ALASKA LEGISLATURE COMMITTEE FILES 1961-1962 3072

1205 ARRC GENERAL INFORMATION, TAPE LOGS

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JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 17, 1981

Governors veto message of 1981 legislation His second veto was overridden in 1982

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Under art. II, sec. 15, of the Alaska Constitution, I have vetoed HCS CSSS SB 5 (Rls) am H, relating to administrative regulations. As a policy matter, I have no quarrel with the bill's assignment to the legislature's standing committees the initial responsibility for reviewing administrative regulations. However, the entire bill is founded upon an unconstitutional existing statute -- AS 24.20.445, which provides for the "suspension" of an administrative regulation by the legislature's Administration Regulation Review Committee. While this bill does nothing to increase or decrease the unconstitutionality of that statute, the bill's reliance on that statute is unwise.

Moreover, there is substantial question wnether this assignment of duties to the standing committees during the legislative interim is valid. Article II, sec. 11, of the Alaska Constitutuion, provides for the Legislative Council as an "interim committee" and authorizes the legislature to create additional interim committees. Rule 21(c), Uniform Rules of the Alaska State Legislature, adopted June 1, 1981, says that a "standing committee may meet between sessions." But various authorities and the wording of art. II, sec. 11, suggest that enactment of a statute is required in order to create an interim committee, which, in fact, has been the practice of the Alaska Legislature. See AS 24.20.010, 24.20.151, and 24.20.400.

Finally, the new paragraphs being added to AS 44.62.190(a) appear to require wasteful duplication. The existing AS 44.62.190(a)(6) requires that a copy of the notice of proposed regulations adoption be furnished to every incumbent Alaska legislator and to the Legislative Affairs Agency. To require additional copies to be furnished to the standing committees (to the chair? to the staff? to the Legislative Affairs Agency?) and to the Administrative Regulation Review Committee staff appears unnecessary.

I share your interest in administrative regulations. My staff and I, along with the Department of Law, stand ready to assist you in developing legislation which addresses any particular problems in the process for adopting and reviewing administrative regulations. To do so, we must identify and analyze the specific problem and carefully consider alternative solutions, making certain to stay within the bounds of the constitution and the realm of feasibility.

Sincerely,

Jay S. Hammond
Governor

Book for you Reg Rev. file

Sec. 24.30.060. Introduction of bills. (a) A member of the legislature or a committee chairman, with the concurrence of a majority of the active members of the committee and on behalf of the committee, may introduce a bill or resolution. Bills and resolutions shall be prepared and introduced in the manner and form prescribed in the uniform rules and the legislative style manual.

Drafter for committee to submit bills

(b) Bills introduced by the Legislative Council shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Legislative Council"; bills introduced by the Administrative Regulation Review Committee shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Administrative Regulation Review Committee"; bills introduced by the Legislative Budget and Audit Committee shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Legislative Budget and Audit Committee." Bills presented by the governor shall be delivered with a letter to the rules committee of either house and bear the inscription "Rules Committee by Request of the Governor"; bills so presented and inscribed shall be received as bills carrying the approval of the governor as to policy and budget impact. The governor may submit a statement of purpose and effect with each bill and appear personally or through a representative before any committee considering legislation. (§ 34 ch 157 SLA 1959; am § 10 ch 47 SLA 1961; am § 1 ch 2 SLA 1971; am § 38 ch 32 SLA 1971; am § 27 ch 71 SLA 1972; am § 1 ch 2 SLA 1977)

Effect of amendment. — The 1977 amendment inserted the language beginning "bills introduced by the Administrative Regulation Review Committee" and ending "the inscription 'Rules Committee by Request of the Administrative Regulation Review Committee' " near the middle of the first sentence of subsection (b).

Legislative committee reports. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138. For report on ch. 71, SLA 1972 (HCSSB 383 am H), see 1972 House Journal, p. 898.

Quoted in Homer Elec. Ass'n v. City of Kenai, Sup. Ct. Op. No. 390 (File No. 673), 423 P.2d 285 (1967).

Sec. 24.30.070. Numbering of bills. The chief clerk of the house in which the bill is introduced shall number it in the order of its introduction and thereafter the bill shall be designated by the number given to it. (§ 35 ch 157 SLA 1959; am § 11 ch 47 SLA 1961)

Sec. 24.30.080. Readings. No bill may become law unless it has passed three readings in each house on three separate days, except that a bill may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it. (§ 36 ch 157 SLA 1959)

Part 4. Administrative Procedure.

Chapter
62. Administrative Procedure Act (§§ 44.62.010 -- 44.62.650)

Chapter 62. Administrative Procedure Act.

Article
1. Application and Effect (§§ 44.62.010 — 44.62.030)
2. Submission, Filing and Publication of Regulations (§§ 44.62.040 — 44.62.125)
3. The Alaska Administrative Register and Code (§§ 44.62.130 — 44.62.170)
4. Procedure for Adopting Regulations (§§ 44.62.180 — 44.62.290)
5. Judicial Review (§ 44.62.300)
6. Agency Meetings Public (§§ 44.62.310 — 44.62.312)
7. Legislative Review of Rules (§ 44.62.320)
8. Administrative Adjudication (§§ 44.62.330 — 44.62.630)
9. General Provisions (§§ 44.62.640 — 44.62.650)

Revisor's note. — In this chapter "secretary of state" has been changed to "lieutenant governor" in conformity with the 1970 Alaska constitutional amendment (SJR 2) changing the designation of that office.

Establishment of quotas by the Board of Game on the taking of game must be in accordance with this chapter. State v. Tanana Valley Sportsmen's Ass'n, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

As must be regulations promulgated under AS 16.05.257. — See State v. Tanana Valley Sportsmen's Ass'n, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

While AS 16.05.257, which authorizes the Board of Game to adopt regulations providing for subsistence hunting, does not specifically refer to this chapter, it appears clear that it merely sets forth an additional purpose for which regulations may be promulgated. State v. Tanana Valley Sportsmen's Ass'n, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

Issuance of permits for killing of caribou based on verbal instructions to agents held improper. — The issuance of permits for the killing of caribou in certain specified areas of the state based on verbal instructions to the permit agents as to the need of individual applicants does not conform to requirements of this chapter. State v. Tanana Valley Sportsmen's Ass'n, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

Nothing in this chapter authorizes the Board of Game to impose requirements not contained in written regulations by means of oral instructions to agents. Such verbal additions to regulations involving requirements of substance are unauthorized and unenforceable. State v. Tanana Valley Sportsmen's Ass'n, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

Cited in Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978).

Article 1. Application and Effect.

Section
10 Application to State Organization Act of 1959
20 Authority to adopt, administer or enforce regulations
30 Consistency between regulation and statute

Sec. 44.62.010. Application to State Organization Act of 1959. Rule-making power conferred by ch 64 SLA 1959 is subject to this chapter. (§ 2(4) art I (ch 1) ch 143 SLA 1959)

Revisor's note. — It is not possible to eliminate the reference to ch 64 SLA 1959 in the above section. The rule-making powers referred to are scattered throughout this revision. However, most of ch 64 SLA 1959 is found in part 2 of this title.

Legislative history report. — F legislative history report on original bill, see House Journal (1959), pp. 394-397.

This chapter applies to the Alaska State Housing Authority. Alaska State Hous. Auth. v. Dixon, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

And its provisions must be adhered to. — There being no express exclusion of Alaska State Housing Authority from the Administrative Procedure Act, ASHA is bound to adhere to the provisions of this chapter. ASHA's separate corporate nature does not detract from this conclusion. The legislature may have had a special reason for choosing the corporate vehicle; e.g., to insulate the state from potential liabilities. Alaska State Housing Auth. v. Dixon, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

Cited in Pan American Petroleum Corp. v. Shell Oil Co., Sup. Ct. Op. No. 553 (File No. 916), 455 P.2d 12 (1969); Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973); In re Application of Sullivan, Sup. Ct. Op. No. 1274 (File No. 2783), 551 P.2d 531 (1976).

Am. Jur. 2d reference. — 1 and 2 Am. Jur. 2d, Administrative Law, § 1 et seq.

Sec. 44.62.020. Authority to adopt, administer, or enforce regulations. Except for the authority conferred upon the lieutenant governor in AS 44.62.130 — 44.62.170, AS 44.62.010 — 44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law. (§ 4 art I (ch 1) ch 143 SLA 1959)

Meaning of "in accordance with standards prescribed by other provisions of law." — The words of this section, "in accordance with standards prescribed by other provisions of law," mean nothing more than if standards are prescribed by provisions of law other than those contained in this chapter, then they must be recognized and adhered to. This language does not mean that regulations cannot be validly adopted by an administrative agency "unless" standards have been prescribed. Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 17 (File No. 17), 369 P.2d 585 (1960).

Statute prevails over conflicting regulation. — The statute delegating its law-making power to government agencies to make law through regulations defines the agency's authority to promulgate regulations and thus if there is a conflict between the statute and a regulation, the statute prevails. Chevron U.S.A., Inc. v. Hammond (A77-195 Civil), F. Supp. (D. Alas. 1978).

Attorney general could not save provisions of former AS 30.25 from unconstitutionality under Alas. Const. art. IX, § 7, by directing promulgation of regulations inconsistent with statute. — See Chevron U.S.A., Inc. v. Hammond (A77-195 Civil), F. Supp. (D. Alas. 1978).

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner. First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power

delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Sec. 44.62.030. Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute. (§ 5 art I ch 1) ch 143 SLA 1959)

Statute prevails over conflicting regulation. — The statute delegating its law-making power to government agencies to make law through regulations defines the agency's authority to promulgate regulations and thus if there is a conflict between the statute and a regulation, the statute prevails. Chevron U.S.A., Inc. v. Hammond (A77-195 Civil), F. Supp. (D. Alas. 1978).

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Regulation accorded presumption of validity. — An administrative regulation must be accorded a presumption of validity, and the challenger of the regulation must demonstrate its invalidity. Union Oil Co. v. State, Sup. Ct. Op. No. 1563 (File No. 2650), 574 P.2d 1266 (1978).

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.020 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Article 2. Submission, Filing and Publication of Regulations.

Section

Sec. 44.62.040. Submitting regulations. (a) Every state agency which by statute possesses regulation-making authority shall submit to the lieutenant governor for filing a certified original and one duplicate copy of every regulation or order of repeal adopted by it, except one which

(1) establishes or fixes rates, prices or tariffs;

(2) relates to the use of public works, including streets and highways, under the jurisdiction of a state agency if the effect of the order is indicated to the public by means of signs or signals; or

(3) is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

(b) Citation of the general statutory authority under which a regulation is adopted, as well as citation of specific statutory sections being implemented, interpreted or made clear, shall follow the text of each regulation submitted under (a) of this section. (§ 1 art II (ch 1) ch 143 SLA 1959; am § 1 ch 40 SLA 1969)

Legislative history report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Regulations promulgated under AS 15.15.330, dealing with the early counting of election votes, are not exempt from the requirements of the Administrative Procedure Act (AS 44.62) by operation of this section and AS 44.62.640. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The lieutenant governor's supervision of personnel and activities relating to the conduct of a statewide election is not the same as the management of employees and internal affairs of a state agency. Executive organization of the election machinery goes well beyond the lieutenant governor's control of his own staff and their actions. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Light Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176 (1977).

Sec. 44.62.050. Style and forms. The Department of Law shall prepare and shall revise when necessary a drafting manual for administrative regulations which prescribes the style and forms for submitting regulations under AS 44.62.040. (§ 2 art II (ch 1) ch 143 SLA 1959; am § 3 ch 70 SLA 1966; am § 1 ch 57 SLA 1969; am § 1 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" near the beginning of the section.

Sec. 44.62.060. Preparation and filing. (a) Every state agency which by statute possesses regulation-making authority shall work

with the Department of Law, under AS 44.62.125, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the Department of Law under AS 44.62.050.

(b) In the performance of duties under AS 44.62.125, the Department of Law shall advise the agencies on legal matters relevant to the promulgation of regulations and may advise the agencies on the need for and the policy involved in particular regulations. In addition, the department shall prepare a written statement of approval or disapproval after each regulation has been reviewed in order to determine

(1) its legality, constitutionality and consistency with other regulations;

(2) the existence of statutory authority and the correctness of the required citation of statutory authority following each section;

(3) its clarity, simplicity of expression, and absence of possibility of misapplication;

(4) compliance with the drafting manual for administrative regulations.

(c) The lieutenant governor may not accept for filing a regulation, amendment or order of repeal required by AS 44.62.040 unless it is accompanied by the written statement specified in (b) of this section and the statement approves the regulation, amendment or order of repeal. (§ 3 art II ch 1 ch 143 SLA 1959; am § 1 ch 149 SLA 1962; am § 4 ch 70 SLA 1966; am § 1 ch 58 SLA 1969; am § 2 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" near the end of subsection (a).

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency (now Department of Law) drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the legislature or promulgated under this chapter. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Clause of regulation incorporating future amendments held severable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code which also incorporated all future amendments of the code was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable in a negligence action based on the death of a guest in a motel fire. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.070. Fees. No state officer or public official may charge a fee to perform an official act in connection with the certification,

submission or filing of regulations under AS 44.62.040 — 44.62.120. (§ 4 art II (ch 1) ch 143 SLA 1959; am § 2 ch 40 SLA 1969)

Sec. 44.62.080. Endorsement and file. The lieutenant governor shall (1) endorse on the certified copy of each regulation or order of repeal filed by him, the time and date of filing, and (2) maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection. (§ 5 art II (ch 1) ch 143 SLA 1959; am § 3 ch 40 SLA 1969)

This chapter does not require that a clause be inserted in each regulation stating where a text incorporated by reference can be found. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1366 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

This appears to be unnecessary, since by law a copy of the text must be available at the lieutenant governor's office. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1366 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

And failure to so specify does not invalidate regulation. — Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1366 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.090. Filing with local government unit clerks. Repealed by § 2 ch 57 SLA 1969.

Editor's note. — The repealed section derived from § 6, art. II (ch. 1), ch. 143, SLA 1959.

Sec. 44.62.100. Presumptions from filing. (a) The filing of a certified copy of a regulation or an order of repeal by the lieutenant governor raises the rebuttable presumptions that

(1) it was duly adopted;

(2) it was duly filed and made available for public inspection at the day and hour endorsed on it;

(3) all requirements of this chapter and the regulations relative to the regulation have been complied with;

(4) the text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

(b) The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed. (§ 7 art II (ch 1) ch 143 SLA 1959; am § 4 ch 40 SLA 1969)

This section establishes a rebuttable presumption that the procedural requirements for the promulgation of administrative regulations have been satisfied. Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Stated in State v. Tanana Valley Sportsmen's Ass'n, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

Sec. 44.62.110 Presumptions from publication. (a) The publication of a regulation in the Alaska Administrative Code or register raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

(b) The courts shall take judicial notice of the contents of each regulation or notice of the repeal of a regulation printed in the Alaska Administrative Code or Alaska Administrative Register. (§ 8 art II (ch 1) ch 143 SLA 1959)

Sec. 44.62.120. Voluntary submitting and publication. With the approval of the lieutenant governor, a state agency may submit to the lieutenant governor for filing a regulation or order of repeal of a regulation not required by AS 44.62.040 to be submitted. If he accepts the regulation or order of repeal, the lieutenant governor shall endorse and file it as required in AS 44.62.080, and may publish the regulation or order of repeal in the manner he considers proper. (§ 9 art II (ch 1) ch 143 SLA 1959; am § 5 ch 40 SLA 1969)

Sec. 44.62.125. Regulations attorney. (a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as his primary responsibility, the functions relating to the handling of administrative regulations.

(b) The department shall

(1) advise all state administrative agencies of the nature and use of administrative regulations;

(2) alert the agencies to statutes that need to be implemented, interpreted or made clear by regulation;

(3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be promulgated by the agencies, correcting or removing the deficiencies, conflicts and obsolete provisions;

(4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered and ensuring compliance with the drafting manual for administrative regulations prepared by the Department of Law under AS 44.62.050;

(5) assist the agencies in holding public hearings under AS 44.62.210;

(6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes in AS 01.05.031;

(7) draft bills for consideration by the governor to transfer matter which should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed. (§ 2 ch 58 SLA 1969; am § 3 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" in paragraph (4) of subsection (b).

Article 3. The Alaska Administrative Register and Code

Sec. 44.62.130. Codification and publication. (a) The lieutenant governor shall provide for the continuing compilation, codification and publication, with periodic supplements, of all regulations filed by his office, or of appropriate references to any regulations the printing of which he finds to be impractical, such as detailed schedules or forms otherwise available to the public, or which are of limited or particular application. The publication of compiled regulations is the Alaska Administrative Code. The periodic supplements to it are the Alaska Administrative Register. The code and register shall contain appropriate annotations to judicial decisions and opinions of the Alaska attorney general.

(b) The legislative council shall prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Alaska Administrative Code. (§ 1 art III (ch 1) ch 143 SLA 1959; am § 1 ch 70 SLA 1966; am § 6 ch 40 SLA 1969)

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1235, 1256), 486 P.2d 906 (1971).

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1366 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.140. Distribution of code and register. The lieutenant governor shall supply a complete set of the Alaska Administrative Code, and of the Alaska Administrative Register, and of each supplement to the code or register to the clerk of each local government unit, or if the authority to accept filings on his behalf is delegated, to the person to whom this authority is delegated. (§ 2 art III (ch 1) ch 143 SLA 1959)

Sec. 44.62.150. Price.
Repealed by § 49 ch 127 SLA 1974.

Editor's note. — The repealed section derived from § 3, art. III (ch. 1), ch. 143, SLA 1959.

Sec. 44.62.160. Date and content of register. (a) The Alaska Administrative Register shall be published quarterly on the first day of the month, beginning in a month to be designated by the Department of Law, but not later than October 1969. All regulations required to be submitted under AS 44.62.040 which are filed by the first day of the month preceding publication shall be published in the register for that quarter.

(b) If during a quarter no regulation, amendment or order of repeal has been filed the regular quarterly register shall be published reflecting that fact. (§ 4 art III (ch 1) ch 143 SLA 1959; am § 3 ch 58 SLA 1969)

Sec. 44.62.170. Form of publication.
Repealed by § 2 ch 57 SLA 1969.

Article 4. Procedure for Adopting Regulations.

Sec. 44.62.180. Effective date. A regulation or an order of repeal filed by the lieutenant governor becomes effective on the 30th day after the date of filing unless

(1) otherwise specifically provided by the statute under which the regulation or order of repeal is adopted, in which event it becomes effective on the day prescribed by the statute;

(2) it is a regulation prescribing the organization or procedure of an agency, in which event it becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(3) it is an emergency regulation or order of repeal adopted under AS 44.62.250, in which case the finding and the statement of the facts constituting the emergency shall be submitted to the lieutenant governor, together with the emergency regulation or order of repeal, which, in that event only, becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(4) a later date is prescribed by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal. (§ 3 art IV (ch 1) ch 143 SLA 1959; am § 7 ch 40 SLA 1969)

Cited in Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1670), 516 P.2d 408 (1973).

Sec. 44.62.190. Notice of proposed action. (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, which the state agency prescribes;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by AS 44.62.060;

(6) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency.

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and mailing notice under this chapter, the notice shall be published, posted, mailed, filed or otherwise publicized as prescribed by the statute.

(c) The failure to mail notice to a person as provided in this section does not invalidate an action taken by an agency under AS 44.62.180 — 44.62.290. (§ 5 art IV (ch 1) ch 143 SLA 1959; am § 2 ch 149 SLA 1962; am § 1 ch 3 SLA 1968; am § 16 ch 143 SLA 1968; am § 4 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "state of Alaska legislators and the Legislative Affairs Agency" for "state legislators" in paragraph (6) of subsection (a).

The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposal; and each, after consideration of the relevant policies and arguments, decides whether to adopt the proposed enactment. When administrative rule making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule making activity takes on a quasi-legislative aspect. Under proper standards, such delegations of legislative power to administer agencies are constitutional. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation if adopted with the secretary of state, and

publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Requirements and sufficiency of notice. — There are few cases and . text discussion of the requirements notice and the sufficiency of notice in proceedings for adoption of rules and regulations. 1959 Op. Att'y Gen., No. 26.

Lengthy regulation to be summarized. — Where a lengthy regulation on one subject is to be proposed the best policy would be to briefly summarize the content and purpose of the regulation. 1959 Op. Att'y Gen., No. 26.

But short regulation to be set forth in full. . only a very short regulation is proposed then ordinari' it would be most practicable to set forth the regulation in full. 1959 Op. Att'y Gen., No. 26

Procedure upon promulgation of many regulations of varied nature. — Where a great many regulations are to be promulgated which are of a varied nature, such as fish and game regulations or oil leasing regulations, then the only practical thing to do would be to give a general listing of the subjects to be covered, a reference to any other existing body of regulations which are being adopted, amended or superseded which might be informative to the particular public or industry concerned (such as a reference to existing regulations of a state agency or department or to existing federal regulations) and a brief listing of any significant changes which are proposed if an existing body of regulations is to be effected. In such case it would be well to indicate that copies of the proposed regulations can be obtained from the agency in order to indicate the agency has done everything reasonably possible to give the public affected by its regulations an opportunity to familiarize itself with the regulations and to prepare itself to submit its views at the hearing. This should constitute substantial compliance with the Administrative Procedure Act and would serve the purpose of the act. 1959 Op. Att'y Gen., No. 26.

And when a summary of a large number of proposed regulations is to be used it would be safe for the departments and agencies of the state government to follow the Ohio and federal practice and give notice of the areas in which regulations may or may not be promulgated by listing the subject matter to which the proposed rules would relate. 1959 Op. Att'y Gen., No. 26.

Public notice referring only to regulation numbers and subject headings. — See 1959 Op. Att'y Gen., No. 26.

For illustrations of the notice required by this section, see 1959 Op. Att'y Gen., No. 26, Exhibits A, B, C and D.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1366 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency (now Department of Law) drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1366 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the legislature or promulgated under the Alaska Administrative Procedure Act. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1366 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Clause of regulation incorporating future amendments held severable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code which also incorporated all future amendments of the code was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable in a negligence action based on the death of a guest in a motel fire. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1366 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Applied in Kingery v. Chapple, Sup. Ct. Op. No. 556 (File No. 1854), 504 P.2d 631 (1972).

Cited in Buehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 171, 349 P.2d 565 (1960).

Sec. 44.62.195. Fiscal notes on regulations. If the adoption, amendment, or repeal of a regulation would require increased appropriations by the state, the department or agency affected shall prepare an estimate of the appropriation increase for the fiscal year following adoption, amendment, or repeal of the regulation and for at least two succeeding fiscal years. (§ 1 ch 16 SLA 1980)

Sec. 44.62.200. Contents of notice. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include

(1) a statement of the time, place, and nature of proceedings for adoption, amendment or repeal of the regulation;

(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;

(3) an informative summary of the proposed subject of agency action;

(4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations;

(5) a summary of the fiscal information required to be prepared under AS 44.62.195.

(b) A regulation which is adopted, amended or repealed may vary in content from the summary specified in (a) (3) of this section if the subject matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject. (§ 6 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 185 SLA 1970; am § 2 ch 16 SLA 1980)

Effect of amendment. — The 1980 amendment added paragraph (5) in subsection (a).

Applied in Kingery v. Chapple, Sup Ct Op. No. 858 (File No. 1554), 504 P 2d 831 (1972)

Stated in State v. Tanana Valley Sportsmen's Ass'n, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P 2d 854 (1978).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 171), 349 P.2d 585 (1960)

Sec. 44.62.210. Public proceedings. (a) On the date and at the time and place designated in the notice the agency shall give each interested person or his authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present them orally. The state agency shall consider all relevant matter presented to it before adopting, amending or repealing a regulation.

(b) At a hearing under this section the agency or its authorized representative may administer oaths or affirmations, and may continue or postpone the hearing to the time and place which it determines. (§ 7 art IV (ch 1) ch 143 SLA 1959)

Difference between hearings under this section and AS 44.62.450. — See 1960 Op. Att'y Gen., No. 7.

And distinction between "adjudicative facts" and "legislative facts." — See 1960 Op. Att'y Gen., No. 7.

Article applicable to exercise of quasi-legislative power. — This article sets forth the procedure which must be followed when an agency exercises its quasi-legislative power. 1960 Op. Att'y Gen., No. 7.

But not to quasi-judicial proceedings. — See 1960 Op. Att'y Gen., No. 7.

Article 8 of this chapter was intended to be applicable to quasi-judicial proceedings. 1960 Op. Att'y Gen., No. 7.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

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Stated in State v. Tanana Valley Sportsmen's Ass'n, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Administrative Law, §§ 281, 282.

Sec. 44.62.220. Right to petition. Unless the right to petition for adoption of a regulation is restricted by statute to a designated group or the procedure for the petition is prescribed by statute, an interested person may petition an agency for the adoption or repeal of a regulation as provided in AS 44.62.180 — 44.62.290. The petition shall state clearly and concisely

(1) the substance or nature of the regulation, amendment, or repeal requested;

(2) the reasons for the request;

(3) reference to the authority of the agency to take the action requested. (§ 8 art IV ch 1 ch 143 SLA 1959)

Sec. 44.62.230. Procedure on petition. Upon receipt of a petition requesting the adoption, amendment or repeal of a regulation under AS 44.62.180 — 44.62.290, a state agency shall, within 30 days, deny

the petition in writing or schedule the matter for public hearing under AS 44.62.190 — 44.62.210. However, if the petition is for an emergency regulation, and the agency finds that an emergency exists, the requirements of AS 44.62.190 — 44.62.210 do not apply, and the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form. (§ 9 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 45 SLA 1969)

Sec. 44.62.240. Limitation on retroactive action. If a regulation adopted by an agency under this chapter is primarily legislative, the regulation has prospective effect only. A regulation adopted under this chapter, which is primarily an "interpretative regulation," has retroactive effect only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation. Silence or failure to follow any course of conduct is considered earlier inconsistent conduct. (§ 10 art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.250. Emergency regulations. A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts which constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of AS 44.62.060 and 44.62.190 — 44.62.210 do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and within five days after adoption the agency shall give notice of the adoption in accordance with AS 44.62.190(a)(1)—(6). Failure to give the required notice by the end of the 10th day automatically repeals the regulation. (§ 2(2) art IV (ch 1) ch 143 SLA 1959; am § 2 ch 45 SLA 1969; am § 1 ch 46 SLA 1972)

Quoted in State v. Tanana Valley Sportsmen's Ass'n, Sup Ct Op No 1716 (File No 3433), 583 P 2d 854 (1978)

Sec. 44.62.260. Limitation on effective period of emergency regulations. (a) No regulation adopted as an emergency regulation remains in effect more than 120 days unless the adopting agency complies with AS 44.62.060 and 44.62.190 — 44.62.210 either before submitting the regulation to the lieutenant governor or during the 120-day period.

(b) Before the expiration of the 120-day period, the agency shall transmit to the lieutenant governor for filing a certification that AS

44.62.060 and 44.62.190 — 44.62... were complied with before submitting the regulation to the lieutenant governor, or that the agency complied with those sections within the 120-day period. Failure to so certify repeals the emergency regulation; it may not be renewed or refiled as an emergency regulation. (§ 4 art IV (ch 1) ch 143 SLA 1959; am § 3 ch 45 SLA 1969)

Stated in State v. Tanana Valley Sportsmen's Ass'n, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

Sec. 44.62.270. State policy. It is the state policy that emergencies are held to a minimum and are rarely found to exist. (§ 2(2) art IV (ch 1) ch 143 SLA 1959)

Quoted in State v. Tanana Valley Sportsmen's Ass'n, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

Sec. 44.62.280. Purpose of AS 44.62.180 — 44.62.290. It is the purpose of AS 44.62.180 — 44.62.290 to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in AS 44.62.250, AS 44.62.180 — 44.62.290 apply to the exercise of quasi-legislative power conferred by a statute, but nothing in AS 44.62.180 — 44.62.290 repeals or diminishes additional requirements imposed by the statute. AS 44.62.180 — 44.62.290 are not superseded or modified by subsequent legislation except to the extent that the legislation does so expressly. (§ 1 art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.290. Limits of the application of AS 44.62.180 — 44.62.290. (a) AS 44.62.180 — 44.62.290 do not apply to a regulation not required to be submitted to the lieutenant governor under AS 44.62.010 — 44.62.320.

(b) Only this section and AS 44.62.180 apply to

(1) a regulation which prescribes the organization or procedure of an agency, or

(2) Repealed by § 4 ch 45 SLA 1969 (§ 2(1) art IV (ch 1) ch 143 SLA 1959; am § 17 ch 143 SLA 1968; am § 8 ch 40 SLA 1969; am § 4 ch 45 SLA 1969)

Am. Jur. 2d reference. — 1 Am. Jur. 2d, Administrative Law, §§ 42-45.60 et seq.

IMPROVING BOND OVERSIGHT IN ALASKA

Prepared for

THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE
SENATOR ARLISS STURGULEWSKI, CHAIRMAN
ALASKA STATE LEGISLATURE

Prepared by

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June 1982

STATE OF ALASKA

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July 28, 1982

Dear Reader:

As a part of the Legislative Budget and Audit Committee's review of the State of Alaska's debt and debt management policies, we requested Mr. Robert Terrell to prepare an overview of bonding oversight issues and to relate the experiences of other states to our situation. This report presents Mr. Terrell's findings.

This report is the first of several which will be available prior to February, 1983, as a part of the Legislative Budget and Audit Committee's work on debt management issues. This report is being made available at this time as it is thought provoking and should assist in future discussions of policy options for debt management.

Sincerely,

Arliss Sturgulewski

Senator Arliss Sturgulewski, Chairman
Legislative Budget and Audit Committee

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The levels of debt being assumed by the state of Alaska, its municipalities and public corporations are of increasing concern to individuals both in and out of the state government. One important question is whether Alaska has adequate mechanisms for overseeing the assumption of debt by its agencies, municipalities and public corporations. The assumption of public debt for capital improvements has implications for both the financial situation of the state, and its future development. Both aspects should be addressed by debt oversight mechanisms. Considerations of whether the state and its residents can afford to go further into debt, as well as technical issues relating to the terms and timing of bond issues, are extremely important. Equally important, though, is the need to consider the long-term impact borrowing and construction decisions can have on the shape and direction of development. Public corporations in Alaska, with their autonomy and high level of borrowing, have the potential for making de facto development decisions which are more properly political decisions.

Arguments against active state bond oversight commonly state that the bond market plays the necessary role in weeding out unsound projects. However, the bond market does not judge the desirability of projects, and is not very efficient at spotting unsound projects. The financial interests of the state and of bond market participants often diverge; states wish to borrow for needed projects, while the bond market has an interest in selling as many bonds as the state can support.

Alaska, by improving its advising and oversight of municipal borrowing activities, could improve the terms on which local governments borrow. The Municipal Bond Bank already plays an important role, but so far its activities cover only a small fraction of municipal borrowing. The state also has an

interest in seeing that the borrowing decisions of local governments will not entail future large commitments of state resources. This could happen if boom areas build facilities that they will be unable to maintain after the boom.

Alaska's public corporations have more than $1.4 billion dollars of debt outstanding, more than twice the total state debt. The fact that the bond market views the credit of legally autonomous public corporations to be linked to the credit of the state is a strong reason for the state to have a means of controlling the assumption of debt by its public authorities. State credit can be adversely affected by the default of a public corporation, even when the debts of the corporation are not legal liabilities of the state.

Borrowing decisions of public authorities shape development, can compete with state bond issues, and are often more expensive to state residents than if the state borrowed the money; these are additional reasons for state oversight of public corporation borrowing.

The bond oversight mechanisms of other states take on a wide variety of forms. Michigan employs a Municipal Finance Commission to oversee the borrowing activities of municipalities and public authorities. North Carolina's Local Government Commission plays a similar role and actually markets all state, municipal, and public corporation bonds. New York instituted a Public Authorities Control Board, after the default of its Urban Development Corporation, with the authority to approve bond issues of some public corporations. Vermont recently instituted a ceiling on the issuance of new state debt which is having a detrimental impact on state capital improvements. Vermont's State Planning Office carries out a detailed capital planning effort designed to provide a ten-year picture of capital needs and priorities. New Jersey's Commission of Capital Budgeting and Planning reviews and makes recommendations on all legislation that has a capital impact, as well as all state bond proposals.

Pennsylvania has a system of over 2300 municipal authorities spawned, in part, by overly restrictive local government debt limits. The Department of Community Affairs can review the activities of some of these authorities, but actual oversight is minimal.

The purpose of this report is to provide a discussion of the purposes, rationale, and major issues involved in state oversight of the issuance of debt by state agencies, municipalities and public corporations, to examine Alaska's current ability to oversee and/or control the debt activities of these subdivisions, and to provide an overview of the debt oversight mechanisms used by other states as examples which may be relevant to Alaska.

The question of whether the state of Alaska has adequate mechanisms for overseeing and regulating the assumption of debt by its agencies, public corporations and municipalities can be reasonably answered only once we know the goals and purposes oversight mechanisms can serve, and the problems that can arise if no such mechanisms exist. Borrowing for capital improvements raises concerns in two distinct areas: financial management, and development strategy. Inadequate controls over the assumption of debt may lead to financial difficulties, and/or to a course of development which is not in the public interest. Good oversight procedures will address both issues.

I. Framing the Problem

Financial Aspects of Debt. Foremost among the financial issues relating to bonded debt is the basic question whether the amount of debt anticipated is unwise, that is, whether the debt service that will result from issuing bonds will place too heavy a burden on the state and its residents. This is not solely a question of determining whether the strain on resources will be so great as to threaten default on the bonds. It is also a question of recognizing the tradeoffs between the use of limited financial resources for current operations and their use for capital improvements. To the extent that the state saddles itself with long-term commitments to repay debt, in times of

financial stress it may become necessary to forego expenditures for desirable current programs in order to meet debt repayment commitments. In addition, given that ability to assume debt is not limitless, any decision to incur debt now necessarily restricts the flexibility to incur debt later for other projects.

Linked to the question of the financial wisdom of incurring debt are a series of related technical issues. Are the bond issues being arranged in such a manner as to ensure the best possible deal for the state? Are bond issues competing with one another and resulting in higher than necessary costs? In an effort to make the issues more marketable are restrictive covenants being included which limit the ability of the state or its subdivisions to carry out the functions for which the money was raised?

Financial questions are raised also by the fact that debt issued independently by various levels of the state -- state agencies. municipalities, and public corporations -- are not independent in their effects on the creditworthiness of the different levels of government. In assigning credit ratings the rating agencies take into account the total debt burden of an area in relation to its resources to repay additional debt. If, for example, a public power authoritiy issues large amounts of debt to be repaid from user charges, this may limit the ability of municipal governments which draw on the resources of the same residents to issue debt on favorable terms. This fact, that the decisions of some units of government to assume debt generate externalities, or spillover effects, for other units of government argues for state oversight mechanisms which at minimum coordinate the activities of the various levels of government assuming debt.

In the worst case, history has shown that the inability of autonomous public corporations to meet their debt service commitments can have a negative

impact on the ability of state and municipal governments to borrow money, even when the chartering state government is not legally responsible for the debts of its creations. When the Urban Development Corporation, a New York public corporation, defaulted on its revenue bond payments (which were not legal responsibilities of the state) the bond market responded by avoiding all New York State and New York City bond issues. The fact that the bond market expects that state governments will make good on the commitments of their independent authorities, and does not clearly separate the credit-worthiness of the state from the credit-worthiness of its independant public authorities, is a strong reason for states to maintain controls over the financial activities of their public corporations. The lack of strong over-sight and control mechanisms over public authorities can lead to a deterioration in state credit, regardless of the financial soundness of its own undertakings.

Development Aspects of Debt. Apart from the financial considerations surrounding the assumption of debt, borrowing to finance capital improvements has a number of development consequences which ought to be considered. Decisions to invest in infrastructure such as roads, port and power facilities, and buildings shape the course of development activities for years to come. The existence of transportation and other infrastructure determine where development can most easily take place. These facilities shape as well as respond to patterns of land use. The fast pace of development in Alaska, the relative paucity of infrastructure, and the interactive effects of providing facilities and the demand for facilities make it extremely important for Alaska to have a long-run development planning and predicting capability which influences decisions on public investment.

Given the large resources available from oil and gas revenues, without planning there is a great potential for money to be invested in ways that do not contribute to long-term stable growth. A great deal of capital could be invested in facilities which serve the relatively immediate needs of powerful or vocal constituencies without providing a sensible base for sustained growth. The existence of a number of autonomous public corporations, each responsible for carrying out decisions in its area (power, renewable resouces, housing) makes a coordinated pattern of development less likely, but no less imperative. The fragmented authority to decide on capital investment issues may increase the ability of special interests to influence decisions and secure state and authority actions which may not reflect the best use of public capital and borrowing capacity.

At the local level, ability to support large capital projects now from oil and gas revenues may not provide sufficient rationale for pursuing those projects. Capital projects are expensive to maintain and operate. If the tax base remaining after depletion of oil and gas reserves is insufficient to support the operation and maintenance costs of the improvements, local governments may find that they are left with monuments that they are unable to operate. The result could well be pressure for state subsidies to support the facilities, or the deterioration of the facilities. These considerations should encourage the state to take an active role in advising local governments on the broader issues of local investment such as life-cycle costs of capital facilities, long-term impacts of capital improvements and how they relate to predictions of population and industrial growth.

While the choice of a development strategy is a political one, it is clear that the existence of such a strategy will have little impact on actual

development unless the state has means for monitoring and directing the pace and direction of capital investment. Bond oversight procedures should be designed with the goals of providing information relevant to long-range planning, and giving advance warning of important decisions to ensure that capital investments to be financed by bond issues fit into overall state development plans.

II. Is State Bond Oversight Necessary?

One argument that is made against expanding state oversight of the bond activities of its agencies, public corporations, and municipalities is that the bond market provides the necessary and sufficient analysis of the financial viability of the projects to be financed through bonds. Several points need to be made in response to this claim. The bond market does not assess the wisdom of the projects brought to it in the form of general obligation bonds backed by the full faith and credit of the issuing state or local government. The bond market makes a determination of the relevant government's ability to meet the debt service requirements of the issue, not a determination of the worth of the project itself. The interests of underwriters, bond counsel, and banks is to promote borrowing up to the point of the government's ability to support debt payments. This is not always in keeping with the public's interest in balanced, planned investment. Even when the bond market's willingness to buy bonds is an adequate reflection of the credit-worthiness of the issuing unit, state oversight can be useful as a checkpoint in the political process of deciding which capital projects, what type of development, to invest in.

In the case of revenue bonds, backed by the revenues of the proposed project, the bond market does try to assess the likelihood that the revenues raised will be sufficient to support the debt service. It does not judge the appropriateness of the project, except insofar as any financially viable project is considered to be desirable. Nor does it help choose between different projects. However, the bond market has not been particularly good even at predicting those projects that would run into trouble, such as the Urban Development Corporation. In addition, it is in the interests of the financial community to continue funding projects to which a large initial commitment has been made in order to ensure that revenues will be generated to pay off the bonds. Bonds of the Washington Public Power Supply System were still receiving AA and AAA ratings long after legislators and citizens' groups began to question the financial viability of the projects. However, those who were heavily invested in the projects had a strong interest in seeing them completed. The judgements made by the financial community on whether to invest or continue to invest in revenue-backed projects are not always the same as those that would be made by state analysts concerned with limiting state liability.

Given the bond market's tendency to view the credit of public corporations as ultimately backed by the state (regardless of the presence or essence of "moral obligation" language in the chartering statutes), and the fact of a continuing large surplus in the general fund which could be tapped in case of financial difficulties, investors are likely to apply less critical analysis of financial viability" to proposed projects of public corporations than would state officials genuinely concerned with potential drains on state resources by proposed "self-supporting" enterprises. The bond market can be

relied on to provide neither a useful judgement on how capital projects will affect development, nor, in many cases, a reliable judgement on the viability of self-supporting projects. As it is the state that ultimately bears the costs and benefits of borrowing decisions, it is only proper that it should have an independent capability to assess what the impact of those decisions will be on its interests.

From the foregoing discussion we can define several purposes that bond oversight and regulating mechanisms could be designed to serve:

1) To protect the financial health and credit-worthiness of the state by ensuring that the state and its subdivisions do not assume levels of debt that are beyond their ability to support, or which adversely affect the ability of other units of government to borrow on favorable terms.

2) To gather information and provide advice so that the borrowing of the state, public corporations, and municipalities may be arranged on terms most advantageous to the state and its residents.

3) To provide a means of coordinating the capital improvements activities of various levels of government by incorporating them into state development plans, or by providing input into other state agencies charged with this responsibility.

Alaska currently has no single point where information on state agency, public corporation, and municipal debt is collected and analyzed. The state exerts little influence on municipal decisions to borrow, and has only limited information on and control over the capital borrowing of its public corporations. The state does control the technical aspects of general obligation bond issues of its state agencies through the State Bond Committee. However, as municipal and corporation debt are currently more than three times state general obligation debt, and as projected public corporation borrowing in 1982

will be five times state borrowing, it is clear that the State Bond Committee has jurisdiction over only a small part of Alaska's public borrowing.

There is both a need and room to improve Alaska's oversight and control of the bond activities of its agencies, public corporations, and municipal governments. Improving Alaska's bond oversight and control procedures should be viewed as an investment in preventive medicine. Even though the state's credit is now good and glaring financial problems do not exist, if regulatory action is postponed until problems become obvious the damage will already have been done.

Municipal Borrowing. Total municipal debt in Alaska is $1,091 million, larger than the state's total general obligation debt. Municipal governments are likely to continue to need to borrow substantial sums in the future. Although the Alaska Department of Community and Regional Affairs collects and publishes information yearly on local government general obligation debt, this information is not utilized for planning purposes or as a means of limiting municipal debt.

Municipal governments face a number of problems in issuing debt. They are at a disadvantage when they enter the bond market to issue relatively small amounts of bonds. Few local governments have the capabilities to design and carry out bond issues most advantageously. Many end up paying too much for financial and legal advice. Local governments generally do not have sophisticated accounting systems, nor capacities for projecting future needs or the costs of capital investments accurately. The state, by improving its oversight and advisory capacity over municipal borrowing activities, could reduce the effective cost of borrowing for municipal governments and improve their borrowing decisions.

The Alaska Municipal Bond Bank is already playing an important role in improving the ability of small municipal governments to borrow cheaply. The Bond Bank sells bonds on the national market and uses the proceeds to buy the bond issues of municipalities. It has received appropriations to reduce the rate of interest it charges local governments below the rate at which it borrows. However, Bond Bank indebtedness of roughly $83 million is a small fraction of total municipal debt of $1,091 million. A large amount of municipal borrowing thus goes on without the advice and coordination of the Municipal Bond Bank.

Although it is unlikely that the default of a small municipal government would have a large impact on state credit, the state has an interest in ensuring the soundness of local investment decisions. Local governments, overcome by the sudden riches of oil revenues, may be tempted into investing in capital projects for which there is no significant need, or which, even if needed, will require large operation and maintenance appropriations which the governments may not be able to support after the booms. The burden will then fall to the state to maintain the facilities with state funds. It is advisable for the state to have financial and planning advisors available to local governments who can help them make capital borrowing decisions with these factors in mind. One way of increasing state oversight would be to require local governments to submit all planned bond issues to the state for approval or, at least, for comment. A logical home for these functions would be the State Bond Committee. Its role could be expanded to provide advice to localities, approve their bond issues, coordinate the timing of issues, and keep records of municipal debt.

Public Corporation Borrowing. The report of the Institute of Public Administration entitled Alaska's Public Corporations: A Framework for Assessment discusses in some detail many of the issues that need to be considered with regard to the activities of these bodies and the state's role in overseeing their actions. Without repeating all the findings it may be useful to point out some of the issues relating to the debt and state oversight of public corporations. Alaska's public corporations, as of June 30, 1981, had debt principal outstanding of more than $1,400 million, more than twice the state's general obligation debt. New borrowing by these corporations is expected to exceed $1,000 million this year, while new general obligation borrowing by the state was $200 million. In addition, public corporations cannot borrow on as favorable terms as the state. Differences in the ratings and terms of state general obligation bonds, and those of public corporation bonds in general make the cost of borrowing for public corporations significantly higher than for the state. Since the state and its residents ultimately pay the higher costs of public corporation borrowing, it is important for the state to have a means of evaluating, coordinating, and controlling the issuance of debt by its public corporations.

The levels of debt being accrued by public corporations should be a matter of concern, particularly given the impact such borrowing can have on state credit. Although Alaska's public corporations are legally separate from the state, a number of factors would make it practically impossible for the state to avoid committing its resources to bailing out public corporations should they run into difficulty meeting their debt services. The fact that Alaska has provided capital appropriations and/or subsidies to each of its public corporations, and is involved in lease-back arrangements with several, makes

the separation of state and public authority responsibility for debt of the authorities problematic. A failure of one of these corporations would probably have, at minimum, a short-term negative impact on the state's credit rating, just as New York's credit was affected by the failure of the Urban Development Corporation. If the state refused to take part in refinancing loans and providing subsidies the adverse reaction of investors would probably be more drastic and longlasting.

Another reason for the state to take a more active role in overseeing the activities of its corporations is that if the high level of authority borrowing is not properly coordinated, state and public authority bond issues may compete with one another, to the detriment of both. Finally, the large amount of borrowing for capital improvements being carried out by Alaska's public authorities necessarily means that a large fraction of the decisions relating to the speed and direction of development in the state is being carried on by these authorities. It is in the public interest to ensure that Alaska maintains mechanisms for reviewing and influencing the decisions of its public authorities. Ideally, all important development decisions of public authorities would be subject to prior public debate and would be required to fit into the state's development strategy.

III. Debt Oversight Mechanisms Used by Other States

Although Alaska's current situation of financial health is unparalleled among the other 49 states, it is hoped that the foregoing discussion has pointed to reasons why Alaska could benefit from developing more formal and extensive methods of debt oversight than presently exist. Obviously, Alaska's vast resources and small population make its situation unique, and any new

debt oversight mechanisms must be tailored to meet its specific needs. However, other states with longer histories have been concerned with levels of state, municipal, and public corporation debt, and have implemented a variety of mechanisms to deal with the problem which may serve as useful examples -- both positive and negative -- for Alaska. The mechanisms used range from almost nonexistent, to legislative or executive department responsibility for auditing books and reviewing budgets of political subdivisions, to a variety of institutional boards charged with reviewing or approving issuance of debt by public corporations and/or municipalities, to statutory or constitutional limitations on debt, to even absolute constitutional prohibition on state debt (Nebraska).

The following states have been chosen to illustrate the range of bond oversight mechanisms currently in use. These examples have been selected from references in the literature and do not represent a comprehensive search of the mechanisms of all states. Although statutory or constitutional debt ceilings are common, because they are rather blunt instruments more emphasis has been placed on examining other institutional methods of overseeing debt activities. It is worth noting that "bond oversight" is a broad term that falls under the jurisdiction of different agencies and boards in different states. The variety of constitutional and statutory limits on the issuance of debt by state agencies, municipalities, and public corporations, and the differing extent to which corporations and municipalities are used to finance capital improvements in different states, makes generalisations difficult. However, certain common concerns emerge, as well as some examples which may be useful as models for Alaska.

Michigan. Michigan has a relatively forceful mechanism for regulating the accumulation of debt by its agencies, municipalities, and public authorities

in its Municipal Finance Commission. The mission of the Commission is to protect the credit of the state and its municipalities. To carry out this responsibility the Commission is given the power to approve or disapprove all bond issues (short and long-term, general obligation and revenue) of state agencies, municipal governments, and public corporations. Any of these units wishing to issue bonds must submit a plan to the Commission's staff which, after reviewing the proposed project and its financing, makes a recommendation to the Commission. The staff considers such questions as the need for the facility, revenue projections, cost estimates, and the amount of debt already outstanding in order to make a judgement on the financial viability of the project. If they have objections to parts of the proposal they inform the issuing agency and try to work out satisfactory arrangements. The Commission, consisting of the Attorney General, State Treasurer, and Superintendent of Public Construction, meets each week to vote on proposed bond issues.

The Commission takes a strict view of the types of financing that are allowable. Methods not specifically approved in the statutes are considered suspect. Once projects have been approved there is some monitoring of agency compliance. Each agency is required to submit yearly audit reports. Compliance with this rule is good, in part because the penalty for non-compliance can be withdrawal of state funds. However, due to staff limitations and inadequate enforcement mechanisms the Commission has little ability to monitor whether agencies comply with the terms of the approval orders. The staff will provide technical and planning assistance to local governments if asked, but is not often asked to do so.

The biggest complaint of the Commission staff is that the Commission has insufficient legal power (and insufficient staff) to enforce the terms of its

approval orders. They would like to be able to better monitor such things as whether rate structures are being set which are sufficient to generate revenues to cover debt service. Where they find that the local agency is not complying they would like the power to take enforcement action. One proposed mechanism would be to give the State Treasurer, upon recommendation of the Commission, the power to withhold state revenues from agencies or municipalities which are not complying with the terms under which they received approval to issue bonds.

In general, the Commission is viewed as successful in performing its task, and effective in weeding out unwise or financially unsound borrowing projects. It is one of the most comprehensive oversight mechanisms in the country, since all local, state agency, and most authority debt comes under its scrutiny.

New York. In the wake of the adverse effect on state and city credit that resulted from the financial difficulties of the Urban Development Corporation in 1975-76, it is not surprising that New York has taken a number of steps to gain greater control over the activities of its public corporations. The most important step was the creation in 1976 of the Public Authorities Control Board (PACB). The Board consists of a chairman appointed by the governor who has always been the Budget Director, along with the chairmen of the Assembly Ways and Means Committee and the Senate Finance Committee. Some, but not all, of the largest public authorities fall under the jurisdiction of the Board and must submit applications to issue bonds to the PACB for approval. The Board's primary interest is in evaluating the financial viability of the projects, and in determining that the bonds will be properly secured and will not result in future claims on state resources.

Although this mechanism provides some check on public authority borrowing that could affect state credit, there is some criticism that the PACB does not consider all the relevant factors in evaluating proposed projects. One reason is that staff resources are too limited to perform in-depth analyses of all proposals. Another criticism has been that the PACB does not have power over all public authorities, and that some of the larger ones are outside its control. Initially only a few authorities thought to be in trouble were included. Others have been added, but many have used their influence to maintain their autonomy.

All authorities under the Public Authorities Act (which includes most, but not all, state authorities) are required to submit annual budgets to the Division of Budget and to the legislative fiscal committees. In fact, compliance with this regulation is uneven. The Comptroller can audit the books of each authority and ask for relevant financial data. Some authorities are reluctant to provide all the information requested by the Comptroller. Those authorities which receive appropriations from the state must have new projects added to a list of approved projects by legislative action. Thus a final means of derailing undesired projects is for the governor to veto additions to the list.

Another mechanism of New York is designed to improve the terms on which state agencies and public authorities borrow. In 1977 the state established the New York State Securities Coordinating Committee. The Committee is composed of the heads of ten of the state's largest authorities along with the Budget Director and State Comptroller. The purpose of the Committee is to coordinate the scheduling of bond issues of the state and authorities in order to minimize competition, enhance the marketability of the obligations and raise capital more efficiently. Although the Committee has eliminated

the worse inefficiencies, some believe that it should be expanded to include all authorities and a means devised for coordinating the scheduling of state and authority debt with municipal borrowing plans.

The oversight mechanisms employed in New York emphasize the financial integrity of authorities. Overall development direction embodied in authority decisions are not a major concern. The budget and audit procedures are viewed as ways of ensuring sound management and keeping the state informed of plans so that problems such as those which arose from UDC debt do not occur again. Although the legal requirements for reporting budgets and providing financial information are clear, there is less than full compliance. Moreover, it is doubtful that the agencies receiving the data have sufficient staff resources to evaluate it effectively.

Vermont. Vermont has very few public authorities. It has a Municipal Bond Bank similar to Alaska's which helps package small municipal bond issues to obtain better terms. Most of the state's debt, however, is in the form of general obligation bonds. In 1975, as a result of the state losing its AAA bond rating, the legislature passed a statute which limits the amount of new state debt that can be issued to 90% of the amount to be retired in that year. The effect of this statute is progressively to reduce the amount the state can borrow in any year (eventually to 0). Inflation has exacerbated the effects of this rule. While the law was intended to slow the growth of debt, it is beginning to have undesired consequences: 1) Needed capital improvements are being put off. The resulting backlog will be difficult to finance once the law is modified, and will result in uneven debt service requirements. 2) Capital improvements which should be paid for over a number of years are competing with current programs for limited appropriations. Many in Vermont now believe

that the debt limit is far too restrictive and is distorting investment decisions. It is likely that it will be repealed before long. Such consequences demonstrate the need for careful consideration of the forms oversight and limitations of debt should take. Poorly designed statutes may create problems as severe as those they were intended to alleviate.

The restrictive borrowing policy outlined above contrasts sharply with the capital planning effort being carried out in the Vermont State Planning Office. Since 1977, every two years each state agency is required to submit a 10-year capital facilities plan in which they list by order of priority their projected capital needs. A detailed two-year plan is also required. According to those in the Planning Office this information enables them to devise a capital investment strategy which is in keeping with the development goals of the executive branch. It facilitates the examination of projects to see if they meet identifiable needs, the identification of deferred maintenance problems, and consideration of long-term operation and maintenance requirements. Finally, by bringing together projected capital requirements in one place it provides a basis for legislative discussions on appropriations and the need for bond issues. It is hoped that this planning will provide some of the impetus to liberalize the state's debt limitation.

New Jersey. In 1975, due to the failure of five bond proposals at the polls, the Governor of New Jersey created the New Jersey Commission of Capital Budgeting and Planning. The Commission is composed of four private citizens, four members from the Executive and four members from the Legislature. The mandate of the Commission is to review the capital plans of all state agencies and all legislation that has a capital impact in order to create an annual

capital plan for the state which evaluates the state's needs for capital investments and recommends ways of financing needed investments. The Commission has evidently brought some coherence to the process of capital planning. Commission recommendation has become a near prerequisite for legislative consideration of capital legislation. In addition, 11 of 12 bond proposals recommended by the Commission have passed at the polls.

Although the Commission technically has the power to review and make recommendations on the capital plans of state authorities, as a practical matter many authorities do not supply requested financial plans. As a result, the Commission has little impact on the decisions of public authorities. The Commission Director cited inadequate staff and the political power of the authorities as reasons why authorities are not coming under the watch of the Commission. Thus, while the Commission has improved New Jersey's ability to develop priorities for state capital expenditures, and to evaluate state bond proposals, it has not been a mechanism for bringing the debt of municipalities or public authorities under state scrutiny.

Pennsylvania. One unique feature of Pennsylvania's debt structure is the role played by the more than 2300 municipal authorities. Most of these authorities are created to build schools, sewers, or water facilities for municipal governments. Most of them are "lease-back" authorities in which the revenue bonds issued by the authority are guaranteed by rental agreements with the local government. After the debt is repaid title to the facility passes from the authority to the local government.

After enactment of the Municipal Authorities Act of 1935 authorities became a popular way of circumventing the constitutional debt limit on local

governments. The courts held that contractual agreements to rent facilities did not count as debt for purposes of the debt ceilings and were not subject to requirements for voter approval, even though taxpayers were just as obligated to pay for facilities so financed as they were for facilities financed by municipal general obligation debt. This convenient legal fiction led to the creation of hundreds of municipal authorities and generated a booming business for local bond lawyers and underwriters.

A constitutional amendment in 1968 and the Local Government Unit Debt Act of 1982 significantly reduced the incentive to create municipal authorities by changing the debt ceiling from a percentage of assessed property values to a percentage of total municipal revenues, removing the debt ceiling entirely for debt approved by voters, and counting authority debt that is guaranteed by municipal rents or subsidies as municipal debt. These changes increased the flexibility of municipal financing options and decreased the advantages of creating municipal authorities. Nonetheless, municipal authorities are still flourishing despite financing costs that are higher than those municipalities themselves incur for similar purposes. This is probably due in part to greater legal and financial flexibility of municipal authorities, and in part to the continuing financial interests local bond lawyers, underwriters and bankers have in promoting municipal authorities.

For years the activities of municipal authorities were beyond the jurisdiction of any state agency. With the statutory changes the Department of Community Affairs was given review power over borrowing of local governments and municipal authorities which draw their revenues from rent payments of municipal governments. In practice, because of the large number of municipal governments and municipal authorities, review is minimal. The Department of

Community Affairs tends to become involved only when a local government gets into difficulty in meeting its debt service payments.

The Pennsylvania example illustrates how an arbitrary debt ceiling, designed to limit local debt, led to efforts to circumvent the ceiling which, aided by judicial approval and local business financial incentives, fostered a system of local debt that was less controlled than the one it replaced. Recent changes in the law have served to re-establish some state control, but the bond activities of statewide and regional authorities remain beyond the jurisdiction of state agencies.

North Carolina. Of the states surveyed, North Carolina maintains the most stringent controls over the borrowing activities of its municipalities and public authorities. Since 1931 cities, counties, and public authorities have had to submit proposed bond issues to the Local Government Commission for approval. The Local Government Commission, in addition to evaluating the proposals, puts together the necessary documents, sells the bonds (as well as all state bonds), and monitors repayment. In evaluating the proposals the Commission looks at financial criteria, such as whether the costs are reasonable and whether the unit issuing the debt can afford it, but they also look at factors such as the need and demand for the facilities. In the case of revenue-backed projects they require that feasibility studies be submitted.

In monitoring debt repayment the Commission requires that each unit submit a yearly independent audit. Each unit must report regularly that it is meeting its debt service payments. If problems in meeting debt payments develop, the Commission is empowered to issue mandatory tax orders (for general obligation bonds) and, if necessary, to take over the management of

the local unit. In its history the Commission has issued only one tax order and has never taken over local management. In general, its monitoring is good enough to allow it to identify potential difficulties in advance and to work with local officials to rectify any problems. Although most local units retain their own bond counsel to work on bond issues, the Local Government Commission provides free advising and auditing services to any unit that requests it.

Having bond approval, sale and monitoring functions located in one agency allows North Carolina to coordinate and control the borrowing of its subdivisions more readily than many other states. Such centralization limits the authority of local governments and public authorities, but the degree to which municipalities and public authorities find the controls and reporting requirements excessive is not known. Although having the state sell all bonds may provide some of the benefits to small units that a bond bank provides in other states, the financial advantages and desirability of having the state market all bond issues are debatable.

Recommendations

Oversight of Public Corporations

1. Alaska should create a formal mechanism for overseeing and regulating the financing and development activities of all public corporations in the state. This mechanism could take the form of a new committee, with representation from the Executive and Legislative branches, similar to the Public Authorities Control Board in New York. Or, the role and powers of the State Bond Committee could be expanded to include oversight of public authorities.

2. The board or committee designated to oversee public authorities should have the authority:

   a. To disapprove or alter the terms, covenants, and timing of bonds to be issued by public corporations.

   b. To set rules and issue orders, including rules governing the disclosure of financial information to the rating agencies and investors.

   c. To receive and review audits, financial reports, and capital budgets already required under existing statutes.

   d. To impose appropriate sanctions for failure to comply with reporting requests or the terms of orders approving the sale of bonds.

3. If the State Bond Committee is chosen as the appropriate vehicle, consideration should be given to expanding its membership to include members of the legislature. Since the Committee, to be most effective, must have

significant power to approve or disapprove bond issues, participation by both the executive and legislative branches is desirable in order to make the Committee's actions credible and to help prevent charges of abuse of authority.

4. The effective functioning of this oversight mechanism depends on the provision of technical staff sufficient to evaluate the financial viability and desirability of proposed capital projects. Whatever structure is chosen additional resources will need to be provided as current staff of the Bond Committee is insufficient to take on these additional duties.

Oversight of Municipal Governments

1. The state's interests in overseeing the borrowing activities of municipalities are:

a. To reduce the cost of borrowing for local governments.

b. To prevent borrowing decisions that may result in deterioration of municipal or state credit, or which may lead to future claims on state resources.

c. To collect information which can provide the basis for coordinating the issuance of debt at all levels of government in the state, and which can be used for long-range planning.

2. The Alaska Municipal Bond Bank is carrying on a number of activities designed to facilitate borrowing by small municipalities. The Bond Bank handles only a fraction of municipal borrowing. There is room to expand its activities so that they cover more municipal borrowing.

3. The state's interest in protecting its credit and the credit of its municipalities, as well as limiting demands for future subsidies are reasons

to consider making proposed local bond issues subject to approval of an expanded State Bond Committee described above. Although the need for such oversight is not as pressing as for oversight of public corporations, it could prove beneficial to both the state and municipalities. North Carolina and Michigan have used similar mechanisms for many years. They have proved useful in identifying ill-conceived borrowing projects, and by providing monitoring of debt repayment have helped give advance warning of impending problems which the state can take action on.

Long-range Planning

The role of an expanded State Bond Committee, or Authorities Control Board, should not be viewed simply as that of ensuring the financial soundness of incurring debt. Decisions to borrow for capital improvements which affect not only the financial situation of the state and its residents, but also the shape of development for years to come should be subject to public debate and control. It would be desirable for the State Bond Committee to work closely with the Division of Policy Development and Planning to ensure that capital borrowing and expenditure activities of state agencies, municipal governments, and public corporations fit into a coherent plan for state development. Consideration should be given to periodically compiling a statewide 5-year or 10-year capital investment plan similar to the ones utilized in Vermont.

The recommendations above vest quite a lot of power in an expanded State Bond Committee, or Public Authorities Control Board. However, if Alaska is to develop a sound debt policy it must have the authority to gather relevant information. Moreover, it must have the authority to act on that information when analysis indicates that assuming additional debt is either financially unsound, or does not serve a desired public purpose.

APPENDIX

Mechanisms for Influencing the Activities of Public Authorities*

Ways that the state can exert influence over its chartered entities include powers of appointment, legislative action, executive supervision, court review, local approval, and voter control.

Powers of Appointment. The statutes which create public corporations usually specify the composition of their board of directors, their terms, and which officials are responsible for appointing them. Although theoretically government officials can influence the orientation of public authorities by judicious appointments, as a practical matter these appointments are often made as political rewards or trades. This limits the influence an appointing official can have over the decisions made by the corporation. Staggered terms make it difficult for newly elected officials to change the direction of the boards they inherit. Occasionally elected officials have the power to veto decisions of authority boards. The usual mechanism is for board decisions to take effect unless vetoed by the official. Effective use of the veto power depends on up-to-date review of authority board minutes -- no small task. Authority boards can often shield important decisions from review by simply making them off the official record or administratively.

Legislative Action. The legislative bodies which create authorities by statute have the power to amend the enabling statutes. This power is often limited by difficulties inherent in changing the rules of authorities with bonds outstanding. However, if the interests of bondholders are protected there is no reason why legislatures should not alter the form or mandates of

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*This section is in large part summarized from A.H. Walsh, The Public's Business, pp. 278-313.

their public authorities. Such flexibility is needed to ensure that authorities do not become ossified and outlive their usefulness. The power of appropriation, which legislatures wield over state agencies, is more limited when corporations are largely self-supporting. One way of increasing such control is to require all agencies which receive subsidies or loans from the state to submit their budgets for approval, and be subject to audits. However, legislative oversight of corporation decisions is probably even more difficult to carry out effectively than supervision by executive agencies.

The legislature's greatest influence over the activities of public corporations comes at the time they are established. Clearly defined missions and powers, as well as rules for reporting financial plans and budgets, and being audited can make control after establishment of public authorities far easier, since many important authority decisions are made incrementally. Keeping watch over the day-to-day operations, and predicting actions is probably handled much more easily by state agencies responsible for the authority's activities than by legislative committees which are following current legislation.

Supervision by Executive Agencies. Statutes creating public authorities often specify types of supervision over them by executive agencies. The most common are: requirements for submission of budgets to budget offices and legislative committees, powers of audit granted to comptrollers, review of bond prospectuses by the attorney general's office, and power to approve or limit bond issues and coordinate activities vested in special commissions or line departments.

Requiring public authorities to submit their budgets for prior approval to the state's budget office and appropriate legislative committees is a potentially powerful means of gaining information and influencing authority

decisions. Requiring capital budgets to be submitted is one way to coordinate the long-run capital plans of public authorities with state goals.

Requirements that authorities be subject to financial and performance audits is another way for the state to keep itself appraised of the financial health and efficiency of organizations whose decisions can significantly affect state credit.

Placing authorities within the jurisdiction of regular state departments (as Alaska has done) is still another way for the state to keep informed on authority activities and exert control. However, to be effective the regulatory power of the department, especially the relationship between decisions made by the authority's board of directors and the department's review and/or veto power, need to be clearly defined.

Although legislators may see little need to review the budgets of authorities which do not utilize large state appropriations, the ability of these corporations to take actions which place an implicit lien on state funds, and which can profoundly affect the state's ability to borrow, gives sufficient reason to scrutinize their activities carefully.

Court Review. So far the courts have failed to provide unambiguous guidelines in their reviews of public authority powers. In judicial decisions authorities enjoy the best of both worlds, being considered arms of government for the purposes of issuing tax-exempt bonds, but being held to be independent agents not subject to administrative control statutes. This duality of interpretation is evidence of the importance in creating authorities of clearly defining the objectives of public corporations, limitations on their powers, and types of legislative or executive control that may be exercised over them. The quasi-independent nature of public corporations has made it difficult for

taxpayers and citizens' groups to legally challenge the expenditure plans of public corporations. This too argues for creating mechanisms whereby such input can be incorporated into authority decisions.

Local Government Controls. In general, public corporations reduce the power of local governments. Regional authorities often skim off revenue-producing projects and leave local governments with the tasks of providing tax-supported services. Local governments often can exert some control over authority decisions if they control zoning issues. They can sometimes use this power over land to stop projects, or to bargain for payments in lieu of taxes.

Voter Control. Because the decisions of public authorities can place a direct burden on taxpayers through lease-back arrangements or an indirect burden in the form of "moral obligation" language, and the fact that states can ill afford to let public authorities default on their loan payments, many people have argued that the borrowing of all government subdivisions should be subject to voter approval. While this proposal appeals to popular democratic notions, it would be likely to have some serious negative consequences. It was the existence of unrealistic debt limits in many states that prompted the growth of public authorities. By the time a bond issue comes before the voters many of the important decisions have already been made: choice of options, site decisions, type of development. It is therefore an open question whether voter ratification of complicated bond issues, themselves the result of political haggling, represent the type of public input the proponents are striving for. Finally, although making all government borrowing subject to voter approval--given that voters on average have approved about half of the borrowing asked for--would eliminate some projects that are not wise, it would also tend to eliminate a large amount of capital investment that is productive and

necessary. If the level of investment in public capital goods declines the result would be a deteriorating infrastructure, and a corresponding decline in the productivity and services that infrastructure supports. Voter preference is for projects that are revenue-producing such as bridges and tunnels, rather than education and low-income housing. The result of shifting to voter approval of all bond issues will be a decline in capital investment and a shift in type of public investment.

A less disruptive means of achieving more accountable debt policies may be to loosen the restrictions that have led to the overuse of public authorities, and at the same time make the investment and borrowing decisions of public authorities more subject to control by elected officials, and formalize mechanisms for citizen input into the decisions of public authorities.

Gerald Thy
Johnson L. 82

LEGISLATIVE BUDGET AND AUDIT COMMITTEE HANDBOOK

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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Prepared by the Division of Legislative Audit

(Revised October 1981)

TABLE OF CONTENTS

ORGANIZATION AND FUNCTION

The Legislative Budget and Audit Committee is a permanent interim committee of the Legislature. It was established in 1955 as the Legislative Audit Committee. The Committee is composed of ten members and two alternates: the chairpersons of the Senate and House finance committees; one member selected from each of the Senate and House finance committees and appointed by the President of the Senate and the Speaker of the House, respectively; and three members and an alternate appointed from each house by the respective presiding officer. If the chairperson of a finance committee chooses not to serve, the presiding officer appoints a replacement from the finance committee.

The Committee has the responsibility for providing the Legislature with fiscal analysis, budget reviews, and audits of State government agencies, and for approving requests from the Governor to revise the appropriations act. As a result of the passage of Chapter 18, SLA 1980, the Committee has authority to monitor lending and investment activities of the State.

To provide the necessary technical assistance to accomplish the purposes, two permanent staff agencies have been created: the Legislative Finance Division and the Legislative Audit Division. These divisions report directly to the Legislative Budget and Audit Committee and are independent of Executive and Judicial agencies. The Committee also has some temporary employees to assist with Committee activities.

Legislative Finance Division

One of the primary responsibilities of a State legislative body is to research, draft and enact revenue and appropriation measures. The Legislative Finance Division was created in 1971 and assigned the following duties:

1. Analyze the budget and appropriation requests of each department, institution, bureau, board, commission or other agency of State government.

2. Analyze the revenue requirements of the State.

3. Provide the finance committees of the Legislature with comprehensive budget review and fiscal analysis services.

4. Cooperate with the Division of Budget and Management in establishing a comprehensive system for State program budgeting and financial management as set out in the Executive Budget Act (AS 37.07).

5. Complete studies and prepare reports, memoranda or other materials as directed by the Legislative Budget and Audit Committee.

The Finance Division reviews proposed changes to the operating budget for the Budget and Audit Committee and prepares necessary backup information for Committee decisions on proposed "revised programs".

During the interim, the Finance Division functions with a staff of seven fiscal analysts, one EDP Coordinator, one Data Control Clerk, one Administrative Assistant and one clerical position. The Division also houses the staff assigned to the two finance committee chairpersons. During Legislative sessions, the Division increases staff to meet the additional needs of the two standing finance committees.

Legislative Audit Division

In accordance with the Constitution of the State of Alaska and Title 24 of the Alaska Statutes, the Legislative Auditor and his staff conduct the post-audit function in the budget cycle. The Division was created in 1955.

All audits performed by the Division are external audits, that is, they are performed by an auditor who is independent of the executive head of the government unit or agency being audited. The three major types of audits performed by the Division are financial-compliance audits, performance audits, and special audits or reviews.

1. Financial-Compliance Audit

A financial-compliance audit determines (a) whether financial operations are properly conducted; (b) whether the financial reports of an agency are presented fairly; and (c) whether the entity has complied with applicable laws, regulations, administrative policies, and legislative intent.

2. Performance Audit

A performance audit is conducted to provide the Legislature with an evaluation and report on the manner in which administrators of an agency have faithfully, efficiently, and effectively administered a program. Faithfulness refers to whether or not programs have been administered in accordance with promises made to the Legislature and the expression of legislative intent. Effectiveness refers to whether or not planned program objectives have been achieved. Efficiency refers

to whether or not program accomplishment has been achieved by using the least-cost combination of resources and with a minimum of waste.

The 1971 Legislature gave the Legislative Audit Division the authority to conduct performance audits of any agency of State government at the direction of the Budget and Audit Committee. The Committee has instructed the Legislative Auditor to review all audit assignments and conduct performance audits whenever considered practical and beneficial to the State.

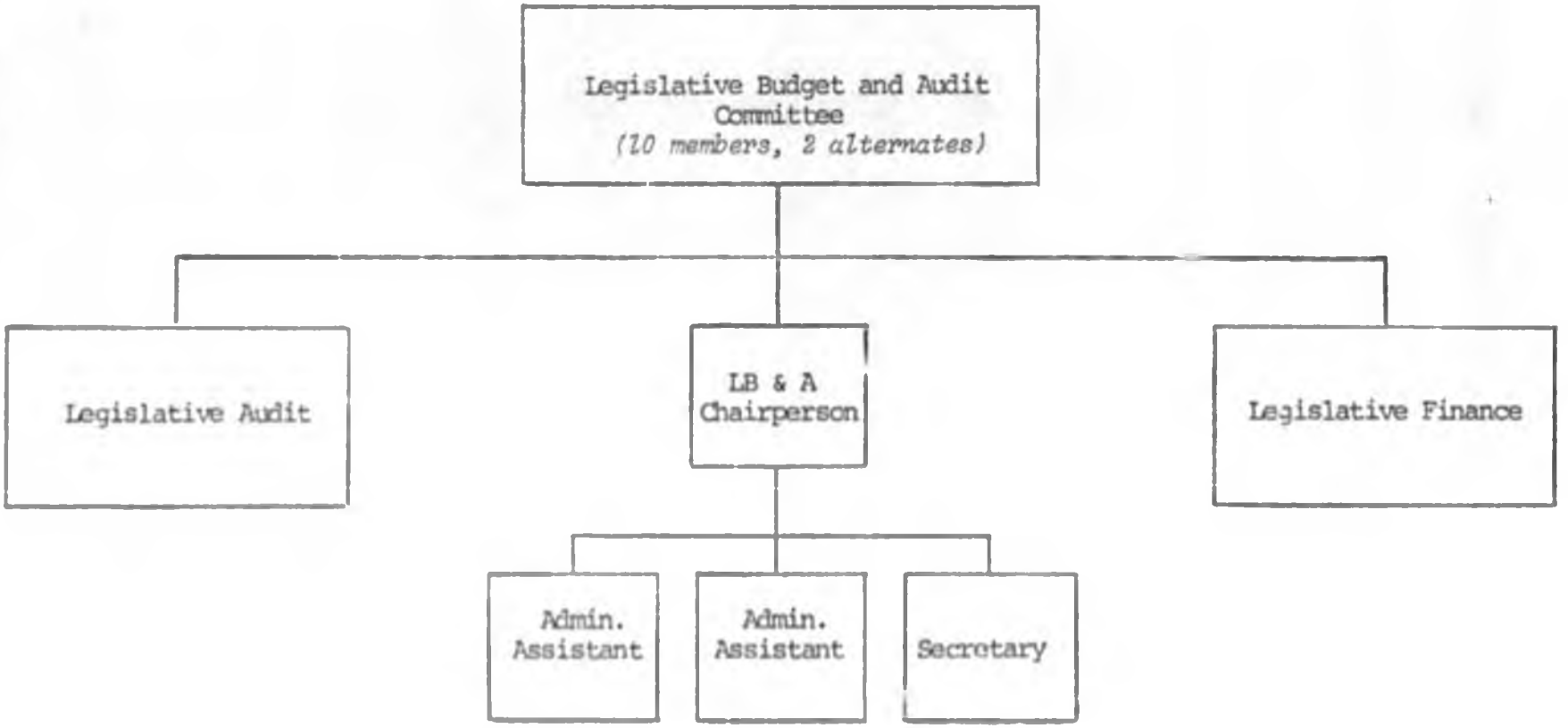
The 1977 Legislature passed a "Sunset Law" which requires the Division to conduct performance audits of boards, commissions, and agency programs subject to termination under AS 44.66. The audit report, along with other reports and testimony, is considered when determining if there is a public need for a board, commission, or program.

3. Special Audit or Report

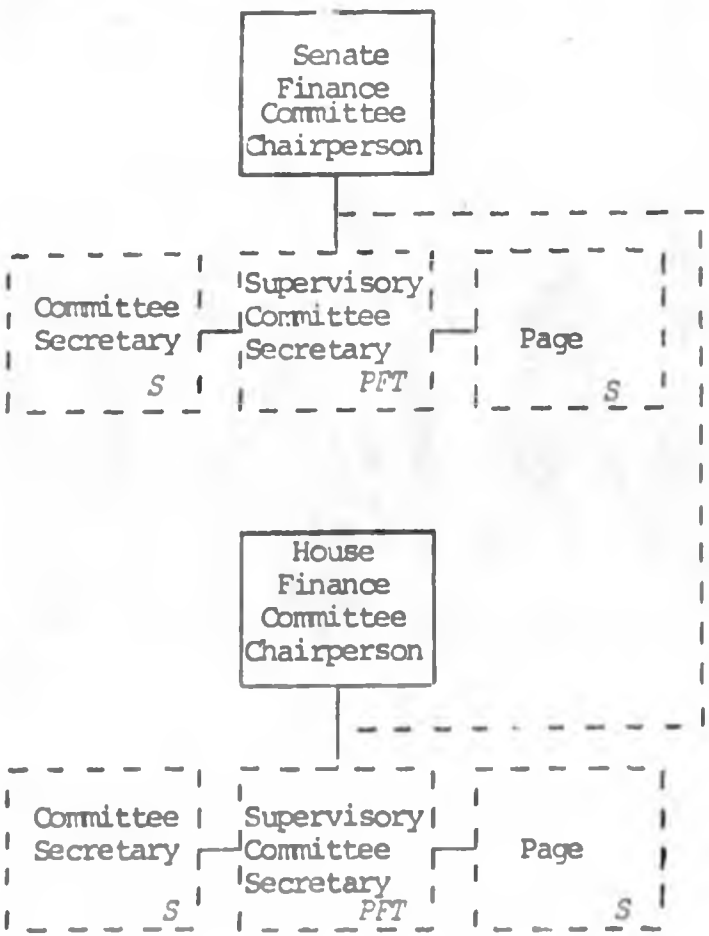
All special reports or special audits are conducted at the request of the Committee. Any member of the Legislature may request, through the Committee, a special audit or report. A special audit can cover many things. It can be an audit that is restricted to one part of an agency's operations or it can be an audit reviewing financial transactions for a period of time shorter or longer than a fiscal year. The special report is often an information type report.

STAFF ORGANIZATION

Legislative Budget and
Audit Committee

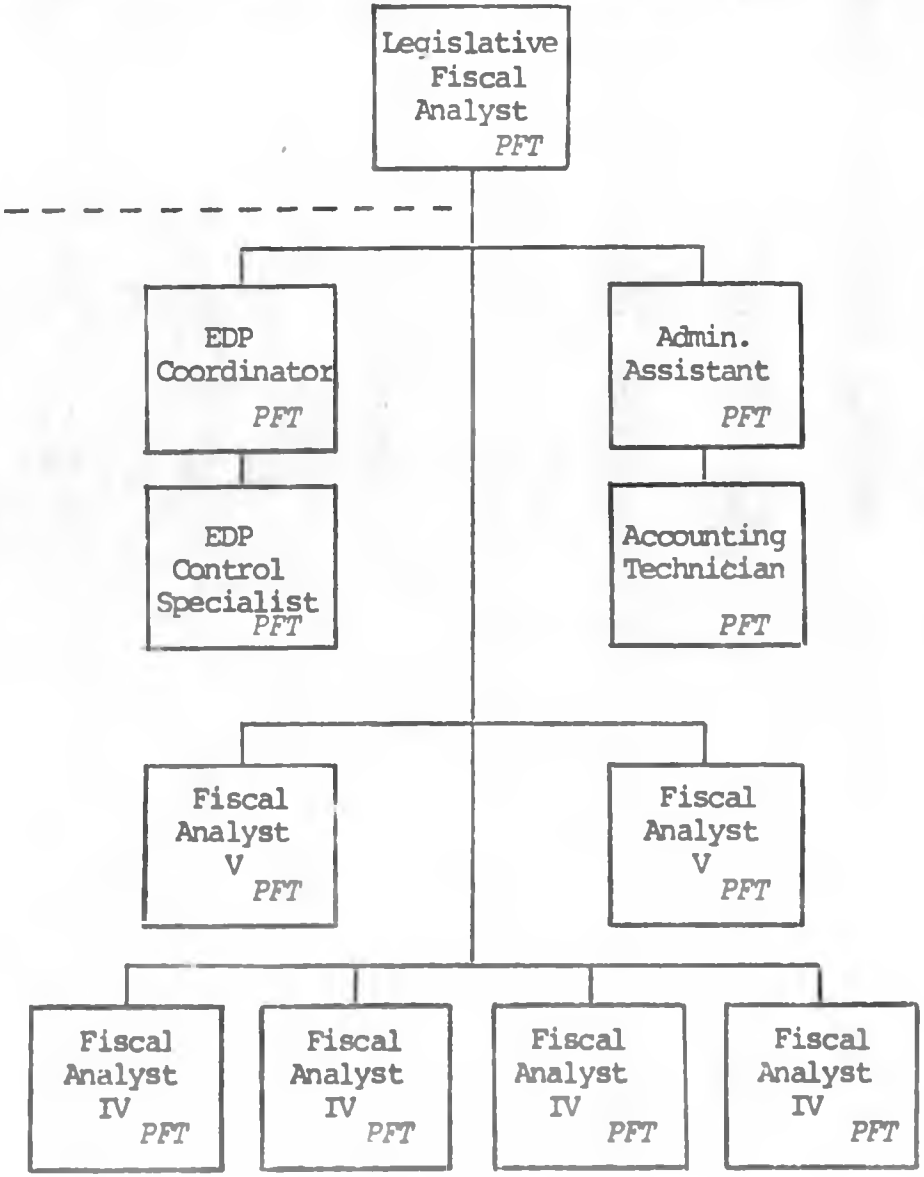


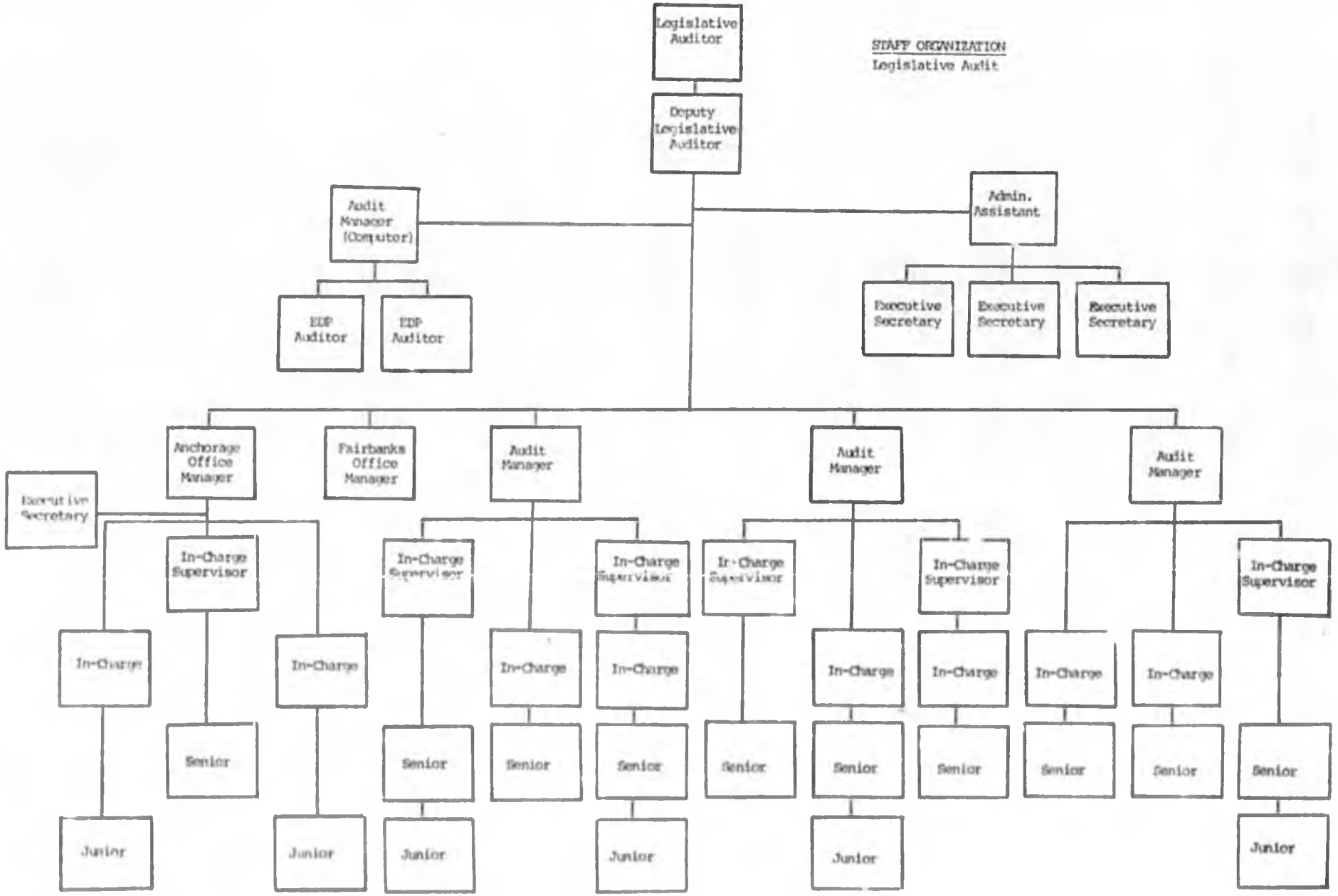
NOTE: Additional employees may be hired based on need (within budget limitations).



NOTE: These positions are under Legislative Finance for budgetary purposes, but actually work for the finance committees. Additional employes may be hired based on need (within budget limitations).

PFT = Permanent Full Time
S = Seasonal




STAFF ORGNIZATION
Legislative Audit
Legislative Auditor
Deputy Legislative Auditor
Audit Manager (Computer)
Admin. Assistant
EDP Auditor
EDP Auditor
Executive Secretary
Executive Secretary
Executive Secretary
Anchorage Office Manager
Fairbanks Office Manager
Audit Manager
Audit Manager
Audit Manager
Executive Secretary
In-Charge Supervisor
In-Charge Supervisor
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DIVISION OF LEGISLATIVE AUDIT
STAFF DUTIES

Legislative Auditor

Acts as liaison between the Budget and Audit Committee and the audit staff.

Makes the final review of all audit reports and issues the opinion on the financial statements presented in the report.

Serves as Fiscal Officer for the Division.

Prepares the budget for the Division.

Provides day-to-day supervision for the Division.

Deputy Legislative Auditor

Directs recruitment of new personnel.

Acts as EEO Officer.

Makes audit assignments.

Coordinates audit schedule.

Approves preliminary and revised audit budgets.

Performs special projects as assigned by Legislative Auditor.

Performs all duties of Legislative Auditor when required.

Audit Manager

Supervises multiple audit teams in the daily conduct of field work.

Approves audit programs and selection of audit procedures during planning stage of audit assignments.

Reviews preliminary audit budget request and subsequent revisions prior to submission to Deputy Legislative Auditor.

Confers frequently with in-charge auditor to assist in problem areas and assures proper coverage within audit scope.

Reviews all work papers and audit reports and presents the completed audit to the Legislative Auditor.

Evaluates in-charge auditors.

Assists the Deputy Legislative Auditor and the Legislative Auditor in selecting audit assignments, scheduling of audit staff and promotion decision for subordinate staff.

Makes recommendations for audit manual revisions.

Performs special projects as assigned by Legislative Auditor.

Anchorage Office Manager

Performs duties listed above under "Audit Manager".

Performs the necessary administrative functions to oversee the branch office.

Computer Audit Manager

Directs and supervises the Division's computer audit team in all computer audits.

Establishes and presents computer related training programs.

Supervises the EDP section in day-to-day support operations.

Performs duties as listed above under "Audit Manager".

In-Charge Supervisor

Supervises multiple concurrent audit assignments.

Performs in-charge functions for the most complex audit assignments.

Performs the preliminary review of all workpapers and audit reports.

Works closely with audit manager during all stages of the audit assignment.

Performs all other duties of in-charge auditor in the absence of an in-charge.

In-Charge Auditor

Plans audit work including preparation of budget, selection of audit procedures, and detailing of audit programs.

Performs auditing procedures and techniques in the more difficult sections of the audit assignment.

Prepares audit workpapers for work performed and has overall responsibility for quality and content of working papers prepared by subordinate auditors.

Prepares written explanations of all major audit findings for presentation to the auditee.

Has overall responsibility for the preparation of financial statements, notes to financial statements, and all narrative included in the audit report. Supervises field work of subordinate auditors assigned to job, including the review of all work performed on the job.

Prepares evaluations of subordinate auditors.

Makes recommendations for audit manual revisions.

Recommends to the Deputy Legislative Auditor future audits and special reports based on results of and observations during current audits.

Communicates frequently with audit manager to discuss audit findings, progression of work within budget constraints, and performance of subordinate auditors.

Senior Auditor

Under direct supervision of in-charge auditor, performs auditing procedures and techniques on major sections of audit assignment. Responsible for workpaper preparation covering all criteria of audit findings revealed during testing.

Under supervision of in-charge auditor, assists in preparation of audit reports, financial statements, and notes to financial statements.

Performs entire audits of limited scope under direct supervision of audit manager. Responsibilities include planning, testing, and preparing workpapers, financial statements, and audit reports.

Junior Auditor

Performs routine audit steps under the supervision of an in-charge or senior auditor.

Responsible for workpaper preparation and summarization of results of testing performed.

Performs small, simple audits under the direct supervision of an audit manager.

EDP Auditor

Works under direct supervision of the Computer Audit Manager.

Designs and writes data processing programs used in conduct of audits.

Processes data processing work through the Department of Administration.

Provides support to in-charge auditors in determining specialized areas where data processing applications can be used.

Administrative Assistant

Manages functional and service operations in preparing audit reports.

Maintains accounting and payroll records for the Division of Legislative Audit and the Legislative Budget and Audit Committee.

Plans, assigns, supervises, and evaluates the work of the clerical staff.

Executive Secretary

Works under direction and supervision of Administrative Assistant (Anchorage Secretary under supervision of Office Manager).

Performs general office duties and prepares audit reports.

LEGISLATIVE AUDIT DIVISION
POLICIES AND PROCEDURES

The following policies and procedures for the Legislative Audit Division have been adopted by the Committee.

Legislative Auditor and His Staff

1. The auditor shall be strictly non-partisan in conduct of his business.

2. The auditor shall not belong to any association or union of State employees that might create a conflict of interest with staff work.

3. The auditor shall maintain a confidential relationship between himself and the agency being examined. No reports or information gained during the course of an examination shall become public information until approved for release by the Committee.

4. The auditor shall provide security over information that has been established by law to be confidential and shall restrict access to such information to members of his staff with a need to know.

5. The auditor shall advise the Budget and Audit Committee when an audit is expected to include examination of information classified by law to be confidential. Upon receipt of such notification, the Committee will take whatever action it deems appropriate to allow the auditor to withhold such information from the Committee.

   If it is considered desirable for the Committee to have access to the confidential information, it will establish necessary restrictions to prevent Committee members from publicizing the information.

Release of Reports

1. When an audit report is complete and has been reviewed and signed by the Legislative Auditor, 15 copies of the report will be prepared and marked PRELIMINARY REPORT. In addition to the report, 15 copies of a digest of report highlights will also be prepared and marked PRELIMINARY REPORT (1975).

2. The PRELIMINARY REPORT will be approved or disapproved for release to the Governor, Department of Administration, and auditee by a majority vote of the Committee (1975).

3. Upon approval, the auditee will be requested to respond to the report within 20 days. The Department of Administration will be invited to respond if they wish (1979).

4. Upon receipt of the agency response, the audit report will be compiled (including Legislative Audit's rebuttal if needed) as the FINAL REPORT (1979).

5. The FINAL REPORT will be submitted to each member of the Legislative Budget and Audit Committee approximately 10 days prior to the next scheduled Committee meeting after the 20-day response period (1979).

6. The FINAL REPORT will be either approved or disapproved for public release by a majority (six members) of the Committee (1975).

7. One copy of the approved FINAL REPORT will be mailed to the Governor, Department of Administration and the auditee (1975).

8. When approved for public release, a copy of the digests will be mailed to each member of the Legislature with a letter stating the complete report may be obtained upon request (1975).

9. Twenty copies of each report are filed with the Alaska State Library in Juneau for further distribution to other libraries in the State.

10. All reports that are approved for public release will be included in the Annual Report of the Division of Legislative Audit to the Legislature.

Special Reports

1. Special reports will be presented to the Committee for approval before they are released to the Governor, Department of Administration and affected agency. The agency will then be requested to respond to the report within 20 days. After the response is received, the Committee will either approve or disapprove the report for public release (1979).

2. Special reports classified as "confidential" or "for Committee information" shall be kept on file in the Division of Legislative Audit for use of the Committee only, unless the Committee wishes them distributed to interested parties (1971).

3. All requests for audits or special reports will be directed to the Committee.

Workpapers

1. Workpapers prepared by the auditor during the course of his work shall remain confidential. However, the workpapers may be reviewed by outside auditors if considered appropriate by the Legislative Auditor and he has instructed them to treat the workpapers as confidential.

2. The auditor shall, upon direction from the Budget and Audit Committee, make workpapers available to members of the Committee.

3. Workpapers containing information classified by law to be confidential will be separated from the regular workpapers and filed in the Legislative Auditor's office. Access will be limited to only those auditors in the Division of Legislative Audit directly connected with the examination or members of the Budget and Audit Committee if the Committee has so directed.

General

1. When requested, by either party, the auditor shall serve as an arbitrator between an agency and the Division of Finance in connection with differences of opinion on the accounting treatment of transactions (1957).

2. The auditor shall render assistance, when appropriate, in connection with accounting matters, to any agency, or he may act in an advisory capacity with respect to an agency's accounting problems - subject to the provisions of the Fiscal Procedures Act and amendments thereto (1957).

3. The auditor and his staff should not make any attempt to direct the procedures of any agency with regard to accounting practices (1959).

4. The Committee considered the request of the Internal Auditor to use Audit Division reports and workpapers. The Committee unanimously approved a motion that the reports be released to him and that he be instructed to treat them as confidential information (1966).

5. The Committee reviewed the audit of the Division of Legislative Audit for the period July 1, 1957 to June 30, 1959. The Audit was released to the Office of the Governor. Some discussion followed regarding the practice of having the Audit Division audit their own records, and it was agreed that this was a practice that should be corrected. A motion passed that the Audit Division be audited by an independent auditing firm and that monies for this be included in the budget request (1959).

6. The Legislative Auditor will pay all travel expenses connected with Committee meetings and travel directed by the Committee Chairman during Budget and Audit meetings. If a Committee members travels on Budget and Audit business that wasn't covered during a regular or special Budget and Audit meeting, the Legislative Auditor will pay all expenses incurred upon written direction from the Chairman or Vice-Chairman.

7. The Legislative Auditor will, when requested, offer testimony to any House or Senate Standing Committee when he or a member of his staff has knowledge that could be helpful to the Committee as a result of:

   a. Having conducted an audit in an area of Committee interest.

   b. Their general background and experience as auditors.

   Information which is confidential under Budget and Audit Committee procedures will not be related to the Standing Committees by the Legislative Auditor or his staff.

   This assistance to Standing Committees will be in the form of testimony only. Requests for studies or additional fact-finding work must be approved by the Budget and Audit Committee.

   Extracts of routine information in the State's accounting records will be furnished to Standing Committees upon request provided that new data processing programs need not be developed to produce the information requested (1979).

Legislative Budget and Audit Committee Contracting Procedures

The following contracting procedures were adopted by the Legislative Budget and Audit Committee on April 10, 1981.

A. Intent

These contracting procedures apply only to contracts administered directly by the Legislative Budget and Audit Committee. No contracts shall be let and no funds shall be expended by the Budget and Audit Committee for purposes that are outside the statutorily prescribed duties and responsibilities of the Legislative Budget and Audit Committee.

These procedures apply to all contracts with a total value of $10,000 or more, including contract amendments, phased contracts and individual contracts which are components of a single work element.

Contracts are to be used for independent consulting services. Contracts are not to be used to provide day-to-day staff services or to maintain Committee staff during the interim between sessions.

The contracting process will be open to the public upon the initial direction by the Committee that a contract be developed to complete a specific project. (Step 2 of the proposed procedures.)

B. Procedural Steps

1. Staff or Committee identify subject area that might require contract work.

2. Committee directs staff to proceed with contract process for the specific subject area identified. Committee approves request for sole source contract at this time. Contract process becomes public information upon Committee approval.

3. Staff develops work program.

4. Staff develops RFP list, based on master contractor file, open solicitation, etc. Master contract file, RFP list and solicitation results are open to the Committee and the public.

5. Request proposals from consultants. Proposals are to be submitted sealed. The request for proposals will include a deadline for receipt of proposals and date for the public opening of proposals.

6. Prepare method of evaluating proposals.

7. Evaluate consultant proposals.

8. Draft final contract, including detailed work program and performance requirements.

9. Final contract document and evaluation of all consultant proposals forwarded to the Committee by the chair. Committee approval of both contract document and consultant selection.

10. Signing of contract.

11. Monitor contract performance.

12. Present status reports products and completion reports to Committee.

LEGISLATIVE BUDGET AND AUDIT
RELATED LEGAL PROVISIONS

Page	Citation	Applicable to LB&A	Audit	Finance
19	AS 14.17.081	X		
19	AS 14.17.082	X		
19	AS 14.40.296	X		
19	AS 14.40.903(a)(7)	X		
20	AS 18.55.996(i)		X	
20	AS 18.56.045	X	X	X
20	AS 24.05.087	X		
20	AS 24.05.200	X		
21	AS 24.20.151	X		
21	AS 24.20.156	X		
22	AS 24.20.161	X		
22	AS 24.20.165	X		
23	AS 24.20.171	X		
23	AS 24.20.181	X		
23	AS 24.20.191	X		
23	AS 24.20.201	X		
24	AS 24.20.206	X		
25	AS 24.20.209	X		
25	AS 24.20.211			X
26	AS 24.20.221			X

LEGISLATIVE BUDGET AND AUDIT
RELATED LEGAL PROVISIONS

Page	Citation	Applicable to LB&A	Audit	Finance
26	AS 24.20.231			X
26	AS 24.20.241		X	
26	AS 24.20.251		X	
27	AS 24.20.261		X	
27	AS 24.20.271		X	
29	AS 24.20.281	X	X	
29	AS 24.20.291		X	X
29	AS 24.20.301		X	X
29	AS 24.20.311	X	X	
29	AS 24.30.060(b)	X		
30	AS 24.40.031	X		
30	AS 29.18.590	X		
32	AS 37.05.210(2)		X	
32	AS 37.07.020	X		
32	AS 37.07.040			X
32	AS 37.07.050			X
32	AS 37.07.080	X		
32	AS 37.07.090(a)			X
33	AS 37.10.087	X		
33	AS 37.10.088(c)	X		
33	AS 37.12.100		X	
33	AS 37.13.120(d)	X		

LEGISLATIVE BUDGET AND AUDIT
RELATED LEGAL PROVISIONS

Page	Citation	Applicable to LB&A	Audit	Finance
33	AS 37.13.120(k)	X		
34	AS 37.13.160	X	X	
34	AS 39.20.245(b)		X	X
34	AS 43.08.035(b)	X		
34	AS 43.21.110(b)		X	
34	AS 44.07.200	X	X	
34	AS 44.07.270(5)	X		
35	AS 44.07.280		X	X
35	AS 44.07.320	X		
35	AS 44.08.020(b)	X		
35	AS 44.08.040(b)	X		
35	AS 44.46.090(a)		X	
35	AS 44.66.020(6)	X		
36	AS 44.66.030	X		
36	AS 44.66.050(a)		X	
36	AS 44.81.260(b)(1)		X	
36	AS 44.81.270		X	
37	AS 44.81.280		X	
37	AS 44.82.160		X	
37	AS 44.82.190		X	
37	AS 44.83.191	X		
37	AS 44.88.200		X	
37	AS 47.30.370	X		
37	AS 47.40.030		X	

AS 14.17.081 relates to the minimum amount of school operating expenditures (55%) that a school district must spend on the instructional component of the district budget. Subsection (d) and (e) state:

> (d) A district which has been determined by the commissioner to be out of compliance with the requirements of this section may, within 20 days of the commissioner's determination, request a waiver by the state Board of Education of the imposition by the commissioner of any reduction in state aid payments under (b) or (c) of this section. The request must be submitted to the Legislative Budget and Audit Committee and must be in writing and include an analysis of the reasons and causes for the district's inability to comply with the requirements of this section. The Legislative Budget and Audit Committee shall review the district's request and forward it, along with the committee's recommendations on it, to the state Board of Education which shall either grant or deny the waiver.
>
> (e) The commissioner shall submit an annual report on actions taken by him or the state Board of Education under this section to the Legislative Budget and Audit Committee by April 15 of each year. (Sec 15, Ch 26, SLA 1980)

AS 14.17.082 relates to school district fund balances. Districts that have at least 400 instructional units may accumulate a fund balance in the school operating fund of seven percent of its expenditures. Districts having less than 400 instructional units may accumulate a fund balance of 10 percent of its expenditures. The commissioner of Education is required to ascertain compliance and report non-compliance, through means of a written report, to the districts and the state Board of Education. The Board of Education shall submit a report making recommendations with respect to the legislative treatment of the fund balances of those districts to the Legislative Budget and Audit Committee by April 15 of each year. (Sec 15 ch 26 SLA 1980)

AS 14.40.296 relates to the establishment of a working capital reserve fund at the University of Alaska. It states, in part, that a quarterly report of the activity of the working capital reserve fund shall be submitted by the University of Alaska to the Legislative Budget and Audit Committee. (Sec 1 ch 117 SLA 1980)

AS 14.40.903(a)(7) mandates that the Alaska Commission on Postsecondary Education, within the Department of Education, consists of two members from the legislature, one of whom shall be designated by the Legislative Budget and Audit Committee. (Ch 78 SLA 1974)

AS 18.55.996(i) states in part, that the Legislative Auditor may prescribe the form and content of the financial records of the regional housing authority and shall have access to these records at any time. (Ch 86 SLA 1981)

AS 18.56.045 states in part, that the Board (of the Alaska Housing Finance Corporation) shall keep minutes of each meeting and send a certified copy to the governor and the Legislative Budget and Audit Committee. (Ch 115 SLA 1981)

AS 24.05.087 requires a member of the legislature who serves on the Legislative Budget and Audit Committee (or any other interim committee) who files a declaration of candidacy for an elective office other than that of a member of either house of the legislature and that person has not resigned from membership on the interim committee, that person's membership terminates on the date of filing. (Ch 11 SLA 1975)

AS 24.05.200 states in part, that except for fiscal and personnel services for the Legislative Budget and Audit Committee, the Legislative Council will provide the administrative services necessary to the operation of the legislature. (Sec 23 ch 157 SLA 1951; am sec 6 ch 47 SLA 1961; am sec 35 ch 53 SLA 1973)

Note: Line 25 Ch 120 SLA 1980 included a provision that space occupied by legislative agencies on the fifth floors of the capitol and state office buildings is under the control of and subject to assignment by the Legislative Budget and Audit Committee. As this provision is somewhat in conflict with AS 24.05.190 which gives the Legislative Affairs Agency control over subject spaces, it appears this provision may be considered intent only. As it is also contained in the appropriation act, it may also be interpreted as having a one year existence.

Article 2. Legislative Budget and Audit Committee.

Section

151. Legislative Budget and Audit Committee established
161. Membership
165. Alternate members
171. Term of membership
181. Vacancies
191. Meetings
201. Powers
211. Legislative Finance Division
221. Staff
231. Duties
241. Legislative Audit Division
251. Qualifications and appointment of legislative auditor
261. Staff
271. Powers and duties
281. Special audit
291. Conflict of Interest
301. Records
311. Reports

Repeal of former article. - Section 1, ch 95, SLA 1971, repealed former Article 2, entitled "Legislative Post Audit". The former article consisted of Sec 24.20.150-24.20.370, and derived from ch 86, SLA 1959.

Legislative committee report. - For report on ch 95, SLA 1971 (FCCS SCS CSHB 14 am 2d FCC), see 1971 House Journal, p. 121.

AS 24.20.151. Legislative Budget and Audit Committee established. The Legislative Budget and Audit Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need of the legislature for full time technical assistance in accomplishing the fiscal analysis, budget review and post-audit functions. (Sec 2 ch 95 SLA 1971)

AS 24.20.156. Purposes. The purposes of the Legislative Budget and Audit Committee include:

(1) monitoring and reporting

(A) the performance of the agencies of the state which perform lending or investment functions,

(B) the extent to which the performance of these agencies has contributed to the fiscal, financial, economic and social improvement of the state and its citizens,

(C) the extent to which these agencies and the executive have prepared and coordinated short-term and long-term economic, fiscal, investment and financial planning;

(2) holding these agencies accountable to statutory intent in their performance by recommending, where appropriate, changes in policy to the agencies or changes in legislation to the legislature;

(3) annually reviewing the extent of capitalization of the investment funds of the state and alternative investment policy for the general fund surplus and recommending needed legislation. (Sec 2 ch 18 SLA 1980)

Effective date. - Section 11, ch 18 SLA 1980, makes the section effective April 9, 1980, in accordance with AS 01.10.070(c).

Editor's note. - Section 1, ch 18 SLA 1980, effective April 9, 1980, provides "FINDINGS. The legislature finds that there is a substantial need for oversight of the performance of those agencies of the state which perform lending or investment functions since those functions do not receive the detailed review to which other expenditures of public money are subject, and therefore the knowledge necessary for sound legislation in this area is not readily available. There is a need for legislative oversight which will provide information on the policy and performance of these agencies, the extent to which the agencies conform to statutory intent, and the impact of their performance on the economy and the state treasury."

AS 24.20.161. Membership. The Legislative Budget and Audit Committee is composed of 10 members: the chairmen of the senate and house finance committees; one member selected from each of the senate and house finance committees and appointed by the president of the senate and the speaker of the house, respectively; and three members appointed from each house by the respective presiding officer. The chairman of the finance committee may choose not to serve on the committee. If this occurs, the presiding officer of the appropriate house shall appoint a replacement from the finance committee. The membership from each house shall include at least one member from each of the two major political parties. The committee shall select its own chairman. (Sec 2 ch 95 SLA 1971)

AS 24.20.165. Alternate Members. The Legislative Budget and Audit Committee shall have two alternate members in addition to the members designated in AS 24.20.161. The president of the senate shall appoint one alternate member from the senate finance committee and the speaker of the house shall appoint one alternate member from the house finance committee. The alternate members shall serve on the committee when a meeting of the committee has been called and the chairman determines that there will not be enough members in attendance at the meeting to provide a quorum. While serving as alternates, the alternate members have the same duties and responsibilities as committee members appointed under AS 24.20.161, and they are entitled to the same travel and per diem allowances. (Sec 1 ch 57 SLA 1979)

AS 24.20.171. Term of membership. (a) The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed. If they are re-elected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor.

(b) When a member of the committee files a declaration of candidacy for an elective office other than that of member of either house of the legislature, and he has not resigned from membership on the committee, his committee membership terminates on the date of filing. (Sec 2 ch 95 SLA 1971; am Sec 3 ch 11 SLA 1975)

Effect of amendment. - The 1975 amendment added subsection (b).

AS 24.20.181. Vacancies. When a vacancy occurs in the statutory or appointive membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member. (Sec 2 ch 95 SLA 1971; am Sec 4 ch 11 SLA 1975)

Effect of amendment. - The 1975 amendment inserted "statutory or appointive" in the first sentence.

AS 24.20.191. Meetings. The budget and audit committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings the same travel and per diem allowances provided by law for members of the Legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature. (Sec 2 ch 95 SLA 1971)

AS 24.20.201. Powers. (a) The Legislative Budget and Audit Committee has the power to:

(1) organize, adopt rules for the conduct of its business and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions;

(2) hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents and testimony, and have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions;

(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) review revenue projections, state agency appropriation requests, the expenditure of state funds, including the relationship between state agency program accomplishments and legislative intent, and the fiscal policies and procedures of state government;

(5) review and approve proposed changes to agency authorized budgets as provided in the Executive Budget Act (AS 37.07);

(6) make recommendations concerning appropriations, their expenditure and the fiscal policies and procedures of state government to the governor when appropriate, and to the legislature;

(7) prepare and distribute reports, memoranda or other necessary materials;

(8) sue in the name of the legislature during the interim between sessions if authorized by majority vote of the full members of the committee;

(9) hold public hearings on the confirmation of the members of the Board of Trustees of the Alaska Permanent Fund Corporation, and the members of the Board of Trustees of the Alaska Renewable Resources Corporation;

(10) make recommendations to the legislature and to agencies of the state which perform lending or investment functions concerning the structure and operating practices of the agencies;

(11) enter into and enforce all contracts necessary or desirable for the functions of the committee;

(12) provide for annual post-audits of the Alaska Housing Finance Corporation and the Alaska Industrial Development Authority.

(b) Nothing in this chapter authorizes the referral by the presiding officer of legislation to the committee at regular or special sessions of the legislature. (Sec 2 ch 95 SLA 1971; am Sec 1 ch 74 SLA 1977; am Sec 2 ch 57 SLA 1979; am Sec 3 ch 18 SLA 1980; am Sec 32 ch 106 SLA 1980)

Effect of amendments. - The 1979 amendment added paragraph (8) of subsection (a). The first 1980 amendment, effective April 9, 1980 added paragraphs (9) through (11) in subsection (a). The second 1980 amendment, effective June 21, 1980 added paragraph (12).

AS 24.20.206. Duties. The Legislative Budget and Audit Committee shall

(1) report to the legislature its recommendations relating to the confirmation of appointees to the Board of Trustees of the Alaska Permanent Fund Corporation and the Board of Trustees of the Alaska Renewable Resources Corporation;

(2) annually review the long-range operating plans of all agencies of the state which perform lending or investment functions;

(3) review periodic reports from all agencies of the state which perform lending or investment functions;

(4) present a complete report of investment programs, plans, performance, and policies of all agencies of the state which perform lending or investment functions to the legislature within 30 days after the convening of each regular session;

(5) present to the legislature within 30 days after the convening of each regular session a review of the report of the governor under AS 37.07.020(d) with recommendations for needed legislation;

(6) in conjunction with the finance committee of each house recommend annually to the legislature the investment policy for the general fund surplus and for the income from the permanent fund;

(7) provide for an annual post audit and annual operational and performance evaluation of the Alaska Permanent Fund Corporation investments and investment programs;

(8) provide for an annual operational and performance evaluation of the Alaska Housing Finance Corporation and the Alaska Industrial Development Authority; the performance evaluation shall include, but is not limited to, a comparison of the impact on various sectors of the economy by public and private lending, the impact on resident and nonresident employment, the impact on real wages, and the impact on state and local operating and capital budgets of the programs of the Alaska Housing Finance Corporation and the Alaska Industrial Development Authority. (Sec 2 ch 18 SLA 1980; am sec 33 ch 106 SLA 1980)

Effect of amendment. - The 1980 amendment, effective May 1, 1980, added paragraph (9). Effective date. - Section 11, ch 18 SLA 1980, makes this section effective April 9, 1980 in accordance with AS 01.10.070(c).

AS 24.20.209. Records. The Legislative Budget and Audit Committee shall keep a complete file of all reports presented to it and all reports presented by it to the legislature or to a legislative committee. (Sec 2 ch 18 SLA 1980)

Effective date. - Section 11, ch 18 SLA 1980, makes this section effective April 9, 1980, in accordance with AS 01.10.070(c).

AS 24.20.211. Legislative finance division. The legislative finance division is established as a permanent staff agency responsible to the Legislative Budget and Audit Committee for performance of fiscal analysis and budget review functions. (Sec 2 ch 95 SLA 1971)

AS 24.20.221. Staff. (a) The committee shall hire and determine the salary of the legislative fiscal analyst who shall serve both at the direction and pleasure of the committee. The fiscal analyst shall serve as head of the finance division and, within the limits of the budget approved by the committee, shall employ and determine the compensation of the professional and clerical staff of the division. (b) The fiscal analyst and members of the professional and clerical staff shall not join or support a partisan political organization. This prohibition does not prevent the fiscal analyst or members of the staff from joining social organizations, expressing private opinion, registering as to party or voting. (Sec 2 ch 95 SLA 1971)

AS 24.20.231. Duties. The Legislative Finance Division shall

(1) analyze the budget and appropriation requests of each department, institution, bureau, board, commission or other agency of state government;

(2) analyze the revenue requirements of the state;

(3) provide the finance committees of the legislature with comprehensive budget review and fiscal analysis services;

(4) cooperate with the division of budget and management in establishing a comprehensive system for state program budgeting and financial management as set out in the Executive Budget Act (AS 37.07);

(5) complete studies and prepare reports, memoranda or other materials as directed by the Legislative Budget and Audit Committee;

(6) with the governor's permission, designate the legislative fiscal analyst to serve ex officio on the governor's budget review committee. (Sec 2 ch 95 SLA 1971)

AS 24.20.241. Legislative Audit Division. The legislative audit division is established as a permanent staff agency responsible to the Legislative Budget and Audit Committee for completion of the post-audit function. (Sec 2 ch 95 SLA 1971)

AS 24.20.251. Qualifications and appointment of legislative auditor. (a) the legislative auditor shall be a certified public accountant of this state, or of another state having requirements equivalent to those of this state, with at least five years of practice in the profession, or the equivalent, before his appointment.

(b) The Legislative Budget and Audit Committee shall examine persons to serve as legislative auditor and, upon completion of the examination, place the name of the person selected in nomination before the legislature. If the legislature is not in session, the person nominated shall

carry out the duties of the office until the next session of the legislature at which time the name of the person nominated shall be presented to the legislature for appointment.

(c) The legislative auditor serves at the pleasure of the legislature. However, when the legislature is not in session, the auditor may be removed for cause by a majority vote of the Legislative Budget and Audit Committee after notice by, and a hearing before, the committee. (Sec 2 ch 95 SLA 1971)

AS 24.20.261. Staff. (a) The legislative auditor shall serve as head of the audit division and, within the limits of the budget approved by the committee, shall employ and determine the compensation of the professional and clerical staff of the division.

(b) The auditor and members of the professional and clerical staff may not join or support any partisan political organization. This prohibition does not prevent the auditor or members of the staff from joining social organizations, expressing private opinion, registering as to party or voting. (Sec 2 ch 95 SLA 1971)

AS 24.20.271. Powers and duties. The legislative audit division shall (1) conduct a performance post-audit of boards and commissions designated in AS 44.66.010 and of those programs and activities of agencies subject to termination as determined in the manner set out in AS 44.66.020-44.66.040, and submit the audit, together with a written report, not later than the first day of the regular session of the legislature convening in each year set out with reference to boards, commissions or agency programs whose activities are subject to termination as prescribed in AS 44.66;

(2) audit at least once every three years the books and accounts of all custodians of public funds and all disbursing officers of the state;

(3) at the direction of the Legislative Budget and Audit Committee, conduct performance post-audits on any agency of state government;

(4) cooperate with state agencies by offering advice and assistance as requested in establishing or improving the accounting systems used by state agencies;

(5) require the assistance and cooperation of all state officials and other state employees in the inspection, examination and audit of state agency books and accounts;

(6) have access at all times to the books, accounts, reports or other records, whether confidential or not, of every state agency;

(7) ascertain, as necessary for audit verification, the amount of agency funds on deposit in any bank as shown on the books of the bank; no bank may be held liable for making information required under this paragraph available to the legislative audit division;

(8) complete studies and prepare reports, memoranda or other materials as directed by the Legislative Budget and Audit Committee;

(9) have direct access to any information related to the management of the University of Alaska and have the same right of access as exists with respect to every other State agency. (Sec 2 ch 95 SLA 1971; am Sec 4 ch 46 SLA 1977; am sec 4 ch 149 SLA 1977)

Effect of amendments. - The first 1977 amendment added paragraph (9). The second 1977 amendment rewrote paragraph (1).

Editor's note. - Section 1, Ch. 149 SLA 1977, provides: "The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government, and that there is need for an effective and regular system of scrutiny of the programs and activities of all agencies, boards and commissions. The legislature further finds that the establishment of a system for periodic review by the public and the executive and legislative branches of certain state agencies, boards and commissions will help the governor and the legislature to determine the need for the continued existence of each of the agencies, boards and commissions."

Legislative committee report. For a report on ch 46 SLA 1977 (HCSSB 261), see 1977 House Journal, p. 1019.

Subsection (6) gives audit division access to state agency records. - Although AS 23.3.110(a) and 43.20.190(a) guarantee confidentiality of records in the Department of Labor and Revenue, subsection (6) of this section enables the Division of Audit to have access to the records of every state agency whether confidential or not. 1972 Op. Att'y Gen.

But confidential tax and wage records held protected by Alaska Cons., art 1, sec 22. - A legislative auditor may not examine confidential records on file for state income tax returns and wage information submitted by employees and employers to the Department of Labor in connection with the administration of the State Employment Security Act to determine if persons receiving assistance from the Department of Health and Social Services under their Adult Public Assistance and Aid to families with dependent children were eligible. Such data is within the ambit of protection intended to be afforded the right of privacy under Alaska Const., art I, sec 22. 1972 Op. Att'y Gen.

AS 24.20.281. Special Audit. A member of the legislature may, in writing and with at least six days notice, request that the Budget and Audit Committee direct a special audit of any state agency or determine the propriety of any expenditure of state funds received by any political subdivision or other entity obtaining state funds. Should a majority of the committee vote to approve the request, the legislative audit division shall make the audit. (Sec 2 ch 95 SLA 1971)

AS 24.20.291. Conflict of interest. The legislative auditor, the supervisor of audit, the legislative fiscal analyst and members of the staff of the legislative finance and audit divisions may not serve in ex officio or other capacity on any board (except as authorized in Sec 231 (6) of this chapter), commission or other administrative agency of state government; nor may they have a financial interest in transactions involving any agency of state government. (Sec 2 ch 95 SLA 1971)

AS 24.20.301. Records. (a) The legislative audit division shall keep a complete file of all audit reports and other reports or releases issued by the division, and a complete file of audit work papers and other related supportive material. The division shall also keep a complete and accurate record of all fiscal transactions involving the division.

(b) The legislative finance division shall keep a complete file of all budget reports and other reports or releases issued by the division and a complete and accurate record of all fiscal transactions involving the division. (Sec 2 ch 95 SLA 1971)

AS 24.20.311. Reports. The committee shall file copies of its approved audit reports including any committee recommendations with the governor, the agency concerned and the Legislature. An annual report summarizing the audit reports and committee recommendations made during the year shall be filed with the governor and with the legislature within the first five days of each regular session of the legislature. Reports shall be approved by a majority of the committee before their release and shall be open to public inspection after their release to the legislature. (Sec 2 ch 95 SLA 1971)

AS 24.30.060(b) "... bills introduced by the Legislative Budget and Audit Committee shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Legislative Budget and Audit Committee."