general obligation debt authorized but not issued, after deducting the following general obligation debt issued and authorized but not issued:

(A) bond anticipation notes;

(B) revenue anticipation notes issued

pursuant to Art. IX, Section 10, Alaska Constitution;

(C) self-liquidating debt; and

(D) debt for which there are funds on hand or sinking funds pledged to the payment thereof including the proceeds of any bonds or notes held for that purpose.

\* Sec. 3. AS 29.10.200 is amended by adding a new subsection to read, and renumbering existing subsections accordingly:

(42) AS 29.47.195 (limitation on municipal debt)

\* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c).

(4) the full value of taxable property as determined by the Department of Community and Regional Affairs under AS 14.17.140.

\* Sec. 2. AS 29.47 is amended by adding a new section to read:

Sec. 29.47.195. LIMITATION ON MUNICIPAL DEBT. (a) No general obligation bond authorization shall be finally adopted by a municipality unless the net debt of the municipality at the time of adoption of the bond authorization does not exceed seven percent of average assessed valuation.

(b) Notwithstanding the provisions in (a) of this section, a bond authorization may be finally adopted if the bond authorization authorizes obligations solely for one of the following:

(1) to meet an expenditure which is the result of a natural disaster;

(2) to meet an expenditure which is necessary to protect the public health;

(3) for a purpose which is self-liquidating; or

(4) to refund existing debt.

(c) For purposes of this section the following terms shall have meanings as follows:

(1) "average assessed valuation" means the average of the full value of taxable property for the last two years as determined by the Department of Community and Regional Affairs under AS 14.17.140.

(2) "bond" or "debt" means bonds, notes or other obligations.

(3) "bond authorization" means the action completed after the bond election of the governing body of the municipality which authorizes a specified amount of general

obligation debt of the municipality for a specified purpose but need not include action to fix the rate or rates of interest on the debt or include action to fix further details of the debt or action to sell the debt.

(4) "self liquidating Debt" is debt for which the cash receipts from fees, rents or other charges (other than taxes) in a fiscal year pledged to pay the debt are sufficient to meet

operating and maintenance costs (exclusive of depreciation and obsolescence) and interest and debt redemption charges payable or accruing in such year without recourse to general taxation.

(5) "net debt" means all general obligation debt issued, and all general obligation debt authorized but not issued, after deducting the following general obligation debt issued, and authorized but not issued:

(a) as bond anticipation notes in anticipation of bonds;

(b) as revenue anticipation notes issued pursuant to Art. IX, Section 10, Alaska Constitution;

c. as self-liquidating debt; and

d. for which there are funds on hand or sinking funds applicable to the payment thereof only including the proceeds of any bonds or notes held for that purpose and any accounts receivable or amounts which may be payable from the United States, the state or any public instrumentality thereof, which funds are applicable only to the payment of any part of the debt not otherwise deductible.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

\*\*\*\*\*  
\*  
\* DELIVER TO: JFOM \*  
\*  
\*  
\* ORIGINAL \*  
\* SENT: 02/17/86 TIME: 11:28 \*  
\* FROM: ANNIE NEUBAUER \*  
\* SUBJECT: POM/FAIRBANKS \*  
\* PRINT DATE: 02/17/86 TIME: 11:29 \*  
\*  
\*\*\*\*\*

TO: REP. SUND, ATTN: SHARI KOCHMAN

FROM STEVE BAINBRIDGE, CITY ENGINEER,  
CITY OF NENANA, NENANA 99760

PHONE: 832-5441

RE: HB521 MUNICIPAL GENERAL OBLIGATION BONDS

I HAVE THE FOLLOWING CONCERNS: REGARDING "SELF-SUPPORTING DEBT", IT IS NOT CLEAR AS TO WHO WOULD MAKE THIS DETERMINATION AND THE PARAMETERS THAT WOULD BE UTILIZED. FOR INSTANCE WOULD G. O. BONDS REPAYED FROM DESIGNATED SALES TAX BE CONSIDERED SELF SUPPORTING?

I HAVE OTHER CONCERNS, BUT POM LIMIT IS 50 WORDS.

Original sponsor: Rules/governor

1 IN THE HOUSE

BY THE HOUSE SPECIAL COMMITTEE  
ON STATE LOANS

2 CS FOR HOUSE BILL NO. 519 (Loans)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public finance; and providing for  
7 an effective date."

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

9 \* Section 1. AS 14.40.040 is amended to read:

10 Sec. 14.40.040. GENERAL POWERS OF THE UNIVERSITY. There is  
11 created and established a corporation to be called the University of  
12 Alaska. It may in that name

- 13 (1) sue and be sued;  
14 (2) receive and hold real and personal property;  
15 (3) contract and be contracted with;  
16 (4) adopt, use and alter a corporate seal;  
17 (5) borrow money, issue debt, or enter into long-term  
18 obligations for the purchase of facilities, goods, or services, which  
19 obligations secure, in whole or in part, debt issued by another party,  
20 as approved by the state bond committee under AS 37.15.770;

21 (6) do and have done all matters necessary for the purpose  
22 of any function set out [FORTH] in this chapter.

23 \* Sec. 2. AS 14.40 is amended by adding a new section to read:

24 Sec. 14.40.255. LEASE-FINANCING. The Board of Regents may enter  
25 into lease-financing agreements only with the Alaska State Housing  
26 Authority acting as the Alaska State Building Authority. A lease-  
27 financing agreement must provide that lease payments are subject to  
28 annual appropriation. If the board intends to enter into an agreement  
29 under this subsection, the board shall provide notice to the

1 legislature and to the state bond committee. The notice must include  
2 the anticipated annual lease payment, the anticipated principal amount  
3 of the debt to be issued by the Alaska State Housing Authority acting  
4 as the Alaska State Building Authority, and the anticipated total  
5 construction or acquisition cost of the project. The board may not  
6 enter into an agreement under this section unless the public building  
7 to be provided has been approved by law. An appropriation for the  
8 project does not constitute approval by law for purposes of this  
9 section.

10 \* Sec. 3. AS 18.55.100(a)(15) is amended to read:

11 (15) acting as the Alaska State Building Authority arrange  
12 or contract for the financing or [, DESIGN, CONSTRUCTION AND] acqui-  
13 sition of public buildings designed by, constructed by, or whose acqui-  
14 sition has been approved by the Department of Transportation and  
15 Public Facilities for lease to the state in accordance with  
16 AS 18.55.010 - 18.55.290 and AS 37.15.770.

17 \* Sec. 4. AS 18.55.140 is amended to read:

18 Sec. 18.55.140. ISSUANCE OF BONDS, NOTES, AND REFUNDING BONDS.  
19 The authority may issue bonds and notes from time to time in its  
20 discretion for any of its corporate purposes and may issue refunding  
21 bonds for the purpose of paying or retiring bonds previously issued by  
22 it. The authority may not issue bonds for public buildings until the  
23 state bond committee has approved the proposal for the issuance of  
24 debt under AS 37.15.770.

25 \* Sec. 5. AS 18.55.140 is amended by adding a new subsection to read:

26 (b) Bonds issued by the authority for public buildings must be  
27 issued in the name of the Alaska State Building Authority and are  
28 subject to AS 18.55.010 - 18.55.290.

29 \* Sec. 6. AS 18.55.288 is amended by adding a new paragraph to read:

1 (4) "bond" means any bond, note, interim certificate,  
2 debenture, or other obligation issued by the authority or the author-  
3 ity acting as the Alaska State Building Authority under AS 18.55.010 -  
4 18.55.290;

5 \* Sec. 7. AS 22.05.025 is amended by adding a new subsection to read:

6 (c) The supreme court may enter into lease-financing agreements  
7 only with the Alaska State Housing Authority acting as the Alaska  
8 State Building Authority. A lease-financing agreement must provide  
9 that lease payments are subject to annual appropriation. If the  
10 supreme court intends to enter into an agreement under this subsec-  
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12 the state bond committee. The notice must include the anticipated  
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19 does not constitute approval by law for purposes of this section.

20 \* Sec. 8. AS 24.23 is amended by adding new sections to read:

21 ARTICLE 2. LEASE AGREEMENTS.

22 Sec. 24.23.100. LEASE OF SPACE. The Legislative Affairs Agency  
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24 for the use of the Alaska legislature and its employees.

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1 this subsection, the agency shall provide notice to the legislature  
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3 anticipated annual lease payment, the anticipated principal amount of  
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11 \* Sec. 9. AS 37.05.280 is amended to read:

12 Sec. 37.05.280. LEASES. The department shall lease necessary  
13 space, and contract for the lease of space, for the use of the state  
14 or an agency of the state, wherever it is necessary and feasible,  
15 subject to compliance with the requirements of AS 37.05.220 - 37.05.280  
16 A [NO] lease or contract for a lease may not provide for a period of  
17 occupancy greater than 40 years. An agency of the state requiring  
18 office, warehouse, or other space shall lease the space through the  
19 department. [NO CONTRACT OR LEASE EXECUTED AFTER JANUARY 1, 1966,  
20 WHICH PROVIDES FOR A PAYMENT OR PAYMENTS BY THE STATE IN EXCESS OF  
21 \$12,000 ANNUALLY IS VALID UNLESS THE USE OF THE SPACE TO BE PROVIDED  
22 FOR BY SUCH CONTRACT OR LEASE HAS BEEN EXPRESSLY APPROVED BY THE  
23 LEGISLATURE BY CONCURRENT RESOLUTION.]

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25 Sec. 37.05.285. LEASE FINANCING. The department may enter into  
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9 for the project does not constitute approval by law for purposes of  
10 this section.

11 \* Sec. 11. AS 37.15.040 is amended to read:

12 Sec. 37.15.040. SALE OF BONDS. Before selling an issue or  
13 series of bonds, the state bond committee shall give notice inviting  
14 sealed bids in the [SUCH] manner [AS] it may prescribe. If satisfac-  
15 tory bids are received, the bonds offered for sale shall be awarded to  
16 the highest responsible bidder or bidders. If the state bond  
17 committee determines that the bids received are not satisfactory as to  
18 price or responsibility of the bidders, it may reject all bids  
19 received.

20 \* Sec. 12. AS 37.15.110 is amended to read:

21 Sec. 37.15.110. CREATION AND MEMBERSHIP OF STATE BOND COMMITTEE.  
22 There is created within the Department of Revenue a committee known as  
23 the "state bond committee," the members of which are the commissioner  
24 of commerce and economic development, the commissioner of administra-  
25 tion, and the commissioner of revenue. If a member of the committee  
26 is absent or otherwise unable to act, the member's designee [IN THE  
27 DEPARTMENT] shall act as a member of the committee in the member's  
28 place.

29 \* Sec. 13. AS 37.15.130 is amended to read:

1           Sec. 37.15.130. OFFICERS, RECORDS AND PROCEEDINGS. The commis-  
2 sioner of commerce and economic development is the chairman of the  
3 state bond committee and the commissioner of revenue is the secretary.  
4 A majority of the members of the committee constitute a quorum. The  
5 committee shall keep a full, complete, and permanent record of its  
6 proceedings. All records and correspondence of the committee shall  
7 be kept in the office of the commissioner of revenue. For the purpose  
8 of this chapter and AS 44.62.310, public notice of 24 hours or more is  
9 adequate notice of a meeting of the committee at which the issuance of  
10 bonds is authorized.

11 \* Sec. 14. AS 37.15.140 is amended to read:

12           Sec. 37.15.140. DUTIES OF STATE BOND COMMITTEE. The state bond  
13 committee shall adopt the resolution and prepare the documents neces-  
14 sary for the issuance, sale, and delivery of state general obligation  
15 bonds.

16 \* Sec. 15. AS 37.15.140 is amended by adding new subsections to read:

17           (b) The state bond committee shall prepare an annual report to  
18 be submitted to the governor and legislature before March 31 of each  
19 year. The report must show

20                   (1) all outstanding debt of debt-issuing entities of the  
21 state;

22                   (2) the anticipated effect on the finances and credit of  
23 the state, including the effect on long-term debt capacity and credit-  
24 worthiness, resulting from that debt;

25                   (3) which long-term debt is state supported and which is  
26 supported only by revenue attributable to the project being financed  
27 by the debt;

28                   (4) all long-term capital lease obligations of the state;

29                   (5) the volume of short-term debt issued and retired during

1 the year by debt-issuing entities of the state;

2 (6) specific identification of each issue for which the  
3 state has pledged some form of indirect support for the debt, includ-  
4 ing any moral obligation of the state to support the debt;

5 (7) future bonding and debt capacity implications of legis-  
6 lation enacted in the previous legislative session; and

7 (8) the recommended debt issuance capacity of the state for  
8 the next two years following the year of the report.

9 (c) The state bond committee may develop written policies con-  
10 cerning debt of the state.

11 \* Sec. 16. AS 37.15.150 is amended to read:

12 Sec. 37.15.150. STAFF AND [COMMITTEE MAY EMPLOY] SPECIAL SER-  
13 VICES. The state bond committee may appoint an executive director who  
14 may, with approval of the committee, select and employ additional  
15 staff as necessary. Employees of the committee are in the partially  
16 exempt service under AS 39.25.120. If the [STATE BOND] committee  
17 considers it necessary and advisable, it may procure architectural or  
18 engineering, fiscal agent or municipal investment, legal, and other  
19 expert or specialized services at reasonable and customary fees to  
20 assist it in accomplishing the most advantageous sale of the bonds.  
21 The fees may be paid from the proceeds of the sale or advanced from  
22 the contingency fund in the Office [OFFICE] of the Governor [GOVERNOR]  
23 or otherwise. *What is this?*

24 \* Sec. 17. AS 37.15.450(a) is amended to read:

25 (a) The bonds shall be sold in the manner, price or prices,  
26 [SUCH] amounts or series, and at the [SUCH] time or times [AS] de-  
27 termined by the committee at either public or private sale. [BEFORE  
28 SELLING A SERIES OF BONDS, THE COMMITTEE SHALL GIVE NOTICE INVITING  
29 SEALED BIDS IN SUCH MANNER AS IT MAY PRESCRIBE. IF SATISFACTORY BIDS

1 ARE RECEIVED, THE BONDS OFFERED FOR SALE SHALL BE AWARDED TO THE  
2 HIGHEST RESPONSIBLE BIDDER. IF THE COMMITTEE DETERMINES THAT THE BIDS  
3 RECEIVED ARE NOT SATISFACTORY AS TO PRICE OR RESPONSIBILITY OF THE  
4 BIDDERS, IT MAY REJECT ALL BIDS RECEIVED.] The bonds, or each series  
5 of them, shall be sold at such a price so that the effective interest  
6 rate over the life of the bonds does not exceed 11 percent per year or  
7 that rate of interest which is 125 percent of the rate of the Bond  
8 Buyer Index of 20 Municipal Bond Average Yields for the week previous  
9 to the date of sale of the bonds, whichever is higher. Interest shall  
10 be payable annually or semiannually.

11 \* Sec. 18. AS 37.15.460 is amended to read:

12 Sec. 37.15.460. BOND RESOLUTION. The committee is authorized  
13 and directed to adopt the bond resolution and prepare all other docu-  
14 ments and proceedings necessary for the issuance, sale and delivery of  
15 the bonds or any part or series of them. The bond resolution shall  
16 fix the principal amount, denomination, date, maturities, place or  
17 places of payment, rights of redemption, if any, terms, form, condi-  
18 tions and covenants of the bonds or each series of them. The commit-  
19 tee shall also determine and provide for the date and manner of sale  
20 of the bonds, and shall provide where a [WHETHER THE] notice of sale,  
21 if any, is to be published [ELSEWHERE IN ADDITION TO THE PUBLICATION  
22 REQUIRED BY AS 37.15.450].

23 \* Sec. 19. AS 37.15.650(a) is amended to read:

24 (a) The toll facilities bonds are sold in the manner, price or  
25 prices, amounts or series, and at the time as determined by the com-  
26 mittee, at either public or private sale. [BEFORE SELLING A SERIES OF  
27 BONDS, THE COMMITTEE SHALL GIVE NOTICE INVITING SEALED BIDS. IF  
28 SATISFACTORY BIDS ARE RECEIVED, THE BONDS OFFERED FOR SALE ARE AWARDED  
29 TO THE HIGHEST RESPONSIBLE BIDDER. IF THE COMMITTEE DETERMINES THAT A

1 BID RECEIVED IS NOT SATISFACTORY AS TO PRICE OR RESPONSIBILITY OF THE  
2 BIDDER, THE COMMITTEE MAY REJECT THE BID RECEIVED.] Bonds, or a  
3 series of bonds, may not be sold if the effective interest rate over  
4 the life of the bonds exceeds 11 percent per year or that rate of  
5 interest that is 125 percent of the rate of the Bond Buyer Index of 20  
6 Municipal Bond Average Yields for the week previous to the date of  
7 sale of the bonds, whichever is higher. Interest is payable annually  
8 or semiannually.

9 \* Sec. 20. AS 37.15.660 is amended to read:

10 Sec. 37.15.660. BOND RESOLUTION. The committee is authorized  
11 and directed to adopt the bond resolution and prepare all other docu-  
12 ments and proceedings necessary for the issuance, sale, and delivery  
13 of the bonds or any part or series of them. The bond resolution shall  
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17 tee shall also determine and provide for the date and manner of sale  
18 of the bonds, and shall provide where a [WHETHER THE] notice of sale,  
19 if any, is to be published [ELSEWHERE IN ADDITION TO THE PUBLICATION  
20 REQUIRED BY AS 37.15.650].

21 \* Sec. 21. AS 37.15 is amended by adding new sections to read:

22 ARTICLE 5. STATE-SUPPORTED DEBT.

23 Sec. 37.15.770. STATE AGENCY DEBT. (a) The state bond commit-  
24 tee shall review proposals for the issuance of debt by or on behalf of

25 (1) the Alaska State Housing Authority acting as the Alaska  
26 State Building Authority for the purpose of providing public build-  
27 ings; and

28 (2) the University of Alaska.

29 (b) The committee may review the general programs and financing

1 plans of the agency that proposes to issue the debt as well as the  
2 specific aspects of the proposed debt issue, including

- 3 (1) amounts;  
4 (2) times;  
5 (3) maturities;  
6 (4) debt structure and security features;  
7 (5) credit enhancements;  
8 (6) use of proceeds;  
9 (7) official documents;  
10 (8) planned rating agency presentations; and  
11 (9) selection, retention, or compensation of financial  
12 advisors, bond counsel, trustees, underwriters, and other profession-  
13 als.

14 (c) The state bond committee shall consider approval of the  
15 amount and time of sale of the debt. The committee shall approve the  
16 issuance of the debt if, in its judgment, issuance of the debt is in  
17 the best interests of the state. The committee may limit approval of  
18 the issuance of debt upon compliance with terms established by the  
19 committee.

20 (d) At the time of sale of the debt, the state bond committee  
21 shall review the bids or pricing of the debt, including discounts,  
22 underwriting spreads, and interest rates. If the committee determines  
23 that the bids or prices are not satisfactory or that the bidders are  
24 not responsible, the agency may not sell the debt.

25 Sec. 37.15.790. MUNICIPAL SCHOOL DEBT. If, at any time, the  
26 state bond committee, in its judgment, determines that the amount or  
27 retirement of debt issued by municipalities and subject to reimburse-  
28 ment by the state under AS 14.11.100 is not in the best interest of  
29 the state, the committee may

1 (1) establish an amount or amounts, for any or all years  
2 before the maturity of all of that municipal debt, that may not be  
3 exceeded by the Department of Education in approving requests under  
4 AS 14.11.103; or

5 (2) establish, under AS 14.11.100(j)(3), a term required  
6 for the maturities of municipal debt authorized by local voters after  
7 March 31, 1986.

8 \* Sec. 22. AS 39.25.120(c) is amended by adding a new paragraph to  
9 read:

10 (19) employees of the state bond committee.

11 \* Sec. 23. This Act takes effect immediately in accordance with AS 01.-  
12 10.070(c).  
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James  
3/4/86 ✓  
#2

Original sponsor: Rules/governor

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24 state bond committee has approved the proposal for the issuance of  
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18 subject to compliance with the requirements of AS 37.05.220 - 37.05.-  
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20 period of occupancy greater than 40 years. A lease agreement must  
21 provide that lease payments are subject to annual appropriation. An  
22 agency of the state requiring office, warehouse, or other space shall  
23 lease the space through the department. [NO CONTRACT OR LEASE EX-  
24 ECUTED AFTER JANUARY 1, 1966, WHICH PROVIDES FOR A PAYMENT OR PAYMENTS  
25 BY THE STATE IN EXCESS OF \$12,000 ANNUALLY IS VALID UNLESS THE USE OF  
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19 tory bids are received, the bonds offered for sale shall be awarded to  
20 the highest responsible bidder or bidders. If the state bond commit-  
21 tee determines that the bids received are not satisfactory as to price  
22 or responsibility of the bidders, it may reject all bids received.

23 \* Sec. 12. AS 37.15.110 is amended to read:

24 Sec. 37.15.110. CREATION AND MEMBERSHIP OF STATE BOND COMMITTEE.  
25 There is created within the Department of Revenue a committee known as  
26 the "state bond committee," the members of which are the commissioner  
27 of commerce and economic development, the commissioner of administra-  
28 tion, and the commissioner of revenue. If a member of the committee  
29 is absent or otherwise unable to act, the member's designee [IN THE

1 DEPARTMENT] shall act as a member of the committee in the member's  
2 place.

3 \* Sec. 13. AS 37.15.130 is amended to read:

4 Sec. 37.15.130. OFFICERS, RECORDS AND PROCEEDINGS. The commis-  
5 sioner of commerce and economic development is the chairman of the  
6 state bond committee and the commissioner of revenue is the secretary.  
7 A majority of the members of the committee constitute a quorum. The  
8 committee shall keep a full, complete, and permanent record of its  
9 proceedings. All records and correspondence of the committee shall  
10 be kept in the office of the commissioner of revenue. For the purpose  
11 of this chapter and AS 44.62.310, public notice of 24 hours or more is  
12 adequate notice of a meeting of the committee at which the issuance of  
13 bonds is authorized.

14 \* Sec. 14. AS 37.15.140 is amended to read:

15 Sec. 37.15.140. DUTIES OF STATE BOND COMMITTEE. The state bond  
16 committee shall adopt the resolution and prepare the documents neces-  
17 sary for the issuance, sale, and delivery of state general obligation  
18 bonds.

19 \* Sec. 15. AS 37.15.140 is amended by adding new subsections to read:

20 (b) The state bond committee shall prepare an annual report to  
21 be submitted to the governor and legislature before March 31 of each  
22 year. The report must show

23 (1) all outstanding debt of debt-issuing entities of the  
24 state;

25 (2) the anticipated effect on the finances and credit of  
26 the state, including the effect on long-term debt capacity and credit-  
27 worthiness, resulting from that debt;

28 (3) which long-term debt is state supported and which is  
29 supported only by revenue attributable to the project being financed

1 by the debt;

2 (4) all long-term capital lease obligations of the state;

3 (5) the volume of short-term debt issued and retired during  
4 the year by debt-issuing entities of the state;

5 (6) specific identification of each issue for which the  
6 state has pledged some form of indirect support for the debt, includ-  
7 ing any moral obligation of the state to support the debt;

8 (7) future bonding and debt capacity implications of legis-  
9 lation enacted in the previous legislative session; and

10 (8) the recommended debt issuance capacity of the state for  
11 the next two years following the year of the report.

12 (c) The state bond committee may develop written policies con-  
13 cerning debt of the state.

14 \* Sec. 16. AS 37.15.150 is amended to read:

15 Sec. 37.15.150. STAFF AND [COMMITTEE MAY EMPLOY] SPECIAL SER-  
16 VICES. The state bond committee may appoint an executive director who  
17 may, with approval of the committee, select and employ additional  
18 staff as necessary. Employees of the committee are in the partially  
19 exempt service under AS 39.25.120. If the [STATE BOND] committee  
20 considers it necessary and advisable, it may procure architectural or  
21 engineering, fiscal agent or municipal investment, legal, and other  
22 expert or specialized services at reasonable and customary fees to  
23 assist it in accomplishing the most advantageous sale of the bonds.  
24 The fees may be paid from the proceeds of the sale or advanced from  
25 the contingency fund in the Office [OFFICE] of the Governor [GOVERNOR]  
26 or otherwise.

27 \* Sec. 17. AS 37.15.450(a) is amended to read:

28 (a) The bonds shall be sold in the manner, price or prices,  
29 [SUCH] amounts or series, and at the [SUCH] time or times [AS]

determined by the committee at either public or private sale. [BEFORE SELLING A SERIES OF BONDS, THE COMMITTEE SHALL GIVE NOTICE INVITING SEALED BIDS IN SUCH MANNER AS IT MAY PRESCRIBE. IF SATISFACTORY BIDS ARE RECEIVED, THE BONDS OFFERED FOR SALE SHALL BE AWARDED TO THE HIGHEST RESPONSIBLE BIDDER. IF THE COMMITTEE DETERMINES THAT THE BIDS RECEIVED ARE NOT SATISFACTORY AS TO PRICE OR RESPONSIBILITY OF THE BIDDERS, IT MAY REJECT ALL BIDS RECEIVED.] The bonds, or each series of them, shall be sold at such a price so that the effective interest rate over the life of the bonds does not exceed 11 percent per year or that rate of interest which is 125 percent of the rate of the Bond Buyer Index of 20 Municipal Bond Average Yields for the week previous to the date of sale of the bonds, whichever is higher. Interest shall be payable annually or semiannually.

\* Sec. 18. AS 37.15.460 is amended to read:

Sec. 37.15.460. BOND RESOLUTION. The committee is authorized and directed to adopt the bond resolution and prepare all other documents and proceedings necessary for the issuance, sale and delivery of the bonds or any part or series of them. The bond resolution shall fix the principal amount, denomination, date, maturities, place or places of payment, rights of redemption, if any, terms, form, conditions and covenants of the bonds or each series of them. The committee shall also determine and provide for the date and manner of sale of the bonds, and shall provide where a [WHETHER THE] notice of sale, if any, is to be published [ELSEWHERE IN ADDITION TO THE PUBLICATION REQUIRED BY AS 37.15.450].

\* Sec. 19. AS 37.15.650(a) is amended to read:

(a) The toll facilities bonds are sold in the manner, price or prices, amounts or series, and at the time as determined by the committee, at either public or private sale. [BEFORE SELLING A SERIES OF

1 BONDS, THE COMMITTEE SHALL GIVE NOTICE INVITING SEALED BIDS. IF  
2 SATISFACTORY BIDS ARE RECEIVED, THE BONDS OFFERED FOR SALE ARE AWARDED  
3 TO THE HIGHEST RESPONSIBLE BIDDER. IF THE COMMITTEE DETERMINES THAT A  
4 BID RECEIVED IS NOT SATISFACTORY AS TO PRICE OR RESPONSIBILITY OF THE  
5 BIDDER, THE COMMITTEE MAY REJECT THE BID RECEIVED.] Bonds, or a  
6 series of bonds, may not be sold if the effective interest rate over  
7 the life of the bonds exceeds 11 percent per year or that rate of  
8 interest that is 125 percent of the rate of the Bond Buyer Index of 20  
9 Municipal Bond Average Yields for the week previous to the date of  
10 sale of the bonds, whichever is higher. Interest is payable annually  
11 or semiannually.

12 \* Sec. 20. AS 37.15.660 is amended to read:

13 Sec. 37.15.660. BOND RESOLUTION. The committee is authorized  
14 and directed to adopt the bond resolution and prepare all other docu-  
15 ments and proceedings necessary for the issuance, sale, and delivery  
16 of the bonds or any part or series of them. The bond resolution shall  
17 fix the principal amount, denomination, date, maturities, place or  
18 places of payment, rights of redemption, if any, terms, form, condi-  
19 tions, and covenants of the bonds or each series of them. The commit-  
20 tee shall also determine and provide for the date and manner of sale  
21 of the bonds, and shall provide where a [WHETHER THE] notice of sale,  
22 if any, is to be published [ELSEWHERE IN ADDITION TO THE PUBLICATION  
23 REQUIRED BY AS 37.15.650].

24 \* Sec. 21. AS 37.15 is amended by adding new sections to read:

25 ARTICLE 5. STATE-SUPPORTED DEBT.

26 Sec. 37.15.770. STATE AGENCY DEBT. (a) The state bond commit-  
27 tee shall review proposals for the issuance of debt by or on behalf of  
28 (1) the Alaska State Housing Authority acting as the Alaska  
29 State Building Authority for the purpose of providing public

1 buildings; and

2 (2) the University of Alaska.

3 (b) The committee may review the general programs and financing  
4 plans of the agency that proposes to issue the debt as well as the  
5 specific aspects of the proposed debt issue, including

6 (1) amounts;

7 (2) times;

8 (3) maturities;

9 (4) debt structure and security features;

10 (5) credit enhancements;

11 (6) use of proceeds;

12 (7) official documents;

13 (8) planned rating agency presentations; and

14 (9) selection, retention, or compensation of financial  
15 advisors, bond counsel, trustees, underwriters, and other profession-  
16 als.

17 (c) The state bond committee shall consider approval of the  
18 amount and time of sale of the debt. The committee shall approve the  
19 issuance of the debt if, in its judgment, issuance of the debt is in  
20 the best interests of the state. The committee may limit approval of  
21 the issuance of debt upon compliance with terms established by the  
22 committee.

23 (d) At the time of sale of the debt, the state bond committee  
24 shall review the bids or pricing of the debt, including discounts,  
25 underwriting spreads, and interest rates. If the committee determines  
26 that the bids or prices are not satisfactory or that the bidders are  
27 not responsible, the agency may not sell the debt.

28 Sec. 37.15.790. MUNICIPAL SCHOOL DEBT. If, at any time, the  
29 state bond committee, in its judgment, determines that the amount or

1 retirement of debt issued by municipalities and subject to reimburse-  
2 ment by the state under AS 14.11.100 is not in the best interest of  
3 the state, the committee may

4 (1) establish an amount or amounts, for any or all years  
5 before the maturity of all of that municipal debt, that may not be  
6 exceeded by the Department of Education in approving requests under  
7 AS 14.11.103; or

8 (2) establish, under AS 14.11.100(j)(3), a term required  
9 for the maturities of municipal debt authorized by local voters after  
10 March 31, 1986.

11 \* Sec. 22. AS 39.25.120(c) is amended by adding a new paragraph to  
12 read:

13 (19) employees of the state bond committee.

14 \* Sec. 23. This Act takes effect immediately in accordance with AS 01.-  
15 10.070(c).

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH S  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2300

February 20, 1986

The Honorable John Sund  
Chairman  
House Loans Committee  
P.O. Box V  
Juneau, AK 99811

Dear Chairman Sund:

Lease purchase financing was contemplated by the delegates to the constitutional convention when they incorporated Section 11 in Article IX. Statutory authority to do this type of financing was given to the Alaska State Housing Authority in 1966 where Chapter 60, SLA 1966, was enacted. A copy of that Act is enclosed for your ready reference.

Also enclosed are memoranda of the Attorney General, dated October 14, 1983, Wohlforth & Flint, dated January 17, 1984, and Birch, Horton, Bittner, Pestinger and Anderson, dated April 4, 1984. These memoranda deal with different questions arising out of lease purchase or, as it is frequently termed, lease revenue financing. As is pointed out in footnote 3 of the Birch, Horton et al., memorandum, between 1966 and 1974 ASHA financed 11 projects under the grant of authority contained in Chapter 60, SLA 1966.

In the context of this substantial history of activity in the area of lease revenue financing, I should like to reiterate that the purpose of HB 519 is 1) to establish a single landlord agency for the leasing by the state of buildings financed by lease revenue bonds and, 2) to provide the authority in the State Bond Committee to manage debt so acquired in a logical manner.

The bill merely seeks to order a potentially chaotic situation with regard to this type of financing. It does not mandate lease revenue financing any more than Section 11, Article IX, mandates such financing. Indeed, nothing in either the constitution or in statute compels the usage of such financing or, for that matter, compels the usage of any type of term financing. All public works projects could be financed through construction appropriations. All could be financed through general obligation bonds. Many, but not all, could be financed through revenue bonds. The method of financing should be chosen to accord with the best interests of the State after careful analysis of the short- and long-term implications of the financing.

As pointed out by Governor Sheffield in his transmittal letter, rating agencies have begun to take into account all state supported debt

The Honorable John Sund  
February 20, 1986  
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when measuring the creditworthiness of a state or a particular financing. It is the informed belief of the members of the State Bond Committee that to fail to enact HB 519 as applicable to all branches of government is to fail to bring order and control to the management of the state's debt.

Some concern has been expressed that the State Bond Committee would, under the terms of HB 519, be vested with the ability to thwart the will of the Legislature by refusing to issue debt or allow the issuance of debt on a whim. The State Bond Committee has been in existence since 1960 and has managed the issuance of general obligation and revenue debt sold since that time. This debt has financed a substantial number of public works for the judicial branch and the executive branch. The management of that debt in a sound manner has resulted in the state's present rating of AA by Standard & Poors and a comparable rating from Moody's, the foremost rating agencies in the United States. I know of no instance when the State Bond Committee has made a judgment as to the value of the project itself. The judgments made by the Committee have been those solely relating to the debt, and the project itself has only been of interest for the role it plays in structuring the debt.

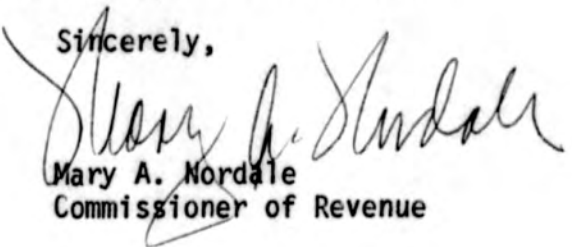
One difficulty could be presented and that would be when the dollar value of several projects, all ready for financing, exceeded the calculated capacity for new debt. Obviously, if all projects arose within one branch of government, that branch would have to establish financing priorities. If the projects arose in more than one branch, negotiations or consultations between or among those branches, conducted by the heads of those branches, would be required to establish financing priorities. The State Bond Committee would render to the negotiators what assistance it could, but since it has no authority to make selections of projects, it could not establish the priorities.

I call your attention to Section 12 of HB 519 which would require the State Bond Committee to report to the Legislature before March 31 of each year, not only as to existing debt, but also future debt and debt capacity. This is a new requirement and is sought as an additional element in the ordering and management of state debt. Such a report would enable the Legislature to make the discrete judgments it must make in authorizing or approving the projects presented during the budget process by each agency of government requiring the construction of public works projects.

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Such centralization of management and reporting will greatly assist the state in maintaining creditworthiness in the nation's financial markets and, more importantly, fulfill on an orderly basis the needs of the public for sound and balanced development of public facilities.

Sincerely,



Mary A. Nordale  
Commissioner of Revenue

MAN:m11  
86-49

Enclosures

cc: Members of House Loans Committee



# LAWS OF ALASKA

1966

Source:

SB 198 am by Conference Committee

Chapter No.

60

## AN ACT

To provide public buildings for the use of the state and its political subdivisions.

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

- \* Section 1. AS 18.55.010 is amended to read:

Sec. 18.55.010. PURPOSE OF SECS. 10 - 290 OF THIS CHAPTER. The purpose of secs. 10 - 290 of this chapter is to remedy the acute housing shortage that exists in certain localities of the state by undertaking slum clearance, low-cost housing projects, housing for persons and their families engaged in national defense activities in the state, and housing projects and housing for veterans of World War II and other citizens of the state and to remedy the short supply of necessary public buildings by providing for the financing, construction and acquisition of public buildings for lease to the state and its political subdivisions.

- \* Sec. 2. AS 18.55.100(a)(15) is amended to read:

(15) arrange or contract for the financing, design, construction and acquisition of public buildings;

for lease to the state or a political subdivision of the state in accordance with secs. 10 - 290 of this chapter.

\* Sec. 3. AS 18.55 is amended by adding a new section to read:

Sec. 18.55.105. LEASE OF AUTHORITY'S PUBLIC BUILDINGS  
TO POLITICAL SUBDIVISIONS. (a) A public building owned by the authority may not be leased to a political subdivision of the state except upon execution of a prior agreement of lease of the premises between the state and the authority. An agreement of lease shall grant an option to the state to apply rental payments made under the lease towards purchase of the premises and receive conveyance of title upon satisfaction of the purchase price. The purchase price shall be a sum equal to all costs of the authority in financing, designing, constructing and acquiring the premises leased and shall include the cost of amortizing indebtedness incurred for those purposes. Total rental payments required under the lease shall equal the purchase price of the premises leased. Upon execution of an agreement of lease between the state and the authority, the state may sublease or assign its interest in the lease to a political subdivision which satisfies the requirements of (b) of this section. A sublease or lease assignment shall include the same option of purchase and right to conveyance of title upon satisfaction of the purchase price as is afforded the state in its agreement of lease with the authority. In case of a sublease to a political subdivision, the state shall covenant with the sublessee that it will not exercise its option to purchase the premises subleased during the term of the sublease.

is a political subdivision of the  
secs. 10 - 290 of this chapter.  
ed by adding a new section to  
OF AUTHORITY'S PUBLIC BUREAU  
A public...

(b) A political subdivision may qualify for a sublease or assignment of the state's interest in a lease with the authority as authorized by (a) of this section only if

(1) the premises which are the subject of the sublease or lease assignment are sought as a replacement for a local facility which is condemned, destroyed by fire or other calamity, or is certified by a state official to be inadequate, unsafe, or otherwise unsatisfactory under the laws of the state for its intended use;

(2) the purchase price of the premises does not exceed \$2,500,000;

(3) the amount of total indebtedness outstanding on all premises subleased or assigned by the state under this section does not exceed \$7,500,000;

(4) the political subdivision agrees to assign to the state, as security for payments required under the proposed sublease or lease assignment, receipts of state taxes shared with the political subdivision, to the extent of the amount of any default in payments required under the proposed sublease or lease assignment;

(5) the Department of Commerce investigates and certifies to the governor the feasibility of a proposed sublease or lease assignment, including but not limited to certification of the fiscal capacity of the political subdivision to meet payments required under the proposed sublease or lease assignment;

(6) the proposed sublease or lease assignment is ratified by referendum vote of a majority of the qualified voters voting in a regular or special local election

provided that the voters are apprised specifically on the ballot of

(A) the term of years of the proposed sublease or lease assignment;

(B) the amount of required payments;

(C) the security required under (4) of this subsection;

(D) the option to purchase and right of conveyance; and

(E) other terms and conditions of the proposed sublease or lease assignment, as determined by the governing body of the political subdivision;

(7) the proposed sublease or lease assignment is ratified by the legislature by concurrent resolution.

(c) If a political subdivision party to a sublease or lease assignment authorized by this section fails to make timely payment of sums due to be paid under the sublease or lease assignment, the state, upon not less than 90 days' notice to the governing body of the political subdivision, may assess, levy and collect taxes within the political subdivision in an amount equal to the payments due and limited to those taxes which the political subdivision is authorized to assess, levy and collect under other provisions of law. Assessment, levy, collection and enforcement of collection shall be at the time and in the manner authorized the political subdivision under other provisions of law.

\* Sec. 4. AS 18.55.286(2) is amended to read:

(2) "public buildings" means a publicly owned structure leased to the state or a political subdivision or

ers are apprised specifically on the

the term of years of the proposed

assignment;

the state for governmental, public or educational

-5-

Approved by Governor April 7, 1966  
Actual effective date: July 6, 1966

# MEMORANDUM

State of Alaska

TO: Hon. Daniel A. Casey, Commissioner  
Department of Transportation &  
Public Facilities  
AND  
Hon. Lisa Rudd, Commissioner  
Department of Administration

DATE: October 14, 1983  
FILE NO: 366-101-84  
TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Construction financing of a public facility by lease agreement

By: *W.F.C.*  
William F. Cummings  
Assistant Attorney General  
Transportation Section-Juneau  
*James L. Baldwin*  
James L. Baldwin  
Assistant Attorney General  
Governmental Affairs-Juneau

The Department of Administration (DOA) and Department of Transportation and Public Facilities (DOT/PF) have requested our advice whether there is sufficient authority granted by law to permit a state agency to finance the construction of a public facility on state land under a lease agreement with a developer and owner of the facility other than the state. Briefly, the lease agreement consists of a conveyance of a leasehold interest in state land to a developer who constructs a facility on the land which is leased back to the state. Upon expiration of the lease agreement, the facility either reverts to the state or the state has an option to purchase it.

Using this financing technique, DOA proposes to centralize state offices in Anchorage and DOT/PF proposes to construct a legislative hall in Juneau. Under both proposals, facilities owned by others would be located on state land. <sup>1/</sup> The answers to your questions involve consideration of the issues set out below.

1. Does financing a public facility through a lease agreement violate provisions of the Alaska Constitution governing the creation of state debt?

We believe that the financing of construction by lease is valid only if terms and conditions are imposed which provide sufficient evidence that future legislatures are not bound to ap-

<sup>1/</sup> We believe that other public facilities are being studied for financing by lease agreement including facilities for the Alaska Vocational Technical Training Center in Seward and a maximum security prison.

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Commissioner of Transportation  
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Commissioner of Administration

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appropriate money for the rental. 2/ Article IX, section 8 of the Alaska Constitution prohibits the creation of public debt except for capital improvements and then only after authorization by the legislature and a vote of the people. The lease transactions proposed are a means to finance the construction of public facilities without directly appropriating from the general fund for the cost of construction or authorizing the creation of debt by selling general obligation bonds. This makes it imperative that the state's right to possess and use the facility is contingent on annual appropriations from revenue anticipated for the fiscal year in which the lease obligation is incurred. Traditionally, appropriations for lease payments are considered operating appropriations which lapse on June 30 of the fiscal year. A lease agreement which provides for termination of the leasehold if sufficient appropriations to pay rent are not enacted will negate the conclusion that a debt is created. A one-year lease with automatic annual renewal for a maximum number of years upon enactment of an appropriation to finance the annual rent has been approved as a term which negates any possibility that a debt is created. Gude v. City of Lakewood, 636 P.2d 691 (Colo. 1981). See also Glennon Heights, Inc. v. Central Bank and Trust, 658 P.2d 872 (Colo. 1983).

2. Does existing law prevent a state agency from entering into a lease agreement for the construction of a public facility?

The lease of state office space is governed by AS 37.05.220 -- 37.05.280. These statutes require a competitive bidding process with award of the contract by DOA to the lowest responsible bidder for the lease. However, the statutes provide one further requirement for office space leases which is lacking in other state contracts for the purchase of goods or services. AS 37.05.280 provides in relevant part that "no contract or lease executed after January 1, 1966, which provides for a payment or payments by the state in excess of \$12,000 annually is valid unless the use of the space to be provided for by such contract or lease has been expressly approved by the legislature by concurrent resolution." This provision requires legislative approval of virtually all leases which the state executes to procure office and other space. However, we believe that this part of the

2/ The advice given in this memorandum is consistent with the majority of state courts which have considered the question. E.g., Bulman v. McCrane, 312 A.2d 857 (N.J. 1973); State ex rel. Thomson v. Gisel, 72 N.W.2d 577 (Wisc. 1958); but see Opinion of the Justices, 79 A.2d 753 (Me. 1951).

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Commissioner of Transportation  
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statute is invalid for two reasons.

Article II of the Alaska Constitution requires that the legislature exercise the law-making power by the passage of a bill not by the adoption of a concurrent resolution. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). Furthermore, the requirement for legislative approval of a lease is a violation of the doctrine of the separation of powers. Governmental power is allocated among the three branches of government by the Alaska Constitution. Some powers are logically allocated to the executive and others to the legislature. The power to execute the law on behalf of the state is one which falls to the executive. Alaska Const. art. III, § 16. It is the role of the legislature to enact laws which establish the conditions under which the executive may enter into leases. Alaska Const. art. II, § 1. However, it is not appropriate for the legislature to reserve a veto power over the enforcement decisions made by the executive. The legislature may amend or repeal the leasing authority for DOA. However, the legislature may not usurp the executive function to lease facilities without destroying the system of checks and balances inherent in our tripartite system of government. 3/ Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

DOT/PF has limited authority to dispose of land acquired for public works other than highways. 4/ DOT/PF may "vacate land or part of it, or rights in land acquired for public work purposes" by executing and filing a deed in the appropriate recording district upon vacating. AS 35.20.070. "Title reverts to the persons, heirs, successors, or assigns in whom it was vested at the time of the taking." Id. All other disposals of land acquired for public works are conducted by the Department of Natural Resources (DNR).

Before DNR may lease state land, the public must be informed of the nature and terms of the conveyance. Alaska Const. art. VIII, § 10; AS 38.05.035(a)(14), 38.05.345. DNR, acting in

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3/ The cited portion of AS 37.05.280 was held invalid on the basis of separation of powers and improper exercise of the law making power by the superior court in Marine View Tenants' Association v. ASHA, No. 1JU-80-1037 CIV (Nov. 1, 1981). That case was not appealed. However, this decision has limited precedential value until a final decision is rendered by the Alaska Supreme Court.

4/ AS 19.05.070 grants broader discretion to dispose of land acquired for highway purposes.

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Commissioner of Transportation  
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Commissioner of Administration

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concert with DOA, must prescribe a disposal procedure for state land which provides the safeguards required by law and permits the construction of a facility which the state will lease from the developer. That procedure may include the grant of a lease under AS 38.05.315 to the state agency responsible for the facility. The lease granted by DNR will allow the lessee agency to sublease the land for development of a leased public facility under specified terms which will include prior DNR review and selection of the sublessee according to AS 37.05.230. The sublease of the land will continue in effect long enough to secure financing for the facility. The payment of rent under the lease to the state agency for the facility would be contingent on the enactment of annual appropriations. If the lease is terminated by the failure to appropriate, the lessor would be the successor to the state agency's right to possess the building until reversion or exercise of the option to purchase.

3. Does existing law prevent a state agency from obtaining financing from a municipality to design and construct a state-occupied facility on state-owned property and then enter into an agreement with the municipality for pay-back without competitive bidding?

DOT/PF is proposing to finance the construction of the legislative hall by lease agreement. The City and Borough of Juneau (city) would sell tax exempt municipal revenue bonds, secured by the lease payments to be paid by the state. The state would then supervise the design and construction of the facilities and be the contracting authority.

As a general proposition, DOT/PF has the authority to make contracts with municipalities for public works. AS 35.05.-040(7). The purpose of this form of contract is further defined by AS 35.15.080(c), which provides in relevant part, "[a] municipality may request joint assumption of responsibilities with the department relating to the planning, design, and construction of a public works project." The term "public works" is very broad and includes public buildings. A public building is one which is "owned or controlled and held by the state for government or public use." AS 35.25.020(5) and (6).

We believe that DOT/PF may contract with the city for the planning, design and construction of the legislative hall. We reach this conclusion because under the provisions of the lease agreement, the state will have control over the building which it will hold for government or public use. Additionally, the state will have significant ownership interests in the facility because it holds fee title to the land upon which the build-

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ing will be constructed and at the expiration of the lease agreement, will own the building free of the interest of the city. However, a contract may not alter the city's responsibility for repaying the long term debt established to finance the cost of construction of the facility.

Our memorandum of May 9, 1983 indicated that AS 37.05.-230 generally required competitive bidding to award a lease agreement which provides for the construction of a public facility. However, competitive bidding is not required in all instances of public contracting. McKinnon v. Alpetco, 633 P.2d 281 (Alaska 1981). The lease transaction under consideration may present an instance where it is in the best interests of the state to negotiate directly with a municipality rather than offer the contract to the lowest bidder. See AS 37.05.230(2). A decision to negotiate directly requires a detailed finding of fact in writing by DOA. In the finding of fact, the commissioner must justify the conclusion that negotiation is in the best interests of the state. A municipality enjoys a preferred status when dealing with the state. Intergovernmental contracts are not governed by the same considerations applicable to the state when it is participating in the open market place. It is probable that a facility can be financed cheaper with municipal revenue bonds than by private means. It may be futile to obtain any advantage from the competitive bid process. If DOA sets out ultimate facts in the finding which supports the conclusion that negotiation furthers the public's interest, then competitive bidding is not required. Libby v. City of Dillingham, 612 P.2d 33, 45 (Alaska 1980)(Rabinowitz, J. concurring). However, the award without competitive bidding would be subject to judicial review to determine whether the decision was arbitrary, capricious or an abuse of discretion. McKinnon, 633 P.2d at 287; Hertz Drive-Ur-Self Systems, Inc. v. Tucson Airport Authority, 299 P.2d 1071 (Ariz. 1956); Volume Services Division or Interstate United Corp. v. Canteen Corp., 369 So. 2d 391 (Fla. App. 1979).

4. Does the appropriation to finance the site acquisition and planning for a legislative hall contain defects which prevent DOT/PF from proceeding with the project?

Section 95, ch. 106, SLA 1983 appropriates \$4,500,000 to DOT/PF plus other money received for land acquisition and facilities planning in Juneau. The land acquisition, planning, and preliminary design efforts for the legislative hall will be paid from this appropriation.

This section makes an appropriation from two sources: \$4,500,000 from the general fund and an unspecified amount from

Hon. Daniel A. Casey,  
Commissioner of Transportation  
Hon. Lisa S. Rudd,  
Commissioner of Administration

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an unspecified source. 5/ This appropriation is for land acquisition and facility planning in Juneau.

The appropriation contains a unambiguous statement of purpose that DOT/PF is appropriated at least \$4,500,000 for land acquisition and facilities planning in Juneau. There is no specification of the public facility upon which the appropriation may be expended. The use of the \$4,500,000 appropriated for site acquisition, planning, and preliminary design for the legislative hall is within the purpose set out in the appropriation. However, the appropriation of money which may be received from other sources presents a serious legal issue. Because no amount is stated for the appropriation, sufficient authorization may not exist to expend the money beyond the \$4,500,000. 6/ Nonetheless, the unspecified source of the appropriation is presumably severable from the general fund part of the appropriation which is stated with specificity in the amount of \$4,500,000. AS 01.10.-030. Consequently, until you begin receiving amounts from "other sources," whatever they may be, the expenditure of general fund money authorized by the appropriation is not a problem.

#### CONCLUSION

We believe there is sufficient authority under existing law to finance the construction of a public facility by lease. However, because this financing technique is not specifically authorized by law, we cannot with absolute certainty advise you that a court would agree with our opinion. You should make allowance for this risk when you plan further development of each project to be financed by the lease purchase method.

WFC:ebc:prm/JLB:pjg

cc: Hon. Harold J. Reynolds, Jr.  
Commissioner  
Department of Education

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5/ We presume "the other money received" was intended to include money to be provided under a lease agreement with the city as discussed in section 3, supra.

6/ Each appropriation must state an amount. AS 24.30.030. It is not necessary for the appropriation Act to set out the amount in dollars and cents if the appropriation contains provisions which make the amount capable of mathematical calculation. *Orbison v. Welsh*, 179 N.E.2d 727 (Ind. 1962).

MILT

ERIC E. WOHLFORTH  
ROBERT B. FLINT  
TIMOTHY G. MIDDLETON  
PETER ARGETSINGER  
ROBERT M. JOHNSON  
KENNETH E. VASSAR

LAW OFFICES  
WOHLFORTH & FLINT  
A PROFESSIONAL CORPORATION  
900 WEST 5TH AVENUE, SUITE 600  
ANCHORAGE, ALASKA 99501-2086

TELEPHONE  
AREA CODE 907  
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ALASKA DEPARTMENT OF REVENUE

January 17, 1984

JAN 30 1984

OFFICE OF THE COMMISSIONER

MEMORANDUM

Constitutional Debt Limitation/State  
and Municipal Leaseback Transactions

This memorandum reviews cases relating to state and municipal leaseback transactions, focusing on the viability of such transactions under constitutional debt limitations. For purposes of clarity, it may help to begin by defining some of the terms used in this paragraph.

Our concept of "leaseback transaction" generally includes the following basic elements:

(1) one party is a state or local government which cannot or will not directly finance a capital project (with "capital project" here generally limited to those capital projects which do not generate user income other than in the form of rent from the state or local government users);

(2) a second party to the transaction is the financing entity, which may be either a public or private corporation;

(3) the financing mechanism generally involves the issuance of bonds; and

(4) the relationship between the state or local government and the corporation is established by a lease agreement under which the state or local government agrees to lease from the corporation the capital project financed with the corporation's bonds; there may also be a preceding lease or sale of land from the state or local government to the corporation for use as the site of the capital project.

By "constitutional debt limitations" we refer to those provisions in the various state constitutions which inhibit the ability of a state or local government to incur debt. These limitations generally fall into one of two categories: (1) those which prohibit debt absent voter approval except for certain

enumerated purposes; and (2) those which limit permissible debt to a particular amount, usually expressed as a percentage of revenues. Alaska's debt limitation falls into the former category, and, because of their relevance to proposed leaseback transactions in Alaska, we present here in full the four pertinent sections from the Constitution of the State of Alaska, Article IX:

SECTION 8. STATE DEBT. No state debt shall be contracted unless authorized by law for capital improvements or unless authorized by law for housing loans for veterans, and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.

SECTION 9. LOCAL DEBTS. No debt shall be contracted by any political subdivision of the State, unless authorized for capital improvement by its governing body and ratified by a majority vote of those qualified to vote and voting on the question.

SECTION 10. INTERIM BORROWING. The State and its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year, but all debt so contracted shall be paid before the end of the next fiscal year.

SECTION 11. EXCEPTIONS. The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation. The restrictions do not apply to indebtedness to be paid from special assessments on the benefited property, nor do they apply to refunding indebtedness of the State or its political subdivisions.

We note also the presence of Article IX, Section 16, of the Alaska Constitution, which establishes a ceiling on permissible annual appropriations by the State. While this section is not per se a limitation on debt (the section expressly exempts from its provisions appropriations of bond proceeds), it may have some effect on the feasibility of a proposed leaseback transaction to the extent that it limits the state's ability to make appropriations.

Finally, among our list of defined terms is "lease participation certificate." By this, we refer to the financing instrument used in a lease participation transaction. A "lease participation transaction" has the same basic elements described for a "leaseback transaction" with one exception: instead of or in addition to issuing bonds to finance the capital project, the corporation, as lessor of the project, issues lease participation certificates which entitle their holders to a share of the lease revenues generated by the project.

With these preliminary matters established, we proceed now to an overview of the research we have completed with regard to leaseback transactions and constitutional debt limitations.

#### OVERVIEW

In preparing this memorandum, we have reviewed some 47 cases decided in 26 states. The earliest case was decided in 1939, the most recent in 1982. There are earlier cases which we declined to include in this survey, primarily because of the existence of more recent cases in their jurisdictions. For ease of reference, we will refer to those cases which have invalidated leaseback transactions as invalidating cases and to those cases which have upheld leaseback transactions as validating cases.

While legal research can seldom, if ever, be satisfactorily reduced to figures and statistics, some of the numbers revealed by our research may be of interest. Of the 47 cases we reviewed, 21 were invalidating cases and 26 validating. Among the 26 states in which these 47 cases were decided, 16 states can be considered validating states in the sense that the most recent decisions in those states are validating decisions. The remaining 10 states have only invalidating decisions, but only two of those states -- Ohio and New Mexico -- have considered the question more than once. Of the 16 validating states, 10 have considered the question more than once. Six of the validating states had early invalidating decisions followed later by validating decisions. In no state has an invalidating decision followed a validating decision.

On the following pages of this memorandum, we will generally follow a chronological order in presenting the cases reviewed; however, three states -- New Jersey, Wisconsin, and Missouri -- have had such extensive judicial review of leaseback transactions that their cases are most instructive if viewed apart from the others. Therefore, the following pages will begin with cases decided in New Jersey, Wisconsin, and Missouri and will then proceed with a chronological review of the cases from the other states.

#### NEW JERSEY

New Jersey's supreme court has decided four leaseback transaction cases. Its first decision, McCutcheon v. State Building Authority, 97 A.2d 663 (N.J. 1953), became the most cited of the leaseback transaction cases of all the states. McCutcheon has been cited approvingly or for support in the invalidating cases of Arizona, Iowa, Massachusetts, Ohio, Oregon, Washington, West Virginia, and Wisconsin. It has also been cited and then ignored, distinguished, or dismissed by many of the validating cases.

In 1968, the New Jersey court expressed some clear misgivings about its McCutcheon decision, though it did not expressly overrule the decision at that time. In 1973, the court fortified the impression created in the 1968 case that it no longer endorsed McCutcheon. Again, however, the court did not expressly overrule the decision at that time. A New Jersey Appellate Court summed up the status of McCutcheon in 1981 with the following comment: "it is apparent that as precedent the case is dead; it simply has not as yet been interred." Enourato v. New Jersey Building Authority, 440 A.2d 42, 48 (N.J. Appel. 1981). Final interment arrived in 1982 when Enourato was appealed to the New Jersey Supreme Court, which expressly overruled McCutcheon.

The effect of McCutcheon on other state courts which have reached invalidating decisions should be noted. We listed above eight states whose courts have reached such invalidating decisions. Three of these states -- Arizona, West Virginia, and Wisconsin -- have since had validating cases decided in their supreme courts. The remaining five states have not had any other post-McCutcheon cases. It will be interesting to note the effect, if any, which the overruling of McCutcheon has on those states as future cases come before their courts.

McCutcheon involved a statutorily created public corporation known as the State Building Authority. The sole business of the Authority was to provide for the construction and acquisition of buildings through the issuance of its bonds. The source of income to the Authority from which the bonds were to be

repaid was the leasing of the buildings to the state and its various departments and agencies. Under the Authority's enabling statutes, the lease contracts would be "valid and binding upon the department, agency, or instrumentality of the State, notwithstanding that no appropriation was made or provided to cover the cost or estimated cost of the contract." 97 A.2d at 665.

Neither the statutory nor the lease provisions set forth by the court in its opinion indicate whether or under what circumstances title to the property would be transferred to the State; however, the statute did authorize the Authority to convey property it acquired. In any event, the most significant concern to the court, as reflected in the following passage from the opinion, was whether the lease contracts were actually purchase contracts:

While in form a way of providing the State with leasehold interests in building facilities for public use, in reality the design of the act is to enable the State by contracts of purchase to acquire for state use buildings possessed and constructed by the Authority by means of bond issues sustained by the State's promise to supply in the guise of rentals sufficient money to liquidate the bonds, available only through the medium of annual appropriations. And this in disregard of the constitutional debt limitation and the restraints laid by the organic law upon the appropriations process. There is no pretense of conformance with the debt limitation provision; there was no submission of the project to the electorate .... The legislation proceeds upon the hypothesis that the fulfillment of the project will not burden the State with a debt or liability within the constitutional sense. But in this the accent is on the external appearance rather than the substance. The label is unimportant; it is the essence that controls. It is an obvious truism that constitutional limitations may not be set at naught by indirection.

97 A.2d at 668. It was this piercing of the lease contract to unveil an underlying purchase agreement which primarily led the court to conclude that the transaction was governed by, and invalid under, the State's constitutional debt limitations.

Another important factor to the court was the nature of the Authority. Regarding this factor, the court stated:

There is for the reasons stated, a radical difference in the relationship between the State and the Authority and the State and a private corporate lessor....The Authority is not an independent autonomous public corporation. It may lease its building facilities only to the State, its departments, agencies, and instrumentalities....And, quite apart from the other considerations heretofore adverted to, the State's taxing power is the sole source of its revenue.

97.A.2d at 671. The court's apparent perception of the Authority as, in essence, the alter ego of the State involved in a transaction which the court viewed as, in essence, a purchase agreement created the situation necessary for the court to reach its conclusion. From the court's perspective, it was reviewing, in essence, a capital construction contract entered into by the State without the required voter approval. The result was inevitable.

As noted above, the statute made the lease payments valid and binding against the state agencies entering into the lease contracts even if the legislature failed to make appropriations for such payments. While the meaning of the statute is not clear, one might have expected the court to use the statute to conclude that any lease entered into under it would be prohibited debt by virtue of its apparent attempt to avoid the appropriation process. Instead, the court virtually ignored the statute. In fact, the following passage, which should most likely be considered as dicta, reflects the opposite situation -- one in which there is no obligation to make payments except to the extent that appropriations so provide:

The constitutional debt-limitation provision is not limited in quality and scope to debts enforceable by action. It has in view the temptation or inducement and incentive to make appropriations for "debts" beyond the prescribed amount, unless approved by the people in the manner ordained. Moral and ethical compulsions are not to be allowed to override the constitutional safeguard against improvidence and the integrity of the State's economy.

97 A.2d at 671

By the court's own account, McCutcheon stood as a rigid enforcement of the state's debt limitation provisions. Any leaseback transaction plan which reflected any indicia of a purchase -- whether by transfer of title at termination of the lease, or by the holding of title by a public corporation, or by lease payments fashioned to pay for debt service on the bonds -- would likely have failed before that court, at least to the extent that one party to the plan was a public corporation whose only customer was the State.

Fifteen years after McCutcheon, the New Jersey Supreme Court again considered a leaseback transaction case, this time with a markedly different result. The second of the New Jersey cases was Clayton v. Kervick, 244 A.2d 281 (N.J. 1968). The opinion was written by Justice Jacobs, the only remaining member of the McCutcheon court and a dissenter in that case (along with Justice, later to become Mr. Justice, Brennan).

The statute in Clayton established the New Jersey Educational Facilities Authority. The Authority was empowered to borrow money and issue bonds to construct projects to be leased to public and private colleges. The projects were anticipated to be revenue producing projects (such as dormitories), and the revenues they produced were primarily the source from which lease payments were to be derived. To this extent the transaction in Clayton was not a "leaseback transaction" as we have defined the term for purposes of this memorandum, and, indeed, it was the revenue-producing character of the projects upon which the court ultimately distinguished the Clayton situation from the McCutcheon situation.

Nevertheless, before distinguishing McCutcheon, the court referred approvingly for nearly two full pages in its opinion to the dissent in McCutcheon and to cases from other states which had rejected the majority opinion in McCutcheon. As to the McCutcheon dissent and the cases from the other states, the court stated:

these decisions, along with the dissent in McCutcheon, appear to us to be clearly the more persuasive....

244 A.2d at 281. Although the court was able to find a way to distinguish, rather than expressly overrule, McCutcheon its disenchantment with the earlier case was apparent.

Thus, while Clayton, is not, strictly speaking, a leaseback transaction case under our definition, its use by the court as the vehicle to undercut McCutcheon, to warmly embrace

the McCutcheon dissent, and to cite approvingly the leaseback transaction cases from other states rejecting the McCutcheon thesis makes the case important for our purposes. Fifteen years after writing his dissent in McCutcheon, Justice Jacobs was finally able to incorporate into a majority opinion his thoughts about the McCutcheon case. Taking full advantage of the opportunity, he recorded the following pertinent comments, among others:

In their separate opinion, the dissenting justices [in McCutcheon] referred to the fact that the generally accepted accounting practice throughout the country does not encompass future rents as debts or liabilities and that corporate balance sheets would be examined in vain for references to lease rentals payable in future years....

The majority in McCutcheon apparently viewed the rental plan as a purchase rather than a lease and as evasion rather than avoidance of the debt limitation....But, as the dissent pointed out, leases between affiliated governmental bodies are common and unquestioned in our society and there was no plausible basis for dishonoring the carefully formulated leasing arrangement between the independent Building Authority and the non-autonomous agencies of the State.

244 A.2d at 283.

Although the Clayton court chose to distinguish rather than overrule McCutcheon, and though much of what the Clayton opinion had to say about McCutcheon was, therefore, simply dicta, it should have been reasonably clear that Clayton marked the deathknell for the earlier case. Still, five years later, a New Jersey Superior Court apparently had not yet clearly received the message.

Bulman v. McCrane, 302 A.2d 163 (N.J. Super. 1973), involved the following issue as explained by the court:

Put concisely, the problem presented is whether a lease-purchase arrangement whereby a state agency contracts with a builder to erect a facility on state-owned land and lease the same to the State for a term of

years at stipulated annual rentals, with an option to purchase at intervals during the term, title to revert to the State at the expiration thereof, violates the debt limitation clause of the State Constitution.

302 A.2d at 164. After reviewing McCutcheon and Clayton, the Superior Court concluded that neither provided guidance for a situation involving a lease to the State of a non-income producing facility by a private corporation. While it avoided using either case as authority for its decision, the court nevertheless reached the McCutcheonesque conclusion that, while the arrangement was cast in the form of a lease, it was, in essence, a purchase agreement. As such, the court determined that the arrangement created prohibited debt. The reason for the court's perception of the arrangement as a purchase agreement basically rested upon the fact that the lease provided for reversion of the building (which was built on state-owned land) to the State at the expiration of the lease.

Nine months later, the New Jersey Supreme Court reversed. Bulman v. McCrane, 312 A.2d 857 (N.J. 1973). The court stated:

The fact that the State may be advantaged by ultimately acquiring title to a potentially useful building as the residue of a transaction otherwise faithful to the theory of a lease...represents no good reason for judicial assiduity in laying hold of that circumstance to destroy the transaction as an unconstitutional debt. The sole obligation of the State here is for future installments of rent. They will presumably be paid out of current revenues as annually appropriated for the purpose. Under settled principles, there is no present debt in the constitutional sense.

312 A.2d at 863- 864 (footnote omitted).

The most recent of the New Jersey leaseback transaction cases is Enourato v. New Jersey Building Authority, 448 A.2d 449 (N.J. 1982). The statute in this case, very much like that in McCutcheon, created a state building authority the sole function of which was to construct buildings for lease to the State. Rental payments, made subject to annual appropriations, were the sole source of repayment of the bonds issued by the Authority to finance the construction of the buildings. The bonds, of course,

expressly stated on their face that they were the obligations of the Authority and not the State. In a relatively brief review of the question, the court rejected the claim that the Authority's bonds would create a state debt. The court noted:

The Authority's creditors have notice that their only remedy lies against the Authority.

Nor does the liability of the State on its lease agreements with the Authority create any debt of the State. Both the statute and the lease make clear that all rent payments from the State are subject to legislative appropriations....

Since the Building Authority Act does not authorize the creation of any debts by the State, the debt limitations clause...does not apply to the Authority's debts or any obligations of the State on its lease agreements with the Authority. We have already disapproved the contrary result reached by a sharply divided Court in McCutcheon...and now expressly overrule that case.

448 A.2d at 456.

These New Jersey cases, from McCutcheon to Enourato, demonstrate an evolution in judicial thinking with regard to leaseback financing. Several of the early cases took the view expressed in McCutcheon of rigid adherence to debt limitation provisions. Under that view, the enforceability of an obligation claimed to exist against a state was not determinative. Any arrangement which appeared to be or could plausibly be said to be a purchase agreement was equated with debt. If there were any moral obligation to make payments or even if the court surmised that, because of practical considerations, the legislature would most likely make the appropriation for the payments regardless of the existence of any moral or legal compulsion, that, too, could be equated with debt. We believe the modern trend and certainly the majority position is more closely attuned to the Enourato view. As long as the obligation of the state under the lease agreement is clearly subject to annual appropriation by the legislature, as long as the bonds issued to finance the project clearly identify the foregoing and clearly indicate that they are not the obligations of the state, as long as state property is not encumbered (a factor extensively discussed in the Wisconsin cases reviewed below), and as long as the enabling statutes

authorizing the transaction reflect all of the foregoing, the likelihood is that the transaction will be upheld.

#### WISCONSIN

Like New Jersey, Wisconsin's supreme court has reviewed four cases concerning leaseback transactions. Unlike New Jersey, however, all of Wisconsin's cases were decided in a two-year period (1953 -- 1954), and, in its four decisions, the Wisconsin court has not experienced the dramatic change in attitude reflected in New Jersey's cases.

The first Wisconsin case was State v. Giessel, 65 N.W.2d 529 (Wisc. 1954) (herein "Giessel I"). The plan in Giessel I called for the incorporation of a non-profit corporation by the State Building Commission. The Commission would lease state land to the corporation. The corporation would construct a building on the land and lease both land and building back to the Commission for the use of state agencies. As security for its loans, the corporation would have the ability to mortgage its lease of the land and of any buildings on the land. One project of the corporation was to construct an addition to an existing state office building. To secure financing for the project, the corporation intended to mortgage the lease to the corporation of the land and existing building.

The court found no fault with the financing plan except with regard to the mortgaging of an interest in state property. As to such mortgaging, the court declared the plan unconstitutional and void, stating:

Logically there would seem to be just as much coercion on the part of the state to pay an indebtedness, for the payment of which existing state property, or an interest therein, had been pledged as security but the state had not otherwise agreed to pay the debt, as

the state had made itself directly liable for the payment thereof.

65 N.W.2d at 540.

Three months later, the court decided State ex rel. Rogers v. Milligan, 66 N.W.2d 326 (Wisc. 1954) (herein "Milligan I"). This case involved virtually the same facts as in Giessel I and was decided in accordance with that case.

Early in 1955, the court had before it State ex rel. Rogers v. Milligan, 69 N.W.2d 485 (Wisc. 1955) (herein Milligan II). Once again, the facts were virtually identical to Giessel I and Milligan I except that here the building company as lessor of the land (which was owned by the city and leased to the building company) and building, instead of mortgaging its leasehold interest in the land, would be able to re-enter and take possession of the land and building if the city failed to pay its rent. The court saw no distinction in this feature of the lease and ruled the plan unconstitutional, noting, however, that if the building company were also the owner of the land "this objection to the lease would be eliminated." 69 N.W.2d at 487.

Finally, toward the end of 1955, the Wisconsin court considered State ex rel. Thomson v. Giessel, 72 N.W.2d 577 (Wisc. 1955) (herein "Giessel II"). Decided only two years after McCutcheon, Giessel II became the second most prominent case on leaseback transactions (after McCutcheon). In a lengthy analysis of the leaseback transaction before it, the court considered McCutcheon and rejected the conclusions of that case, stating:

That case is distinguishable from the present situation in that it rests on legal premises which this court has not adopted....This court....has heretofore held that no debt is created unless the state itself is under a legally enforceable obligation.

72 N.W.2d at 589. The Wisconsin court indicated various distinguishing factors between the two cases and between the constitutions of the two states. Whether it was a result of those distinguishing factors or, more likely, a result of a plain disagreement between the two courts, the Wisconsin court reached conclusions opposite to those of the New Jersey court with respect to two significant legal issues: first, as noted above, the Wisconsin court found no constitutional debt in the absence of a legally enforceable obligation; and second, the Wisconsin court, though it did not find an installment purchase contract to exist in the plan before it, indicated that even if such contract did exist it would not necessarily create state debt (this second conclusion being no more than a corollary to the first in that a purchase contract, to the same extent as a lease, creates no debt in the absence of a legally enforceable obligation).

The plan before the court in Giessel II was a typical leaseback transaction involving a private, nonprofit corporation as the financing entity. The corporation was empowered to either purchase or lease land from the state for the purpose of constructing buildings on the land and either leasing or subleasing,

depending upon the interest initially conveyed to the corporation, the land and building to the state. There were three causes of action presented to the court in Giessel II.

The first cause of action related to a lease and sublease. Rent on the sublease was calculated to enable the corporation to retire the indebtedness to be created in the construction of the building. The sublease provided that "it is mutually agreed by the parties hereto that the corporation, its successors or assigns, hereby waive, relinquish and release any and all rights of re-entry, or to re-take possession of the herein demised premises, and hereby agree not to exercise any such rights, in the event of nonpayment of rent or of other defaults hereunder by the University, its successors or assigns." 72 N.W.2d at 580. The second cause of action involved the same type of arrangement with the same re-entry waiver.

The third cause of action related to a sale of land by the state to the corporation. The corporation was to build an office building on the land and lease it to the state building commission. The loan by the corporation to finance the construction was to be secured by a mortgage on the land. The lease provided that if the legislature failed to appropriate money for rental or for any other breach of the lease, the corporation would be entitled to "enter on, and expel, the commission from said premises forthwith, and without notice, and the corporation may from time to time apply all monies held by the corporation as security for faithful performance by the commission of its covenants and undertakings hereunder, to the payment of all damages sustained by the corporation by reason of any such default, which damages shall include, without limiting the generality of the foregoing thereby, the cost of decorating, altering and improving the premises and brokers' commission incurred in reletting the same, and also the difference between the net income actually received by the corporation from said demised premises upon reletting and the rent limited herein." 72 N.W.2d at 581. The lease further provided that it was made subject to a mortgage made by the corporation to its lender. Under the mortgage, rents to be paid by the commission were pledged to the lender.

With regard to these causes of action it should further be noted that (1) the state consented to a pledge or assignment of the state's obligation to pay rent by the corporation to its lender; (2) the state purchased equity in the building projects described in the first two causes of action in amounts greater than fifty percent of the cost of the projects; and (3) the state was authorized to use income derived from existing state buildings to pay the rent on the building described in the first cause of action.

The court first considered whether the state's consent to the assignment of its rental payments to the corporation's lender created debt. The court ruled that it did not and referred to the principle enunciated in Giessel I that the payment of future rent is not a presently existing debt. 72 N.W.2d at 584. The court noted that the assignment of the rents simply changed the party entitled to receive the rents if paid and did not obligate the state to pay the corporation's obligations.

The court next considered whether the state's investment in the projects led to prohibited debt. The court rejected the contention, stating that the investment did not obligate the state to pay all or any portion of the sums borrowed by the corporation to construct the buildings "even though good judgment may dictate that it do so voluntarily". 72 N.W.2d at 586.

The court next encountered the old McCutcheon argument that the leases and subleases were, in effect, contracts of purchase which created impermissible state debt. As noted above, the court chose not to follow McCutcheon and adhered to its general principle that where there is no obligation against the state to make payments, whether under a lease or under a purchase contract, there can be no debt.

Finally, the court considered whether the state's agreement to use income from existing state buildings to pay the rent on the building leased from the corporation created a state debt. The court noted that the nature of the fund from which the rental payments were to come had no bearing on the nonenforceable and contingent nature of the state's obligation and, therefore, did not affect the court's determination that no debt had been created.

To the degree that McCutcheon was rigid, Giessel II can be said to be flexible in considering its constitution's debt limitation provisions. Giessel II represents the position that as long as the state's obligation is nonenforceable and contingent and as long as there can be no loss of state-owned property there is no state debt.

#### MISSOURI

The first of the Missouri cases is Board of Public Buildings v. Crowe, 363 S.W.2d 598 (Mo. 1962). The financing entity in that case was a public corporation which had authority, once it constructed a building in a city, to require any state agency which occupied rental quarters in such city to rent space from the corporation's building and to contribute from funds

appropriated for such agency's support a proportion of the rentals of the building. It was argued in the case that the payment of rentals from funds appropriated to the state agencies and taken from revenue raised by taxation would create a "liability" of the state. The court noted that no rents could be paid by any agency unless the legislature appropriated money to that agency. Once such an appropriation was made, the money lost its character as general state revenue. The court rejected the contention and sustained the transaction.

Crowe was followed in 1971 by New Liberty Medical and Hospital Corporation v. E. F. Hutton and Company, 474 S.W.2d 1 (Mo. 1971). In this case the Missouri court did find constitutionally prohibited indebtedness arising from the provisions of the lease agreement used in the leaseback transaction. Under the agreement, the hospital district (which was subject to the state's constitutional debt limitations) was obligated unconditionally to pay rentals "without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstances whatsoever." 474 S.W.2d at 6. The court noted that

This is more than the usual obligation of lessee to pay rent for premises furnished. It is an unconditional undertaking to pay a sum total which will equal the principal and interest on the debentures plus taxes, costs and certain other items over a 30-year period, even if for some reason the premises become unavailable for use of lessee. This is assuming indebtedness which must be paid in all events.

474 S.W.2d at 6. Not surprisingly, the court invalidated this leaseback transaction. A similar lease agreement was used in the third Missouri case, Scroggs v. Kansas City, 499 S.W.2d 500 (Mo. 1973), and it, too, was invalidated by the court.

The last of the Missouri cases was St. Charles City-County Library District v. St. Charles Library Building Corporation, 627 S.W.2d 64 (Mo. 1981). Like the lease agreement in the Colorado Gude decision, discussed later in this memorandum, the district here was able to avail itself of annual options to renew. Because of this feature, the court distinguished Scroggs and held that there were no long-term repayment obligations created on the part of the district and, hence, no violation of the constitutional debt limitations of Missouri.

OTHER STATES

Having reviewed the cases of three of the most active courts in the leaseback transaction area, we proceed in this part to review the remaining cases from the other states. As noted earlier, this review will proceed in chronological order.

The earliest case in our survey is State v. Griffith, 22 N.E.2d 200 (Ohio 1939). The leaseback transaction in this case involved a public corporation which constructed additions to state mental hospitals and subleased the buildings back to the state Department of Public Welfare. Under their contract, the department pledged "all and every part of its available source of income" to pay the rent on and to maintain the buildings. There were a number of elements to the transaction to which the court took exception in invalidating the arrangement.

While the court accepted the concept that pure revenue bonds (that is, those payable solely from the revenues generated from the project financed with the bonds) were acceptable under constitutional debt limitations, the court could not accept a general obligation bond of a public corporation. This was particularly so in a situation, as in this case, where the public corporation was joined in its obligation by the Department of Public Welfare

The court noted that

the obligation of the Department of Public Welfare of the state of Ohio under its contract with the authority to pay as rental for the state property turned over to the authority the sum of \$421,500 per annum for twenty-five years, plus other expenses of the authority is an absolute and outright obligation of the department, an arm of the state, on account of such bonds. In addition the department obligates itself to liquidate the indebtedness to the authority by pledging "all and every part of its available sources of income" and "to fix the amount or amounts to be charged and collected for the support of patients and inmates of the hospitals under [its] control...so as to be sufficient in the aggregate to provide available funds to pay the maintenance costs of said buildings...and to pay the Public Institutional Building Authority the sums" promised....

22 N.E.2d at 205. The court additionally disapproved of the pledging of income derived from existing buildings in addition to the income to be derived from the buildings financed with the bonds. The court reasoned that "to the extent that the income from the use of these buildings is diverted to the payment of rental to the authority for the purpose of servicing these bonds, the general revenues from taxation to support these institutions must necessarily be increased to the same extent. The income from the institutions ought to be increased, by reason of the new structures, but there will also be greater expense in administration and upkeep." 22 N.E.2d at 205.

Plainly, the most serious problem in the Griffith situation was the outright pledge by a department of the state to pay a sum certain annually under contract with the corporation. Because of the number of concerns expressed by the court, it is difficult to surmise how a provision making all payments subject to annual appropriation by the legislature might have changed the court's conclusion, but such provision could only have helped the situation.

In 1941, New Mexico's supreme court rendered the first of its two leaseback transaction cases, State Office Building Commission v. Trujillo, 120 P.2d 434 (N.M. 1941). Trujillo presented a lengthy and considered analysis of leaseback transactions in the light of constitutional debt limitations and became another oft-cited and significant case in the area.

As much as any other case in the field, Trujillo clearly pointed out the dual considerations inherent in any leaseback transaction involving a public corporation. The court carefully considered the relationship of the public corporation in Trujillo to the state and then considered the nature of the obligation entered into by the state itself.

The statute creating the corporation in Trujillo designated it "a public body corporate as an agency of the State." The court immediately seized upon this language and noted that "it is through such agency that the State is to act, and being an agency, its acts are the acts of the State." 120 P.2d at 440. The conclusion that the bonds of the corporation are then debts of the State itself could hardly be avoided from that point. It may not be likely that the same difficulty would be encountered in Alaska considering the Alaska Constitution's express reference to obligations of public corporations as exceptions to this state's debt limitation provisions. (Constitution of the State of Alaska, Article IX, Section 11); however, it is certainly advisable in any event to give the courts a clearer indication that a separate and independent legal entity is intended to be

created as has generally been done in the statutes creating Alaska's present public corporations.

From the perspective of the obligation created by the other state agencies in entering into the lease contracts, it was urged upon the court that the rental payments should not be considered debt for the reason that they amounted to current administrative expenses. This, of course, was the argument accepted by the Wisconsin court in *Giessel II*; however, the facts in this case did not permit such a conclusion. There was no provision in the agreement or in the statute making the payment of rent by the state agencies contingent upon appropriation for the purpose; in fact, once the agencies entered into the lease agreement, both the statute and the agreement prevented them from terminating the lease except under narrowly specified circumstances. As the court noted:

Subject only to the one condition set out in said section, the state would be obligated to continue payment of rentals until the indebtedness of the Commission was satisfied. This would mean, so long as the agencies did not recede from the lease agreements under the one specified condition, that future legislatures would be bound to provide appropriations for payment of rentals.

120 P.2d at 448 (emphasis in original). The lesson from this aspect of the case is the now familiar refrain: the obligation of the state agency to pay rent must be contingent upon the legislature's decision to appropriate for that purpose. Such a provision might not have saved the case before a court such as that in McCutcheon, but it could have made a difference in many of the cases.

The next leaseback transaction case was Opinion of the Justices, 79 A.2d 753 (Maine 1951). In this lone entry into the leaseback transaction arena by the Supreme Court of Maine, the state senate presented to the Justices a proposed leaseback transaction the only significant feature of which was a statutory provision which appeared to make it mandatory upon the state and the public corporation to enter into a lease agreement upon completion of construction of the building by the corporation. The lease agreement was to provide rents sufficient to retire the corporation's bonds. There is no provision indicating that rental payments by the state were subject to appropriations.

The court foreshadowed the McCutcheon analysis by finding the "so-called" lease to be a contract of purchase.

The so-called rental is not true rent, to wit, payment for the use of property. The total amount of so-called rental is the purchase price the State is to pay for the property....Being a contract of purchase, obligating the State to pay the purchase price, unless the entire amount thereof is to be paid pursuant to appropriation presently made from funds or revenues currently available therefor, such contract of purchase would in the constitutional sense be a liability created by the Legislature on behalf of the State.

79 A.2d at 756 (emphasis in original).

In 1955, two leaseback cases from two states emerged. In McArthur v. Smallwood, 281 S.W.2d 423 (Ark. 1955), the rental payments from the state to the public corporation were to come first from legislative appropriations and, if such appropriations were not forthcoming, then from a special levy to be assessed by various county treasurers. Noting particularly that there was no obligation on the legislature to make the appropriations, the court upheld the transaction. The special levy was upheld on the basis of the "special fund doctrine", which was also a significant consideration in the Trujillo case. The "special fund doctrine" provides, in essence, that the repayment of bonds from a special tax or levy does not violate state debt limitations because the general taxing power of the state is not involved. Any reliance upon such a doctrine in Alaska, of course, would require serious consideration of the dedicated fund prohibition in the Alaska Constitution (Article IX, Section 7).

The other 1955 case was State v. Yelle, 289 P.2d 355 (Wash. 1955). Yelle relied extensively on McCutcheon, employed the same analysis, determined that the lease was actually a purchase, and invalidated the arrangement. The opinion does not clearly indicate whether there was any compunction on the legislature to make the appropriations to pay for the rents, nor is it clear that the rental payments were contingent upon such appropriations. In any event, such considerations probably do not make much difference with regard to the McCutcheon progeny. We have discovered no Washington case subsequent to the crumble or demise of McCutcheon.

Illinois' court considered a municipal leaseback transaction in People v. Public Building Commission of Chicago, 142 N.E.2d 67 (Ill. 1957). Of particular importance to that case was a provision in the statute which required municipalities entering into leases with the public corporation to "enact an ordinance or

resolution providing for the levy or a direct annual tax sufficient to pay the annual rental under the lease when it becomes due and payable." 142 N.E.2d at 72. The Illinois court noted that its definition of "indebtedness" was "not as liberal as that indulged in by a majority of jurisdictions." 142 N.E.2d at 75. Nevertheless, even in the more liberal jurisdictions, a provision such as that embodied in the statute quoted above would have been likely to lead to a finding of debt. The Illinois court had no trouble reaching such conclusion.

In 1958, the Indiana Supreme Court was presented with a leaseback transaction involving a public corporation. In Book v. State Office Building Commission, 149 N.E.2d 273 (Ind. 1958), the lease agreement between the public corporation and its state agency lessees contained a provision, much like that in Trujillo, which permitted the lessees to terminate their agreement only under specified conditions. Nevertheless, the court upheld the agreement.

In Book, the court was presented with a series of assertions reflecting a McCutcheon-like analysis of the situation. The court repudiated each assertion as it was presented. Thus, the court, looking to the statute creating the public corporation and to previous Indiana cases, denied that the public corporation was "in reality" the State of Indiana. It followed that since the corporation was a corporate body separate from the state, the holders of its bonds would have to rely upon the corporation's revenues derived from rental income and would not have any recourse against the state. For these reasons, the court concluded that the bonds of the corporation were not debt of the state. In response to the assertion that the lease agreements were "in reality" contracts to pay the corporation's bonds, the court stated the general rule that

a municipal corporation may lawfully contract for necessary services over a period of years and agree to pay therefor in periodic installments as the services are furnished. In such cases the aggregate of the amounts to be paid as the services are rendered under such contracts are not considered as an indebtedness of the corporation, and such contracts are not rendered invalid by the fact that the aggregate of the installments exceeds the debt limitation.

149 N.E.2d at 284 - 285. In any event, the fact that the state agencies might obtain title to the buildings they rented at the expiration of their lease would not be sufficient to convert the

lease into a purchase agreement. The court further stated, reminiscent of Giessel II, that the Indiana debt limitation provisions applied only to legally enforceable obligations. Since the court found no language binding any future legislature to make appropriations for the rent under the lease agreement and since the rentals could be paid only by appropriations made by the legislature, the court concluded that the lease agreement created no constitutionally prohibited debt.

Giessel II and Book are located on the more liberal end of the leaseback transaction spectrum, with Book perhaps a bit more liberal because of the court's willingness to overlook the lease provision apparently limiting the state agencies' ability to terminate the lease.

It is worthwhile at this point to temporarily abandon our chronological order to briefly review a later Indiana case -- Teperich v. North Judson-San Pierre High School Building Corporation, 275, N.E.2d 814 (Ind. 1971). We note the case only for its reaffirmation of the Book principle that rent payments "cannot be considered debt until the payments become due." 275 N.E.2d at 817.

In 1960, the Massachusetts court issued its solitary opinion relating to leaseback transactions. Ayer v. Commissioner of Administration, 165 N.E.2d 885 (Mass. 1960), involved, as the financing entity, a nonprofit corporation created by statute. The sole purpose of the corporation was to construct a building to be leased, and ultimately transferred, to the state. Citing McCutcheon, Trujillo, and Yelle, among others, the court embarked upon its analysis by "looking through form to substance". 165 N.E.2d at 892. The court first considered the nature of the corporation and then considered the nature of the lease agreement.

Although the court agreed that the corporation was an entity separate from the state, it nevertheless concluded that the corporation was "nothing more than a mere intermediary to carry out only one purpose." The following factors were pertinent to the court's analysis: (1) the corporation's sole purpose was to construct and lease to the state a building to be used only by the state; (2) the corporation was given powers of eminent domain; (3) the building, at the expiration of the lease, would become the absolute property of the state and the corporation would fade from existence; and (4) the corporation had virtually no power to deal with its property except as provided in the lease agreement. Reflecting upon these factors, the court then considered the statutory provision that the bonds of the corporation would not constitute a debt of the state or a pledge

of its faith and credit. The court's opinion as to this was as follows:

This disclaimer is ineffective if, contrary to the disclaimer, such be the natural and reasonable effect of the statute.

165 N.E.2d at 889.

With regard to the lease agreement, the court noted:

Viewing realities, we consider that the so-called "rentals" are not really rentals at all, but in practical effect are installment payments on account of a purchase by the Commonwealth of an office building, with full title to be acquired at an indefinite future date.

165 N.E.2d at 890. One of the important characteristics of the lease agreement leading the court to this conclusion was the requirement in the agreement that the state continue to make rental payments even if the building was not completed on time or was damaged or destroyed.

This 1960 case, which to the best of our knowledge has not been followed by any other Massachusetts leaseback transaction case, employed the McCutcheon-like analysis of piercing through form to arrive at the court's impression of substance. In this regard, the presence of a provision making the state's rental payments contingent upon legislative appropriations may not have changed the result, particularly if the Massachusetts court adopted the McCutcheon view that a mere moral imperative or even a practical likelihood for making the appropriations would suffice to create debt. However, the absence of such a provision allowed the court to reach its conclusion without the necessity of taking that position, and the presence of the affirmative duty of the state to make the rental payments even in the absence of a completed or inhabitable building for the state to occupy doubtless provided a strong incentive to the court to find a prohibited debt.

Another 1960 case, which was also the only decision on the subject we have found for its jurisdiction, was Application of the Oklahoma Capitol Improvement Authority, 355 P.2d 1028 (Ok. 1960). While Ayer emulated McCutcheon and Yelle, the Oklahoma court closely followed the pattern of Giessel II and Book.

There were two significant features of the statute under review in the Oklahoma case. First, a provision of the statute required the state treasurer to purchase the public corporation's bonds issued to provide financing for the building to be leased to the state. Second, the public corporation was authorized to require state agencies and departments to occupy space in the building and pay rent. A third feature also merits consideration, that feature being the intended rental of a portion of the building to federal government agencies.

Despite the first two of the foregoing features of the statute, the court reasoned that housing for state agencies was essential to state government. If the state did not own the housing, a proper method of providing it was through leases.

The court then noted:

We see no real distinction between a state department entering into a lease agreement and paying rent to a private party and having the same transaction with the Authority. In either event the state department receives a service in the form of housing which the state itself does not own. In addition the state will obtain two office buildings paid for in part from rentals from federal agencies.

355 P.2d at 1032. Given the second of the statutory provisions described above, we must allow that other courts might have seen a difference.

Two lower court California cases were decided in 1962 and 1963. In McClain v. County of Alameda, 25 Ca.R. 660 (Dist. Ct. of App., First Dist., Calif. 1962), and City of La Habra v. Pellerin, 30 Ca. R. 752 (Dist. Ct. of App., Fourth Dist., Calif. 1963), the California courts upheld leaseback transactions on two bases:

(1) the leases did not create an immediate indebtedness for the aggregate amount of the installment rent due; and

(2) under previous California cases, an obligation imposed by law on a city (such as, in these cases, to provide facilities for city functions) is not an indebtedness or liability within the meaning of the California debt limitation provisions. At least with respect to the first of the foregoing bases, the California courts, without citing Giessel II or Book, reflected a judicial attitude similar to that expressed in those other cases.

The following year, 1964, brought forth Montana's only entry in the leaseback transaction area, State v. City of Missoula, 395 P.2d 249 (Mont. 1964). The transaction there was somewhat unique to the extent that the financing entity involved was an individual -- Theodore Jacobs. In a succinct opinion, the Montana court expressed its belief that

A debt payable in the future is obviously no less a debt than if payable presently; and a debt payable upon a contingency, as upon the happening of some event, such as the rendering of service or the delivery of property, etc., is some kind of debt, and therefore within the prohibition.

395 P.2d at 251 (quoting from State ex rel. Helena Water Works v. City of Helena, 63 P. 99 (Mont. 1900)). Thus, with virtually no discussion of the elements of the lease from Jacobs to the city, the court reached the opinion that the lease would constitute prohibited debt. It is worth noting another difference in outlook, if not legal analysis, between this case and the California and Oklahoma cases described above: that is, in both California and Oklahoma the need for governmental facilities was viewed as rising to the level of a legal duty, while the Montana court expressed the following opinion as to the need of Missoula for the building in question:

No one, we believe, would seriously contend that the acquisition of a building valued at approximately \$46,000 would be a reasonable and necessary expense requisite to maintain the corporate existence of the City of Missoula.

395 P.2d at 251.

It took the Arizona court five years -- from 1965 through 1969 -- to ultimately conclude its leaseback transaction case. The case began as City of Phoenix v. Phoenix Civic Auditorium & Convention Center Association, Inc., 408 P.2d 818 (Ariz. 1965). Quoting extensively from McCutcheon, Trujillo, and Yelle, the court adopted the principles and reasoning of those cases and invalidated the leaseback transaction because (1) it was, in reality, a purchase agreement; and (2) the source of payment of rents by the city under the lease was to come from the general revenues of the city and not from a special fund derived other than from general taxes.

The next year, the court was asked to clarify its opinion as to whether the debt limitation would be violated if the lease agreement expressly provided that rental payments would come only from excise and ad valorem taxes and not from the city's general taxes and general fund. City of Phoenix v. Phoenix Civic Auditorium & Convention Center Association, Inc., 412 P.2d 43 (Ariz. 1966). Under such circumstances, the court indicated it would find no debt limitation violation.

After fully complying with the clarifications presented in the court's 1966 supplementary opinion, the City of Phoenix found itself once more challenged over the lease agreement. The City sought a peremptory writ of prohibition from the Supreme Court to prevent the City's challengers from proceeding with their case in the superior court. The Supreme Court issued the writ, thus finally concluding the case. City of Phoenix v. Superior Court, 455 P.2d 257 (Ariz. 1969).

In Hall v. Baltimore, 250 A.2d 233 (Md. 1969), the Maryland Supreme Court upheld a leaseback transaction relying on the prevalent common law rule that rent to fall due beyond the current period is not a present debt. The court specifically noted that there was no pledge of municipal assets as the leases involved were subordinate to the city's interest in the property. The court cited with approval Giessel II to the same effect.

Another 1969 case, McFarland v. Barron, 164 N.W.2d 607 (S. Dak. 1969) presented a leaseback transaction which should probably be the model for future endeavors in the area. The court provided the following summary of the plan which reflects a careful and thoughtful preparation for the avoidance of debt limitation problems:

The leases must contain a provision that rents shall be payable solely from appropriations to be made by the legislature and any revenues derived from the operation of the leased premises. In the event of nonpayment of rents by the State, the building or facility may be leased to others for suitable purposes. A lease may be made for a term of one year from the time a building is completed and ready for occupancy, with an option to the lessee to extend the term for one year from the expiration of the original term and for one year from the expiration of each extended term until the original term of the lease has been extended for a total number of years to be agreed upon at a rental which, if

paid for the original term and for each of the full number of years for which the term of the lease may be extended, will amortize the total cost of the erection of the building and appurtenances.

164 N.W.2d at 609. Referring to the common law concept that future rents do not create present indebtedness, the court upheld the arrangement. To the suggestion that the state would have a moral obligation to discharge the bonds, the court repounded:

While the legislature in making appropriations may not be confined to legal obligations, but may recognize moral or equitable obligations...there would exist under the proposed leases no binding legal obligation to authorize expenditures for rent ....In the event of nonpayment of rent or failure of the legislature to appropriate funds the Building Authority is empowered to lease the building or facility to others for suitable purposes to meet accruing payments.

164 N.W.2d at 609 -- 610. And the court finally concluded:

Since the stipulation of the State to pay rents to the Building Authority will be subject to available appropriations and current revenues, the inhibition of the debt limitation provisions of the Constitution will not apply.

164 N.W.2d at 611.

We temporarily abandon our chronological order once more to note here the subsequent South Dakota case, Millar v. Barnett, 221 N.W.2d 8 (S. Dak. 1974). Citing McFarland, the court again upheld a leaseback transaction similar to the transaction under review in the preceding case.

In 1970, three cases from three states were decided. New Mexico produced its second leaseback transaction case (following the 1941 Trujillo decision) in McKinley v. Alamoqordo Municipal School District Authority, 465 P.2d 79 (N.W. 1970). The leaseback arrangement in Alamoqordo stands in stark contrast to that crafted in the McFarland case. The financing entity in this arrangement was to be a nonprofit corporation whose membership was identical to the membership of the municipal agency which would be the corporation's lessee. As part of the lease