

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902

1915

SRES

SB 697

1/15

ALASKA RENEWABLE RESOURCES CORPORATION

Investments in Capital Stock

December 31 and June 30, 1981

(Unaudited - See Accompanying Compilation
Report of Peat, Marwick, Mitchell & Co.)

<u>Company</u>	<u>December 31</u>	<u>June 30</u>	<u>Industry</u>
TEPA	\$ 234,912	200,000	Fish
SeaWard Shipyard	150,000	150,000	Forest Products
Trinity Resources	206,100	255,000	Fish
Kokechik	490	490	Fish
Ball Brothers, Inc.	500,000	500,000	Fish
Alaska Bait Producers	85,000	85,000	Fish
Alaska Food Co.	500,000	500,000	Fish
Alaska Woods, Inc.	100,000	100,000	Forest Products
Greatland Farms	50,000	50,000	Agriculture
Mastercraft	100,000	100,000	Forest Products
Salamatof Seafoods, Inc.	316,111	316,111	Fish
Alaska Fish	125,000	125,000	Fish
Sterling Seafoods	100,000	100,000	Fish
New Seward, Inc.	150,000	150,000	Fish
Icicle Seafoods, Inc.	3,082,622	3,047,466	Fish
Seafoods of Alaska	120,000	-	Fish
Sterling Seafoods	1,225	-	Fish
Schnabel Lumber Company	1,800,000	-	Forest Products
Martin Clark	25,000	-	Fish
	<u>\$ 7,646,460</u>	<u>5,679,067</u>	

LEGISLATION SUMMARY

SB 697: "An Act relating to the Alaska Renewable Resources Corporation."

GENERAL: The bill expands the ARRC board of trustees from 3 to 5 members, alters their compensation from annual salary to a per diem arrangement, and eliminates their authorization to make grants.

- Sec. 1: Changes the number of members on the ARRC board of trustees from 3 to 5.
- Sec. 2: Replaces language establishing the members initial terms at 2, 3, and 4 years with staggered terms of 4 years each.
- Sec. 3: Changes the quorum requirement from 2 to 3 members.
- Sec. 4: Eliminates the annual salary for board members, replacing it with compensation for board meeting attendance determined by the board, not to exceed \$200 per day. Members are also entitled to per diem and travel for members of boards and commissions under existing law.
- Sec. 5: Requires the board to hire an executive director to serve at the pleasure of the board, at a salary determined by the board. The director may not be a member of the board. The executive director may hire other staff with the board's approval. The director and staff positions are in the exempt service classification.
- Sec. 6: Amends existing provision for financial assistance to prohibit grants.
- Sec. 7: Eliminates language pertaining to grants from provision for financial assistance.
- Sec. 8: Adds language prohibiting the ARRC from making grants.
- Sec. 9: Deletes language authorizing the board to make grants.
- Sec. 10: Transitional provisions. Provides for the completion of terms of members serving on the effective date of the bill. Establishes the initial terms of the new member positions at 2 and 3 years.

NOTE: The bill has no effective date.

PRIME SPONSOR: Kerttula (by request)

CO-SPONSOR(S): None

LEGISLATIVE SUMMARY

Work Draft

SB 697 "An Act establishing the Alaska Resources Corporation in place of the Alaska Renewable Resources Corporation (AS 37.12)".

- Sec. 1 Changes the name by deleting the word renewable. Moves the Corporation from the Department of Revenue to Commerce and Economic Development.
- Sec. 2 Purposes are to facilitate the rehabilitation, enhancement and development of the state's resources to strengthen the state's economy.
- Sec. 3 Changes from a board of trustees to a board of directors.
- Sec. 4 Board of directors will consist of 4 members appointed by the governor as well as the Commissioner of Commerce and Economic Development. The Chairman can not serve successive terms.
- Sec. 5 Terms of the board members shall be for 4 years with the terms staggered. Adds language that the governor shall appoint a member to fill unexpired terms. Deletes the language of one member serves 2 years, one member serves 3 years, and one member serves 4 years.
- Sec. 6 Changes the quorum from 2 members to 3.
- Sec. 7 Members receive no salary but they are entitled to per diem and travel expenses.
- Sec. 8 Deletes the words "of trustees"
- Sec. 9 Duties: financial assistance for projects that will accomplish the purposes of the Corporation; promote the use of state's resources in the state and development of import substitution and export markets; prepare long range operating and financial plans and a budget; monitor projects and provide operational and performance evaluations; fund activities that will maximize returns to the state, and local governments and the citizens in the form of tax revenues and resident employment and income.
- Sec. 10 Deletes the words "renewable resource". Deletes the words "for a minimum period of time specified by the board" which is to keep the activity in the state.
- Sec. 11 Deletes the provisions that: grants may be made for up to 90% of the projects costs for the purposes of: 1.) applied research and development of products, technologies, for the rehabilitation, enhancement, or development of renewable resources; 2.) demonstration, one-time basis, economic or technical feasibility of new products, market, or technology involving renewable resources; or 3.) rehabilita-

tion, enhancement, or development of a common-property resource where the benefit from the project can not be captured by any single economic unit.

- Sec. 12 Adds a new section requiring equity investments not exceed the term of the loan or 10 years, whichever occurs first.
- Sec. 13 Changes one of the things the board may not do. The Board may not make grants. Present statute states they may not make grants for more than 10% of the annual appropriation to the Corporation.
- Sec. 14 Changes the definition of Board by deleting the word "trustees" and replacing it with "directors."
- Sec. 15 Changes the definition of Corporation by deleting the word "renewable."
- Sec. 16 Changes the definition of project by deleting the word "renewable."
- Sec. 17 Changes the definition of renewable resource by deleting the word "renewable." With a new definition of resource as: a natural component of the environment including but not limited to fisheries, agriculture, forest products, renewable energy, tourism and mining.
- Sec. 18 Deletes the provision that the Legislative Budget and Audit Committee hold confirmation hearings on the members.
- Sec. 19 Deletes the provision that the Legislative Budget and Audit Committee make recommendations regarding the confirmation of the appointees to the Board.
- Sec. 20 Deletes the word "renewable" from the name of the Corporation.
- Sec. 21 Initial terms of the board shall be one member serving 1 year one member serving 2 years, one member serving 3 years and one member serving 4 years.
- Sec. 22 Terminates the present Board of Trustees of the Alaska Renewable Resources on the effective date of this Act.
- Sec. 23 Transfers all records, appropriations, equipment and other assets or liabilities to the Alaska Resources Corporation.
- Sec. 24 Repeals 37.12.040 Removal and vacancies. The governor may remove a member with the consent of a majority of the legislature in joint session. Provisions of time and when the legislature is not in session. A vacancy does not impair a quorum.

Repeals 37.12.070 (12): Powers of the board: provide grants for projects having broad public application which do not have direct income-producing potential.

Repeals 37.12.125(5): Definitions: (5) "rehabilitation, enhancement and development" means any activity or program which improves the health and well-being of a renewable resource or renewable resource population leading to an increase in the quality or productivity of the resource and to an increase in the benefits derived from the resource to the citizens of the state.

IDENTIFICATION:

BILL NAME: Re: Alaska Renewable Resources Corporation

SPONSOR(S): Kerttula (by request)

RELATED BILLS PENDING:

DATE INTRODUCED: 1/29/82

REFERRALS Resources, Finance

INITIAL RESEARCH:

INITIAL BILL SUMMARY COMPLETED **yes**

SUMMARY BY LEGAL DIVISION:
DEPT. OF LAW SUMMARY:

SPONSOR CONTACTED FOR BACKUP
MATERIALS:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR
REPS. NOTIFIED.

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPRATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/CS DRAFTED

Virginia Del Piero - HRRC - notice 3/22
Wayne Littleton - HRRC - " 5/22
Dept. of Revenue Donna Cline 3/25
" of Commerce & Eco Dev. Katie Wallen 3/25

✓ Donkworth
✓ HRRC

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

January 5, 1982

TO: Members of the Legislative
Budget and Audit Committee

FROM: Gerald L. Wilkerson, CPA *GLW*
Legislative Auditor
Division of Legislative Audit

SUBJECT: Audit of the Alaska Renewable
Resources Corporation

Please find enclosed four Attorney General's opinions relating to ARRC and the Renewable Resources Development and Investment Funds.

The opinions are provided for your information and review and will also be included as appendixes in our final report on ARRC.

As discussed in our report, these opinions have a significant impact on the current operation of ARRC, and several of our recommendations are based on these opinions.

Enclosures

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

December 17, 1981

Gerald Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Alaska Office Building
Juneau, Alaska 99811

RECEIVED

DEC 28 1981

LEGISLATIVE
AUDIT

Dear Mr. Wilkerson:

You have requested this department's advice regarding whether an Alaska Renewable Resources Corporation (ARRC) Trustee or employee may serve as a voting director on the board of an ARRC investee. We think that AS 37.12.080(b)(4) clearly prohibits ARRC from placing an employee or trustee on an investee's board for the purpose of exercising voting rights on matters relating to the management of the investee.

AS 37.12.080(b)(4) provides that ARRC may not "assume responsibility for management of any project in which it has invested and may not exercise voting rights for that purpose or for any other purpose which is within the scope of managerial control." This section absolutely prohibits exercising voting rights for any purpose "which is within the scope of managerial control." Under AS 10.05.174, the position of a director of a corporation is functionally defined to include management of the business and affairs of the corporation. Therefore, any exercise of voting rights by an ARRC Trustee or employee would necessarily be for a purpose which is within the scope of managerial control.

The only exceptions to this prohibition against voting as a member of the board of an ARRC investee are provided in AS 37.12.080(c). This section allows the ARRC board to take any action which it deems necessary to protect its investment. However, before the ARRC board may act under AS 37.12.085(c), it must find that actual circumstances or events threaten the


Gerald Wilkerson, CPA
Legislative Auditor

December 17, 1981
Page 2

investment. In the situation you have described in your opinion request, no circumstances exist which warrant extraordinary action under AS 37.12.085(c). We, therefore, conclude that if an ARRC trustee or employee is a director of an ARRC investee, that trustee or employee may not vote as a director of the ARRC investee.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Leslie J. Ludtke
Assistant Attorney General

LJL:vrb

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

465-3600

July 29, 1980

RECEIVED

Mr. Gerald R. Wilkerson, CPA
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

JUL 30 1980

LEGISLATIVE
AUDIT

Re: ARRC spending and investment
practices
Our file: J-66-792-80

Dear Mr. Wilkerson:

You have asked whether (1) the statutory limitation on the Alaska Renewable Resources Corporation's (ARRC's) investments in a company includes outright loans, (2) whether technical assistance funding can come from ARRC's capital budget, (3) whether applicants for that assistance must meet the same requirements as those imposed for financial assistance, (4) whether ARRC must receive a return on expenditures for technical assistance, and (5) whether ARRC or the Department of Revenue has ultimate authority and control over the investment of ARRC's surplus funds. We will answer each question in turn.

1. The statutory limitation on ARRC's investments relates to equity investments and does not include loans.

AS 37.12.080(b) provides in relevant part that the ARRC board may not

invest in more than 49 percent of the outstanding corporate stock or other corporate obligations issued by an applicant

Given their plain meaning, the words "corporate obligations" would certainly include promissory notes, bonds, and any other liabilities of the applicant. However, "[t]he notion that because the words of a statute are plain, its meaning is also plain is merely pernicious oversimplification." United States v. Monia, 317 U.S. 424, 431 (1943) (Frankfurter, J., dissenting). This is especially true where, as here, we are dealing with a statute which is the apotheosis of imprecision.

If we look at the statute as a whole, it seems rather obvious that ARRC will routinely be holding all or almost all of the promissory notes issued by applicants. The very reason for ARRC's participation is the unavailability of regular financing. Ch. 179, § 2, SLA 1978, set out as a note preceeding AS 37.12.010. Hence, giving the words "other corporate obligations" their plain meaning would confound the very purpose for the legislature's passing the statute in the first place. Accordingly, we concur in the interpretation placed on this prohibition by the ARRC board, i.e., as being applicable only to equity interests in applicant corporations.

2. Funding of technical assistance can come from ARRC's so-called capital budget.

We do not doubt that, as an accounting rule, technical assistance expenses should be considered as operating expenses as opposed to capital expenses. The problem here,

however, is that the legislature appropriates to the capital budget without regard for the niceties of that distinction. That is true not only of ARRC's budget but of the entire budget generally. Accordingly, the mere fact that money has been appropriated to ARRC in that part of the budget denominated as being for "capital projects" does not, in and of itself, make it unavailable for expenditure for what are usually categorized as operating expenses.

Given the highly generalized nature of the appropriation to ARRC for capital projects and the absence of any legal significance in the denomination in the budget of appropriations for "capital projects," there are no legal restraints on ARRC's expending the latter for technical assistance. As a statutory rule, ARRC's own administrative expenses are to be budgeted as its operating expenses. AS 37.12.095(b) provides: "The total amount of the corporation's operating budget shall be specified separately in its budget and appropriated from the general fund." The ARRC projects, which -- by force of this statutory exclusion -- necessarily include technical assistance, are then to be budgeted separately, presumably as capital projects. This is precisely what appears to have been done here. In the 1979 appropriations bill, ch. 80, SLA 1979, at page 115 of the 1979 Temporary and Special Acts, \$638,000 is appropriated to ARRC from the general fund under the general denomination of "operating expenditures." Id., at 69. On page 164, some \$32 million, broken down into resource categories, is appropriated from "other

funds" to ARRC under the general denomination of "capital projects." Accordingly, this use of the funds has to be valid valid under both AS 37.12.095 and chapter 80, SLA 1979.

3. Technical assistance must be limited to entities which are qualified applicants for financial assistance.

As ARRC counsel points out, the statute does not generally lend itself to certainty. On this matter, it is as follows:

The corporation may provide funding for technical and management advice and assistance to qualified applicants as it considers necessary in the circumstances.

AS 37.12.115(b) (emphasis added). The statute defines "applicant" as follows:

'applicant' means a person making application to the corporation for financial assistance
.....

AS 37.12.125(1) (emphasis added). The term "qualified applicant" is not included within the definitions section of the statute, but in effect, is defined by those provisions of the statute which describe the requirements for financial assistance in AS 37.12.085, which states that "[a]n applicant is qualified if," he has submitted a proposal under AS 37.12.080(a)(1), is a three-year resident, and has not been a failure on previous projects with the corporation.

Counsel for ARRC suggests that it may be necessary for some applicants to receive technical assistance before they can qualify in that they are not capable of submitting a proposal under AS 37.12.080(a)(1) without that assistance.

But the requirements of AS 37.12.080(a)(1) are not that technically difficult, and there can be little question that, as a practical matter, an unsophisticated applicant with a great idea would have no problem meeting the loose requirements of section 80(a)(1). After that has been done, the board can "provide funding for technical and management advice and assistance to qualified applicants as it considers necessary in the circumstances." AS 37.12.115(b).

4. There is no requirement that the board realize a return on money provided for technical assistance.

We concur with ARRC's counsel that the statute does not require ARRC to realize a return on money provided for technical assistance. We think that it is left to the sound discretion of ARRC's board to determine whether money so used must be repaid. The House Finance Committee stated that the money would be repaid. 1978 H. Jour. 832. But the discretionary language of the statute to the effect that the money so used "may form a part of a later investment," must be deemed to control.

5. The Department of Revenue has control over the investment of ARRC funds.

We have concluded that the establishment of the Alaska Renewable Resources Development Fund, AS 37.11.010 - 040, the Alaska Renewable Resources Investment (nee Permanent) Fund, AS 37.11.050 - 090, and the Alaska Economic Disaster Impact Fund, AS 37.11.100, is in conflict with the constitutional prohibition against dedicated funds and is,

therefore, a nullity. */

The 1974 legislation establishing these funds and the introduction in 1975 of bills to establish still other special purpose funds led to an opinion from this office in which we concluded that mineral revenues are within the constitutional prohibition against dedicated funds. 1975 Op. Atty. Gen. No. 2; Alaska Const., art. IX, § 7. The opinion, in turn, led to the adoption of a constitutional amendment to provide for a single exception to allow the dedication of certain mineral revenues to the Alaska Permanent Fund. Under the maxim expressio unius est exclusio alterius, all other dedications are excluded from the exception. 2A SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 47.23 (4th Sands ed. 1973). In other words, the constitutional amendment providing for the Alaska Permanent Fund precludes the establishment of these funds.

The "allocation" of these same mineral receipts to ARRC under AS 37.12.020, which was adopted in 1978, is similarly a proscribed dedication which is equally unconstitutional and, therefore, likewise a nullity. Aside from the exceptions made by the constitution itself for dedicated funds, the only way that public money can be made available for ex-

*/ We had previously opined that, taken as an accounting device rather than as a dedication, the original 1974 enactment might be valid. Informal Op. Atty. Gen. Oct. 12, 1977. The 1978 legislation and ARRC's interpretation of its intended effect compels us to come now to a contrary conclusion.

July 29, 1980

penditure is by an appropriation. Alaska Const., art. IX, § 13. Appropriations can be made solely in appropriation bills. Alaska Const., art. II, § 13.

Accordingly, ARRC funds consist solely of the money appropriated to ARRC by the legislature in appropriation bills, nothing more, and nothing less, the provisions of AS 37.12.020 to the contrary notwithstanding. As with all other instrumentalities of the state government, ARRC's appropriations remain in the treasury under the control of the Department of Revenue until they are to be used, except to the extent that the legislature has provided to the contrary. There is nothing in AS 37.12.010 - 125 which provides to the contrary and which also conforms to the constitution.

Sincerely yours,

WILSON L. CONTON
ATTORNEY GENERAL

By:



Rodger W. Pegues
Assistant Attorney General

RWP/pjg

MEMORANDUM

State of Alaska

TO: Gerald L. Wilkerson.
Legislative Auditor

DATE: April 1, 1981

FILE NO: J-66-412-81

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Constitutionality
of the Renewable Re-
sources Investment
Fund

By:

Rodger W. Pegues
Assistant Attorney General

You have asked us for our views on the constitutionality of the Renewable Resources Investment Fund. In our view, it is unconstitutional.

The Legislative Counsel has opined to the contrary, relying in part on a plain-language interpretation of the constitution's provisions on dedicated funds. The Alaska Supreme Court has occasionally used a plain-language interpretation to determine the meaning of a statute. E.g., Alaska Mines and Minerals, Inc. v. Alaska Industrial Bd., 354 P.2d 376, 379 (Alaska 1960). But a literal interpretation of the words of a statute or constitution should not be applied if it will frustrate the framers' obvious intent and if the words can reasonably be given a different construction. 2 A. Sutherland, STATUTES AND STATUTORY CONSTRUCTION, § 46.07 (4th Sands ed. 1973). And even where the court states that, when the law is plain, there is nothing left for interpretation, Alaska Public Employees' Ass'n v. State, 525 P.2d 12, 14, n. 14 (Alaska 1974), the court does, in fact, interpret it. There simply is no rule that forbids the use of aids in construing the meaning of a statute however clear the words may appear on superficial examination. Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1, 9-11 (1976). For that reason, resort should be had to the records of the Constitutional Convention where, as here, they provide substantial aid in ascertaining the meaning and purpose of the prohibition against dedicated funds. */

When resort is had to the record, there can be no

*/ As a practical matter, the Alaska Supreme Court has consistently resorted to the Minutes of the Constitutional Convention. The only question is how much weight it will give to the remarks of delegates.

question that the convention intended to bar the dedication of oil and gas revenues. 1975 Op. Atty. Gen. No. 9. We will not repeat that opinion here. The Alaska Supreme Court has yet to rule whether that intent will be given its effect. It may or may not. But until it does rule, it is our view that the words "tax or license" in article IX, section 7, of the constitution are flexible enough, in context, to include all revenues, and that therefore, the framers' intent must be given effect.

Giving the language of section 7 that meaning not only accords with the undisputable intent of the framers but also with the obvious conclusion of the voters that an exception from the prohibition against dedicated funds should be made with respect to at least 25 percent of certain mineral revenues. By expressly making this exception, the amendment includes all remaining mineral revenues within the bounds of the prohibition. That is, by necessary implication, all other dedications of mineral revenues are prohibited. 2 A. Sutherland, STATUTES AND STATUTORY CONSTRUCTION § 47.23 (4th Sands ed. 1973).

Accordingly, under article IX, section 7, of the Alaska Constitution, the dedication of five percent of mineral revenues for a special purpose prescribed by AS 37.11.020 is unconstitutional and invalid on its face. The additional dedications of interest and of amounts remaining in the fund, AS 37.12.060, are equally unconstitutional and invalid.

The Legislative Counsel also opines that an amendment made to article IX, section 7 by the same amendment which established the Alaska Permanent Fund grandfathered in dedications made prior to that amendment. Thus, in his view, even if the dedication for renewable resources had been unconstitutional, it was validated by this amendment. However, the Legislative Counsel's view here is directly contradicted by the rules established for amending the constitution.

The applicable constitutional provision reads as follows:

The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted.

Alaska Const., art. XIII, § 1 (emphasis added). */ The applicable statute adds: "Each amendment shall be confined to one subject." AS 15.50.010. Arguably, the constitution itself might not impose a single-subject requirement, but it probably does, and the statute clearly does. Moreover, both require that the subject not merely be disclosed but, in the language of the statute, be identified by "a true and impartial summary." Here, neither the single-subject nor the disclosure requirement was met. Each is discussed in turn.

Generally, the rules applicable to statutory construction apply as well to the provisions of a constitution. 16 C.J.S. Constitutional Law § 15 (1956). The rule with respect to subjects is that where a statute contains two or more subjects but only one is disclosed by the title, the subject which is disclosed will be given its effect and the undisclosed subjects contained in the statute are invalid and of no effect. 1A A. Sutherland, STATUTES AND STATUTORY CONSTRUCTION § 18.08 (4th Sands ed. 1972). Cf., Port of Longview v. Taxpayers of Port of Longview, 533 P.2d 128 (Wash. 1975) (summary of constitutional amendment).

In the instant case, the title of the resolution which proposed the amendment disclosed that it would establish "an Alaska Permanent Fund for certain proceeds derived from non-renewable resources." The clear implication is that a single fund is to be established. It says nothing about establishing additional dedicated funds, by validation of unconstitutional dedications. The title remained unchanged in the legislature, notwithstanding two significant but little noticed amendments to the proposed amendment.

One of these amendments changed the word "constitution" to the word "section" in the last line of section 7 of article IX of the constitution to provide - in what can only be characterized as by stealth and deception - for the continuation of dedications existing not when the constitution was ratified back in 1956 but when the amended section was ratified, i.e., to grandfather in all the unconstitutional dedications established by law between 1956 and 1976.

*/ Constitutional provisions providing for the legislature to propose amendments are strictly construed. Moore v. Shanahan, 486 P.2d 506, 511 (Kan. 1971). Here, the use of the singular militates against a conjunction of amendments which are not by their nature interconnected.

We have taken the position that this amendment was without any effect */ because (1) to be effective, it had to (but did not) make reference to the invalid legislation it sought to validate, Matthews v. Quiniton, 362 P.2d 932, 938-939 (Alaska 1961); Annot. 171 A.L.R. 1072 (1947); (2) its subject (object or purpose) was not disclosed by the title or ballot summary as required under the constitution, art. XIII, § 1, the law AS 15.50.020, and recognized legal principles, 16 AM. JUR.2d Constitutional Law § 45 (1979); and (3) its subject, retrospective validation of diverse, invalid dedicated funds, was separate from and in addition to the purpose or object of establishing a new, singular dedicated fund, and therefore, required separate treatment. Alaska Const., art. XIII, § 1; AS 15.50.010. See Kerby v. Luhrs, 36 P.2d 549, 554 (Ariz. 1934); 94 A.L.R. 1502 (1935). **/

The Legislative Counsel assumes without discussion that, with the slight guidance provided by the voters' pamphlet and ballot summary, the average voter would notice the change in words and would be able to comprehend that the change from "constitution" to "section" means that the amendment necessarily ratified or validated theretofore unconstitutional dedicated funds. No basis is given for this assumption. None exists.

In reviewing HJR 39 for the governor, this office missed the change in words altogether, and the reviewer made no mention of it. The review letter was signed by Attorney General Gross after further review by Assistant Attorney General Peterson. Neither of them noticed the change of words either.

*/ We took the position in the spring of 1979 when, nearly three years after its adoption, this amendment was first brought to our attention by Douglas Pope, its likely author. Until then, we -- like thousands of others -- had never noticed it!

**/ The second of the significant but littled noted amendments to HJR 39 added the phrase "unless otherwise provided by law" to the proposed section 15 of article IX to provide that income from the permanent fund would go into the general fund unless otherwise provided by law. The effect or purpose of this latter change was not disclosed by the title or body of the proposition or by the committee report on the resolution. 1976 H. Jour. 685.

In writing supporting and opposing statements on the constitutional amendment for publication in the voters' pamphlet, neither the officers of the State Chamber of Commerce -- who must be credited with at least as much percipience as the average voter -- nor former Speaker of the House Tom Fink (likewise) indicated any awareness of the change of words and its purpose or effect. One would think that the latter, who opposed the amendment, would certainly have mentioned the all-encompassing validation of unconstitutional dedications as an additional reason for voting no on the question. The only reasonable inference is that the change was not discerned.

The Cordova Times editorialized in favor of the proposition. Friday, Oct. 29, 1976. It understood that "[o]nly the interest on the fund could be used to run the government," but it showed no awareness of the possibility of the amendment's grandfathering in other dedicated funds, or at any rate, it made no mention of it. The Fairbanks Daily News-Miner lauded the establishment of the permanent fund. Wednesday, Nov. 3, 1976. It cautioned about possible "multi-billion dollar pit of political shenanigans to rival the worst union pension fund scandals," but made no mention of additional multi-million dollar dedicated funds for special purposes. Earlier, Friday, October 29, 1976, the News-Miner had editorialized for the fund's establishment in a lengthy, detailed examination of the proposed constitutional amendment. Not one mention was made of the change in words which would validate the theretofore unconstitutional dedications.

While the News-Miner's editors had obviously given the proposition on the permanent fund a lot of thought, there is not the least indication that they discerned the possibility that the amendment grandfathered in other dedicated funds.

The Anchorage Times editorial for Sunday, October 24, 1976, described the pluses and minuses -- mainly the latter -- of the proposed permanent fund at length. The editorial's tone is so obviously unfavorable that it is unreasonable to assume that, even though they understood that replacing the word "constitution" with "section" would result in validating theretofore unconstitutional dedicated funds, the Times editors ignored it. One can only infer that they (too) missed it altogether. No other reason explains their omitting it from their list of drawbacks in the proposed constitutional amendment.

Following the election, Anchorage lawyer and former legislator Joe Josephson wrote about the permanent fund in his weekly newspaper column. Anchorage Times, Tuesday, Nov. 9,

1976. While he indicated concern for the effect that the existence of the new dedicated fund might have on Alaska's governmental finance policies, and thereby, on its economy, nothing in the column indicated any understanding that the amendment validated dozens of theretofore unconstitutional dedicated funds for special purposes. In sum, none of the state's keenest observers appears to have even noticed the amendment to section 7 of article IX.

In Short v. State, 600 P.2d 20, 22 n. 4 (Alaska 1979), the court stated that due process is denied if the ballot proposition fails to adequately notify the voters of the proposition's subject matter. And there is no question that the constitution requires a summary of each amendment to be placed on the ballot. Alaska Const., art. XIII, § 1. It seems pretty obvious here, that the summary and other information on the proposition did not in any way indicate to persons who were interested and concerned that the effect of replacing "constitution" with "section" was to grandfather in unspecified, numerous dedicated funds for special purposes which had theretofore been unconstitutional.

The courts agree that adequate notice of the subject matter is mandatory. The summary of a ballot proposition must inform the voters of as many of its features as word limitations allow. E.g., Redden v. Meyers, 513 P.2d 767 (Ore. 1973); Bazett v. Myers, 508 P.2d 199 (Ore. 1973). It should have been simple enough for the draftsman of the ballot title and summary here to state the principal features of the proposition, i.e., that among other things it validated hitherto invalid dedications. One can only infer that the summary's draftsman omitted to do so because he did not know that this was a feature of the proposition. */ This omission was by no means minor. It simply is not enough to leave it to the voters to infer certain effects or consequences. The duty to summarize requires that adequate notice be made. Sundleaf v. Myers, 520 P.2d 438, 441-442 (Ore. 1974); Short v. State, 600 P.2d 20, 22, n. 4, 25, n. 15 (Alaska 1979) (dicta). The failure to include the purpose or object of the amendment in the summary excludes it from the scope of the amendment. Port of Longview v. Taxpayers of Port of Longview, 533 P.2d 128 (Wash. 1975).

*/ In this instance, this office drafted the summary. The proposed summary was reviewed by the lieutenant governor's assistants and the director of elections. None caught the omission, i.e., no one noticed the change in words.

As regards separate subjects, the rule in this jurisdiction is liberal with respect to their inclusion in single measures. Short v. State, supra; Gellert v. State, 522 P.2d 1120 (Alaska 1974); Suber v. Alaska State Bond Committee, 414 P.2d 546 (Alaska 1966). It will be rare, indeed for our court to overturn any measure on the single-subject rule. */ Nevertheless, this might well be the one.

While both amendments are obviously parts of a broader single subject, i.e., dedicated funds, and therefore related, each is also separate with respect to its object and purpose. Joining the two in a single proposition deprives "the voter of his or her liberty of choice, forcing acceptance of an objectionable proposition by coupling it with an unrelated meritorious objective which the voter earnestly wants to support." Short v. State, 600 P.2d 20, 25 (Alaska 1979). In Short, the court held that coupling correctional facilities with public safety facilities in a single bond proposition was valid. Here, it would have to find that coupling the establishment of the uniquely popular permanent fund with validation of the previously established and unknown number of unconstitutional dedicated funds is valid. The comprehensive construction programs which underlay the decision in Gellert and Short and the "inextricably intertwined" taxation which underlay the decision in North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978), are missing here. There is neither a comprehensive plan nor an inextricable interrelation here. There is a rider, the very evil the rule described in Short is designed to preclude. 1A A. Sutherland, STATUTES AND STATUTORY CONSTRUCTION § 17.01 (4th Sands ed. 1972). Accordingly, the additional amendment violates the single-subject rule.

Accordingly, because the replacement of "constitution" with "section" in article IX, section 7, of the Alaska Constitution was not mentioned in the title of the resolution which proposed the amendment and was not made known to the voters and because conjoining it in the same ballot proposition as the establishment of the Alaska Permanent Fund violated the

*/ The single-subject rule is applied to propositions for constitutional amendments by AS 15.50.010. Had this office perceived that the amendment contained two subjects, it would have placed each on the ballot separately in accordance with AS 15.50.010 and the precise language of article XIII, section 1, of the constitution.

Gerald Wilkerson

- 8 -

April 1, 1981

single-subject rule, it is a nullity and of no force or effect. The dedication of revenues for renewable resources was and is invalid.

RWP/pjg

cc: Honorable Thomas K. Williams
Commissioner
Department of Revenue

Donald D. Lehr, Director
Division of Budget & Management
Office of the Governor

MEMORANDUM

State of Alaska

TO: Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

DATE: November 2, 1981

FILE NO: J-66-058-83

TELEPHONE NO: 465-3600

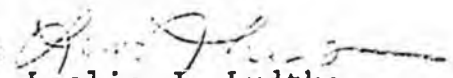
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1981

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Audit of ARRC

LEGISLATIVE
AUDIT

By: 
Leslie J. Ludtke
Assistant Attorney General

You have asked this department's advice concerning four issues which have arisen in your audit of the Alaska Renewable Resources Corporation (ARRC). The questions raised by your audit are:

1. Did ARRC have authority to expend repaid principal from previous loans made?
2. Did ARRC have authority to expend funds appropriated by Chapter 33, SLA 1980 after January 31, 1981?
3. Did ARRC have authority to expend funds for post-investment technical assistance?
4. May an ARRC Trustee serve on the Board of Directors of an ARRC investee?

We will answer each question in turn.

1. ARRC may not expend funds except as appropriated by the legislature.

AS 37.12.095 provides that the corporation (ARRC) may expend money only as appropriated by the legislature. This provision is constitutionally mandated by Article IX, § 13 of the Alaska Constitution which allows money to be withdrawn from the treasury only by legislative appropriation. We have already advised your office that ARRC funds consist solely of the money appropriated to ARRC by the legislature in appropriation bills. (Formal opinion of the Attorney General, 7/29/80). No legislative appropriation has been made to ARRC which would allow the expenditure of the repaid principal from previous loans. Any expenditure of those funds therefore violates AS 37.12.095.

2. ARRC may not expend funds appropriated by Chapter 33, SLA 1980 after January 31, 1981.

Section 1 of FCCSSB 140 created the commercial fish purchasers assistance fund and provided for the administration of this fund by the board of trustees of ARRC. However, Section 4 of the same bill repealed the commercial fish purchasers assistance fund on January 31, 1981. Section 1 of FCCSSB 22, the appropriation bill which accompanied FCCSSB 140, appropriated the sum of \$15,000,000 to this fund. The lapse date of this appropriation was June 30, 1981. It is clear that the difference in lapse dates between the act creating the fund and the appropriation bill creates a problem as to where the appropriation can be deposited after the fund is repealed.

In previous opinions, we have advised that if no fund is in existence to receive the specific appropriation from the general fund, (Informal opinion of the Attorney General 6/8/77) the funds must remain in the general fund. Similarly in order to expend an appropriation, the agency must have both the power to expend the money and must have the money itself. In this instance, ARRC has the money but it does not have the power to expend it. Therefore, because the legislature has not conferred the power upon ARRC to expend funds after January 31, 1981 to assist commercial fish purchasers, no funds appropriated for that purpose may be expended for that purpose after that date. Therefore, the unencumbered balance of the appropriation must lapse.

3. ARRC may expend funds for post-investment technical assistance.

AS 37.12.115(b) provides that ARRC may provide funding for "technical and management advice and assistance to qualified applicants as it considers necessary in the circumstances." The fact that the "qualified applicant" must have submitted a marketing plan under AS 37.12.085(1), does not preclude further funding for marketing studies or technical advice if ARRC considers that funding "necessary in the circumstances." In our formal opinion to your office on July 29, 1980 we advised you that the ARRC board may provide this type of assistance to qualified applicants where it considers the assistance necessary.

4. An ARRC trustee who also serves on the Board of Directors of an ARRC investee may not vote on or participate in discussions concerning matters in which ARRC has a financial interest.

AS 37.12.065 specifically addresses the question you have raised in your request for advice. Apparently, an ARRC trustee was at the time of investment and is now a member of the board of trustees of an ARRC investee. AS 37.12.065 does not prohibit an ARRC trustee from maintaining such an interest, provided that that interest was acquired before the investment was made. In relevant part, 37.12.065 provides

If a member or employee owns or controls such an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any activity relating to that interest.

This statute prohibits the board member from participating in activities affecting this interest either in the capacity of an ARRC trustee or as a board member of the corporation in which ARRC has an interest. In several previous opinions we have concluded that public officials may not participate in any manner in matters in which they have a financial interest. (Informal opinions of the Attorney General, 7/12/63, 3/5/81.) This same rule should be strictly applied to members of the ARRC board. Because of the peculiar quasi-governmental nature of their position, ARRC board members should be particularly cautious with respect to even an appearance of a conflict. In this instance, the ARRC board member should refrain from all discussions of the investment and any vote related to the investment.

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consultation with the Department of Fish and Game, shall determine which communities are economically impacted fishing communities.

(b) If the economic disaster is due to a fisheries failure based on consideration of need, the legislature may appropriate to the Alaska economic disaster impact fund from the renewable resource fund (ch. 130, SLA 1974). If there is an insufficient balance in the renewable resource fund to meet emergency needs that may be determined under the provisions of AS 4.33.285, the legislature may appropriate from the general fund to the Alaska economic disaster impact fund balance may not exceed \$5,000,000. The commissioner of revenue, after determining that there is in the Alaska economic disaster impact fund a surplus above an amount sufficient to meet anticipated demands, may invest the surplus as provided in ch. 10 of this title. Interest derived from investment of these surplus funds shall be deposited to the renewable resource fund. If the economic disaster is due to other than a fisheries failure, the legislature may appropriate from the general fund to the Alaska economic disaster fund to meet emergency needs.

(c) Unappropriated or otherwise unencumbered balances remaining in the Alaska economic disaster impact fund at the close of each fiscal year shall not lapse as provided in AS 37.25.010 but shall be available in perpetuity for fund purposes.

(d) Within the first 10 days of each legislative session the commissioner of commerce and economic development shall submit to the legislature a detailed report of all expenditures from the fund and all actions taken under AS 44.33.285. (§ 9 ch 277 SLA 1976)

Chapter 12. Alaska Renewable Resources Corporation.

Section	Section
10. Alaska renewable resources corporation created	70. Powers
15. Purposes	75. Duties
20. Allocation	80. Financial assistance
25. Board of trustees	85. Eligibility for financial assistance
30. Composition of the board of trustees	90. Reports and publications
35. Term of office	95. Budget and appropriations
40. Removal and vacancies	100. Annual audit
45. Qualifications of board members	105. Cooperation with other agencies
50. Quorum	110. Tax exemption
55. Compensation of board members	115. Technical assistance
60. Employment of personnel	120. Public access to information
65. Conflicts of interest	125. Definitions

Cross references. -- As to the Alaska Renewable Resources Investment Fund, see AS 37.11.050 et seq. As to termination of the Alaska Renewable Resources Corporation, see AS 44.66.010.

Editor's note. -- Section 1, ch. 179, SLA 1978, provides: **DECLARATION OF POLICY.** It is the policy of the state to

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"(1) rehabilitate, enhance, and develop its renewable resources and, insofar as is consistent with sound resource management policies, develop its human resources by providing maximum opportunities for employment and a higher standard of living for its citizens; and

"(2) utilize the funds set aside under ch. 11 of this title to further the (A) development of renewable resources that will contribute to a stable self-sustaining state economy, employment opportunities, and lifestyle alternatives for its citizens, and (B) commercial, traditional, and common uses of the state's renewable resources."

Section 2, ch. 179, SLA 1978, provides: FINDINGS. (a) The legislature finds that Alaska has renewable resources that are not being utilized to their full potential. Many problems which confront the state, including high unemployment and unstable economy, could be mitigated by the expanded use and development of its renewable resources.

"(b) It is further found that Alaska's economy has historically depended upon sporadic and non-stable development.

"(c) It is further found that several key factors have contributed to the slow development of renewable resource industries, including,

"(1) insufficiency of research and development financing and venture capital financing;

"(2) a lack of knowledge within the business and financial communities about conditions affecting renewable resource industrial development in the state and a lack of scientific information concerning many resources; and

"(3) a lack of technology appropriate to Alaska.

"(d) It is further found that the state's policy of assisting the development of viable industries is best accomplished by providing assistance to the private sector to identify and demonstrate new products, markets, and technologies."

Legislative history report. — For report on ch. 179, SLA 1978 (HB 682), see 1978 House Journal, p. 830.

Sec. 37.12.010. Alaska Renewable Resources Corporation created. There is created the Alaska Renewable Resources Corporation to carry out the purposes of this chapter. The corporation is a public corporation of the state and an instrumentality of the state within the Department of Revenue, but has a legal existence independent of and separate from the state. The exercise by the corporation of the powers conferred by this chapter is considered an essential function of the state. (§ 3 ch 179 SLA 1978)

Sec. 37.12.015. Purposes. The purposes of the corporation are to

(1) facilitate the rehabilitation, enhancement, and development of the state's renewable resources so as to strengthen the self-sustaining sectors of the state economy;

(2) sponsor research and development of technologies and innovations for the rehabilitation and enhancement of the state's renewable resources to achieve an appropriate use of the resources;

(3) identify new products, markets, and technologies for renewable resource industries in the state which will constitute an appropriate use of the resources; stimulate the research and development of these products, markets, and technologies; assist in the demonstration of their technical and economic feasibility; and assist in their introduction into commercial markets. (§ 3 ch 179 SLA 1978)

"(1) rehabilitate, enhance, and develop its renewable resources and, insofar as is consistent with sound resource management policies, develop its human resources by providing maximum opportunities for employment and a higher standard of living for its citizens; and

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(3) identify new products, markets, and technologies for renewable resource industries in the state which will constitute an appropriate use of the resources; stimulate the research and development of these products, markets, and technologies; assist in the demonstration of their technical and economic feasibility; and assist in their introduction into commercial markets. (§ 3 ch 179 SLA 1978)

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

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

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

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

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

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

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

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(c) A vacancy on the board does not impair the authority of a quorum of the board to exercise all the powers and perform all the duties of the board. (§ 3 ch 179 SLA 1978)

Sec. 37.12.045. Qualifications of board members. (a) No person may be appointed to the board who has not been a resident of the state for at least three years.

(b) No member of the board may hold any other state or federal office, position, or employment, whether elective or appointive, except as a member of the armed forces of the United States or the state. (§ 3 ch 179 SLA 1978)

Sec. 37.12.050. Quorum. Two members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board. (§ 3 ch 179 SLA 1978)

Sec. 37.12.055. Compensation of board members. Board members are in the exempt service under AS 39.25 and receive an annual salary within Range 30 of the salary schedule for state employees established by AS 39.27.011. (§ 3 ch 179 SLA 1978)

Sec. 37.12.060. Employment of personnel. The board may employ and determine the salary of an executive director. The executive director may, with the approval of the board, select and employ additional staff as necessary. The executive director and all employees of the board are in the exempt service under AS 39.25. (§ 3 ch 179 SLA 1978)

Sec. 37.12.065. Conflicts of interest. (a) Members of the board of trustees are subject to the provisions of AS 39.50.

(b) No member or employee of the board may acquire an interest, direct or indirect, in a corporation, company, association, or project owned, controlled, or invested in by the corporation. If a member or employee owns or controls such an interest, he shall immediately disclose the interest in writing to the board and refrain from participating in any manner in any activity relating to that interest. (§ 3 ch 179 SLA 1978)

Sec. 37.12.070. Powers. In carrying out the corporate powers of the corporation, the board may

- (1) adopt a seal, and use a corporate seal;
- (2) prescribe, adopt, amend, or repeal bylaws;
- (3) sue and be sued in the name of the corporation;
- (4) enter into any agreements necessary to the exercise of its powers and functions;
- (5) accept grants from and contract with the federal government and the state and its political subdivisions, and to that end comply with the provisions of federal, state, or local programs where necessary, except that it may not enter into any agreements whereby any permanent state

Chapter 12. Alaska Renewable Resources Corporation.

Section
70. Powers

Sec. 37.12.010. Alaska Renewable Resources Corporation created.

Editor's notes. — For approval of the Alaska Renewable Resources Corporation investment in Ball Brothers, Inc., see § 3, ch. 32, SLA 1980 in the 1980 Temporary and Special Acts and Resolves. As to Forest Products Producers Assistance Fund, see § 1, ch. 92, SLA 1980 in the 1980 Temporary and Special Acts and Resolves.

Sec. 37.12.070. Powers. In carrying out the corporate powers of the corporation, the board may

- (1) adopt, alter, and use a corporate seal;
- (2) prescribe, adopt, amend, and repeal bylaws;
- (3) sue and be sued in the name of the corporation;
- (4) enter into any agreements necessary to the exercise of its powers and functions;
- (5) accept grants from and contract with the federal government and the state or its political subdivisions and to that end comply with the provisions of federal, state, or local programs where necessary, except that it may not enter into any agreements whereby any permanent state or local government position is funded or partially funded in connection with a project;
- (6) accept grants and loans from other sources than those in (5) of this section to be held and used for the purposes of the corporation;
- (7) appear in behalf of the corporation before boards, commissions, departments, or other agencies of municipal, state, or federal government;
- (8) acquire, hold, use, lease, sell, or otherwise dispose of property of any kind, real, personal, or mixed, or any interest in it;
- (9) hold, as a means of securing the providing of financial assistance, patents, copyrights, trademarks, royalties, or any other evidences of protection or exclusivity issued under the laws of the United States or any state or nation;
- (10) prepare, publish, and distribute technical studies, reports, bulletins and other materials it considers appropriate;
- (11) invest, in such form as it considers appropriate, in projects which are economically viable and income-producing;
- (12) provide grants for projects having broad public application which do not have direct income-producing potential;
- (13) adopt regulations governing the exercise of its corporate powers;

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(14) deposit funds, or invest surplus funds, through the treasury division of the Department of Revenue which may invest in any investments authorized in AS 39.35.110 so long as its investment policy is consistent with the prudent-man rule;

(15) do all acts and things necessary or desirable to carry out the purposes of the corporation.

(16) [Terminates June 30, 1984] provide funds to the Alaska Council on Science and Technology, to be awarded and administered in the manner prescribed by AS 44.21.241 — 44.21.255 when the funds are to be expended to accomplish a corporate purpose under AS 37.12.015. (§ 3 ch. 179 SLA 1978; am. § 2 ch 56 SLA 1979; am Executive Order No. 48, § 2 (1981))

Effect of amendments. — The 1979 amendment added paragraph (16).

The 1981 amendment, effective July 1, 1981, substituted "AS 44.21.241 — 44.21.255" for "AS 44.19.181 — 44.19.189" in paragraph (16).

Editor's note. — Section 1, ch. 56, SLA 1979, provides: "FINDINGS. The legislature finds that there is a need for development of small-scale and low-cost alternatives for Alaskans in regard to building design, food production, recycling, transportation, energy gener-

generation, waste disposal, and small-scale residential and industrial enterprise. Therefore, the legislature finds that the development and wider use of low-cost and small-scale technologies appropriate to Alaska should be encouraged."

Section 8, ch. 56, SLA 1979, provides for the termination of the act relating to northern technology on June 30, 1984. As part of that act AS 37.12.070(16) will terminate on that date.

Sec. 37.12.080. Financial assistance.

Editor's notes. — Section 1, ch. 32, SLA 1980 provides: "COMMERCIAL FISH PURCHASERS ASSISTANCE FUND. (a) There is created in the Alaska Renewable Resources Corporation (AS 37.12.010) the commercial fish purchasers assistance fund. The commercial fish purchasers assistance fund shall be administered by the board of trustees of the Alaska Renewable Resources Corporation and may be financed only by appropriations by the legislature. (b) The board of trustees of the Alaska Renewable Resources Corporation may use money in the commercial fish purchasers assistance fund to provide financial assistance to commercial purchasers of the 1980 salmon harvest. Financial assistance under this subsection shall be provided in accordance with AS 37.12.080, except that in providing financial assistance under this subsection the board of trustees of the Alaska Renewable Resources Corporation

(b) is not required to comply with the provisions of AS 37.12.080(b)(1); and

(2) is required to comply with the provisions of AS 37.12.080(a) only to the

extent the board of trustees determines is possible considering the limited time available to provide financial assistance to commercial purchasers of the 1980 salmon harvest.

(c) The approval of the commissioner of commerce and economic development is required before approval of any application for financial assistance from the commercial fish purchasers assistance fund.

(d) The Alaska Renewable Resources Corporation and the commissioner of commerce and economic development shall report quarterly to the legislature and the governor on all loans and other forms of financial assistance from the commercial fish purchasers assistance fund."

Section 2, ch. 32, SLA 1980 provides: "LOAN GUARANTEES FOR COMMERCIAL FISH PURCHASERS (a) The Commercial Fishing and Agriculture Bank may

1. make loans to provide financial assistance to commercial purchasers of the 1980 salmon harvest;

2. purchase loans made by commercial banks to provide financial assistance to

or local government position is funded or partially funded in connection with a project;

(6) accept grants and loans from other sources than those in (5) of this section to be held and used for the purposes of the corporation;

(7) appear in behalf of the corporation before boards, commissions, departments, or other agencies of municipal, state, or federal government;

(8) acquire, hold, use, lease, sell, or otherwise dispose of property of any kind, real, personal, or mixed, or any interest in it;

(9) hold, as a means of securing the providing of financial assistance, patents, copyrights, trademarks, royalties, or any other evidences of protection or exclusivity issued under the laws of the United States or any state or nation;

(10) prepare, publish, and distribute technical studies, reports, bulletins and other materials it considers appropriate;

(11) invest, in such form as it considers appropriate, in projects which are economically viable and income-producing;

(12) provide grants for projects having broad public application which do not have direct income-reducing potential;

(13) adopt regulations governing the exercise of its corporate powers;

(14) deposit funds, or invest surplus funds through the treasury division of the Department of Revenue which may invest in any investments authorized in AS 39.35.110 so long as its investment policy is consistent with the prudent-man rule;

(15) do all acts and things necessary or desirable to carry out the purposes of the corporation. (§ 3 ch 179 SLA 1978)

Sec. 37.12.075. Duties. In carrying out the purposes of this chapter, the board shall

(1) seek to maintain the productivity of healthy renewable resources and expand the productivity of depleted or underutilized renewable resources;

(2) provide financial assistance for projects which the board finds will accomplish the purposes of the corporation as set out in § 15 of this chapter;

(3) promote the utilization of the state's renewable resources in the state and the development of import substitution and export markets;

(4) annually prepare long-range operating and financial plans and the budget for the forthcoming year;

(5) monitor approved projects for compliance with this chapter and provide operational and performance evaluations (post-audits) of projects receiving financial assistance and an overall assessment, expressed in qualitative and quantitative terms, of the degree to which the purposes of the corporation, as set out in § 15 of this chapter, have been achieved; and

(6) attempt to fund activities which will tend to maximize returns to the state and local governments and its citizens in such forms as tax revenues and resident employment and income. (§ 3 ch 179 SLA 1978)

Sec. 37.12.080. Financial assistance. (a) In providing financial assistance, the board shall

(1) consider the proposals of qualified applicants only after the applicant has submitted a detailed proposal in the form prescribed by the board; no assistance may be approved by the board unless it finds, in writing, that:

(A) the proposed project, if successful, will further the purposes of the corporation as set out in § 15 of this chapter;

(B) the application contains an adequate plan for project implementation, including, where applicable, a complete business, financial and marketing plan for commercial activities;

(C) sufficient capital is not available from other sources on reasonable terms;

(D) the applicant has agreed that if new renewable resource industrial activity results from the proposed project, his best efforts will be employed to keep that activity in the state for a minimum period of time specified by the board;

(E) the applicant demonstrates that sufficient technical and business expertise to accomplish the objectives of the proposed project is available;

(F) all costs, including additional governmental cost, associated with and ancillary to the project and future obligations generated by the project have been identified, including any necessary operating, maintenance, or other support costs for the life of the project;

(G) potential resource use conflicts that may result from the proposed project are identified and evaluated, and when necessary, plans to mitigate or resolve those conflicts and to preserve for the future options for the use of the state's renewable resources are included in the application;

(2) use the financial mechanism most appropriate to the conditions of the applicant and the proposed project and which will most effectively utilize the funds available; grants may be made by the board of up to 90 per cent of the total project costs for the following purposes:

(A) projects for the applied research and development of products, technologies, or innovations for the rehabilitation, enhancement, or development of the state's renewable resources;

(B) projects for the demonstration, on a one-time basis, of the economic or technical feasibility of a new product, market, or technology involving a renewable resource; or

(C) projects for the rehabilitation, enhancement, or development of a common-property resource where the benefits from the project cannot be captured by any single economic unit;

(3) in evaluating projects, consider the preferences and priorities of the residents of the region in which the project is to be located;

(4) require investments made by the corporation to be secured by means determined to be appropriate by the board.

(b) The board may not

(1) invest or otherwise provide assistance of more than five per cent of the resources of the corporation or \$1,500,000, whichever is less, in a single project or applicant unless the legislature has approved the investment by concurrent resolution;

(2) invest in more than 49 per cent of the outstanding corporate stock or other corporate obligations issued by an applicant unless the legislature has approved the investment by concurrent resolution;

(3) make a loan for a period in excess of 30 years unless the legislature has approved the loan by concurrent resolution;

(4) assume the responsibility for management of any project in which it has invested and may not exercise voting rights for that purpose or for any other purpose which is within the scope of managerial control; or

(5) provide funds to any state agency unless that expenditure is included in the corporation's annual budget;

(6) allocate to grants more than 10 per cent of the annual appropriation of the corporation.

(c) Nothing in this section prevents the board from taking such action and exercising such rights as it considers necessary for the protection of its financial interests in the event of

(1) actual or threatened default on any of the board's investments;

(2) actual or threatened insolvency of a project in which the board has made an investment; or

(3) any other immediate or actual circumstance or event which jeopardizes an investment made by the board.

(d) Projects for which financial assistance is granted shall comply with all applicable provisions of law. (§ 3 ch 179 SLA 1978)

Sec. 37.12.085. Eligibility for financial assistance. The board may provide financial assistance if it finds that an applicant is qualified to receive assistance. An applicant is qualified if

(1) he has submitted a proposal to the board in accordance with § 80(a)(1) of this chapter;

(2) he is a resident of the state for three years or, if the applicant is a partnership, corporation, or other association, the majority interest is beneficially owned by residents of the state and a majority of the owners are residents of the state; and

(3) his projects which have previously received financial assistance from the corporation, if any, have complied with all requirements of that assistance and have performed with sufficient success or promise to warrant further aid. (§ 3 ch 179 SLA 1978)

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Sec. 37.12.090. Reports and publications. (a) The board shall prepare and distribute in non-technical language materials describing the purposes and activities of the corporation.

(b) The board shall publish an annual report for the governor, the legislature, and the public at the time of submitting its annual budget request. Each annual report shall include financial statements and audit reports, a statement detailing the sources from which the corporation received money, a statement detailing the investments made by the corporation, a summary and evaluation of the data required by § 75(5) and (6) of this chapter, a list of public facilities required by or complementary to the corporation's investment activity, and any other information that the board of trustees believes would be of interest to the recipients of the report. (§ 3 ch 179 SLA 1978)

Sec. 37.12.095. Budget and appropriations. (a) The corporation may expend money only as appropriated by the legislature. The corporation is subject to the Executive Budget Act (AS 37.07) except as provided in (b) and (c) of this section.

(b) The budget of the corporation shall include the categories and amounts of proposed financial assistance broken down by financing mechanism and resource sector affected and all funds received by the corporation whether through allocations made by this chapter, appropriation, or otherwise. The total amount of the corporation's operating budget shall be specified separately in its budget and be appropriated from the general fund.

(c) The unexpended and unobligated portion of the appropriations, other than appropriations for operating expenses, does not lapse into the general fund at the end of a fiscal year, but remains available for appropriation as provided in this section in subsequent fiscal years. (§ 3 ch 179 SLA 1978)

Sec. 37.12.100. Annual audit. The corporation shall have its financial record audited annually by an independent outside auditor. The legislative auditor may prescribe the form and content of the financial record of the corporation and shall have access to these records at any time. (§ 3 ch 179 SLA 1978)

Sec. 37.12.105. Cooperation with other agencies. All departments, agencies, and public corporations of the state shall provide information, services and facilities to the corporation on its request. The corporation shall reimburse the department, agency, or corporation for expenses reasonably incurred on the corporation's behalf. (§ 3 ch 179 SLA 1978)

Sec. 37.12.110. Tax exemption. The corporation is exempt from all taxes and assessments in the state. All security instruments issued by the corporation, their transfer, and their income are exempt from all taxes and assessments in the state. (§ 3 ch 179 SLA 1978)

Sec. 37.12.115. Technical assistance. (a) The corporation may provide financing for pre-investment activities including feasibility studies, when, in its opinion, the proposed project is of high priority and the financing is not available from other sources on reasonable terms and conditions. Amounts so advanced may form a part of a later investment if the enterprise or project is financed by the corporation.

(b) The corporation may provide funding for technical and management advice and assistance to qualified applicants as it considers necessary in the circumstances. (§ 3 ch 179 SLA 1978)

Sec. 37.12.120. Public access to information. Information in the possession of the corporation is a public record, except that information which discloses the particulars of the business or affairs of a private enterprise or investor is confidential and is not a public record. Confidential information may be disclosed only for the purposes of an official law enforcement investigation or when its production is required in a court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of reports, items, persons, or enterprises. (§ 3 ch 179 SLA 1978)

Sec. 37.12.125. Definitions. In this chapter, unless the context otherwise requires,

(1) "applicant" means a person making application to the corporation for financial assistance;

(2) "board" means the Board of Trustees of the Alaska Renewable Resources Corporation;

(3) "corporation" means the Alaska Renewable Resources Corporation;

(4) "project" means products, markets, innovation, or technological developments for the rehabilitation, enhancement, or development of renewable resources and includes applied research for those products, markets, or technological developments;

(5) "rehabilitation, enhancement, and development" means any activity or program which improves the health and well-being of a renewable resource or renewable resource population leading to an increase in the quality or productivity of the resource and to an increase in the benefits derived from the resource to the citizens of the state;

(6) "renewable resource" means non-human living organisms; natural components of the environment, including the air, land, and water; and energy systems which are naturally recurring or replenished. (§ 3 ch 179 SLA 1978)

Chapter 14. Trust Funds.

Article

1. Mental Health Fund (§§ 37.14.010 — 37.14.050)
2. University Fund (§§ 37.14.060 — 37.14.100)
3. Public School Fund (§§ 37.14.110 — 37.14.150)
4. Custody and Investment of Trust Funds (§§ 37.14.160 — 37.14.170)

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STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

ROOM 508
CAPITOL BUILDING
POUCH V
JUNEAU, ALASKA 99811

907-465-3818
907-465-3810

MEMORANDUM

March 4, 1982

TO: All Members
Legislative Budget and Audit Committee

FROM: Senator Arliss Sturgulewski, Chairman *AS*
Legislative Budget and Audit Committee

RE: Revolving Loan Funds

The Legislative Budget and Audit Committee, the Finance Committees, and many of the members of the legislature, have made it clear that they are concerned with state agency expenditures that occur outside the normal budgeting process. The several revolving loan funds are a major source of such "off-budget" expenditures. In order to get some idea of the size of revolving loan fund receipts, I requested information from both the Legislative Audit Division and the Division of Loans and Veteran Affairs, Department of Commerce. The attached memoranda provide an overview of FY 81 returns of repaid principal and interest to revolving loan funds, as well as projections of annual returns and activity levels of funds administered by the Division of Loans and Veteran Affairs.

It is interesting to note that the present volume of loans outstanding under these revolving funds is \$2.1 billion, with an FY 81 return of principal and interest estimated at \$146 million. This represents a significant amount of money for "new" loans to Alaskan firms and residents.

Attachments

APRC
B.4

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

February 25, 1982

RECEIVED
FEB 26 1982

BUDGET/AUDIT
COMMITTEE TO:

Senator Arliss Sturgulewski
Chairman
Legislative Budget and
Audit Committee

FROM:

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit

SUBJECT:

Revolving Loan Programs - Unappropriated
Funds

This memo constitutes the short report you requested on the State's revolving loan funds, and the amounts of money which are returned to each fund on an annual basis, unless otherwise specified.

Your expressed concern that millions of dollars may be outside or ignored by the legislative and budget processes is most dramatically reflected in funds received by the Alaska Housing Finance Corporation's Housing Development Fund on loans made with appropriated funds. It is estimated that for the 13-month period ending December 31, 1982 the fund has received principal and interest repayments in excess of \$67 million on appropriated funds.

Another State agency receiving significant "cash" repayments is the Alaska Industrial Development Authority which has estimated that it has accumulated approximately \$60 million in reserves on loans and funds appropriated to it since its inception.

The cash accumulated by other loan funds is relatively immaterial at the present because of historic "under" funding of loan programs. Loan funds administered by the Division of Business Loans such as Commercial Fishing, Small Business, Tourism, Child Care, Historical District, etc. have not received appropriations sufficient to meet loan demand or no appropriations have been made until recently. As a remedy, loans were sold to the Treasury Division to provide funds to meet loan demand. As a result the loan funds accumulate relatively little cash from their portfolio since most of the money received must be passed on to Treasury.

Senator A. Sturgulewski
Page 2
February 25, 1982

It is our understanding that the accumulated cash in these funds do not need to be reappropriated in order to be reloaned by the various agencies. This does not apply to ARRC because of a unique statutory requirement which mandates that the corporation may expend money only as appropriated by the Legislature.

The attached schedule demonstrates the estimated accumulation of cash on appropriated funds for loans for currently active revolving-type of funds. Strict comparability between funds is not possible since different administrative agencies use varying dates of measure. However, you should be able to gain an understanding of the approximate relative amounts that are of concern.

13

**REVOLVING LOAN FUNDS
ESTIMATED ACCUMULATION OF
NET "CASH" FOR VARIOUS PERIODS**

<u>Fund</u>	<u>FY'81 Unless Other- wise Noted (Note 1)</u>	<u>Amount of Loans Outstanding (Note 2)</u>	<u>Number of Loans Outstanding (Note 2)</u>	<u>Comments</u>
Child Care Facility	\$ 3,805	\$ 85,710	7	Net of transfers to Treasury. No repayments as of 06/30/81. All loans owned by Treasury.
Fisheries Enhancement	-0-	11,042,622	31	
Historical District	-0-	166,740	3	
Bulk Fuel	8,587	49,950	1	
Residential Energy Con- servation	3,375	259,568	74	
Alternative Technology and Energy	42,249	1,682,471	379	
Tourism	92,799	5,901,434	21	Net of transfers to Treasury, AIDA.
Commercial Fisheries	2,106,487	80,980,298	7,487 *	
Small Business	2,712,278	75,560,269	611 *	Net of transfers to Treasury, AIDA.
Fishermen's Mortgage and Note	-0-	-0-	-0-	
Residential Care Facilities	-0-	-0-	-0-	
Veteran's Medical Malpractice Liability	1,995,950	244,101,836	5,119	
Alaska State Housing Authority (ASHA)	-0-	-0-	-0- *	No activity in revolving portion of funds.
Alaska Power Authority Power Project	-0-	22,124,347	17 *	
Alaska Industrial Develop- ment Authority (AIDA)	60,000,000	157,441,349	850	Inception to date.
Capital City	-0-	-0-	-0-	
Public Law 92-203	-0-	-0-	-0- *	
AHFC Housing Develop- ment	67,243,565	1,366,592,368	20,351 *	13-months ended 12/31/81.
Alaska Renewable Resources Corp. (ARRC)	1,361,882	17,519,389	54 *	Inception to 09/31/81. Of the cash accumulated \$875,861 has been reloaned.
ARRC Commercial Fish Purchases Assistance	4,218,805	Not Available	Not Available	
Alaska Gas Pipeline Financing Authority	-0-	-0-	-0-	
Alaska Municipal Bond Bank Authority	-0-	75,105,500	31 *	
Housing Development	-0-	-0-	-0-	
Senior Citizens Housing Development	-0-	-0-	-0-	
Temperate Social Activities	-0-	-0-	-0-	
Nonconforming Housing	-0-	6,265,300	99 *	
Agriculture	3,080,915	22,193,896	411 *	Of the cash accumulated \$3,016,000 has been reloaned.
Outdoor, Recreational, Open Space and Historical Properties Development	-0-	-0-	-0- *	
Scholarship	2,780,279	53,738,826	24,986 *	
Memorial Scholarship	4,200	19,600	16 *	
Total	<u>\$145,655,176</u>	<u>\$2,143,831,473</u>	<u>54,549</u>	

Note 1

The amounts are comprised of principal and interest payments from notes held only by the funds.

Note 2

Amount of loans outstanding and number of loans outstanding were obtained from Legislative Audit reports except those funds asterisked (*), which were obtained from the House Research Agency report "State Loan Programs: Monthly Activity Report, Fourth Quarter FY 1981" dated August 31, 1981.

(4)

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF VETERANS' AFFAIRS

February 22, 1982

JAY S. HAMMOND, GOVERNOR

POUCH DA
JUNEAU, ALASKA 99811
PHONE: 465-2555

RECEIVED
FEB 25 1982
BUDGET/AUDIT
COMMITTEE

Honorable Arliss Sturgulewski
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

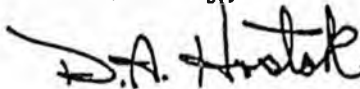
Enclosed you will find cash flow projections on the loan funds which you requested of Dave Massey. These projections assume that all fund monies are invested in loans. The following characteristics and assumptions should be taken into consideration when reviewing the projections.

The number of loans actually being serviced by the Division of Loans and Veterans' Affairs is much larger than the portfolio balance shown on the enclosed cash flow projection. Since you were more concerned with the "true revolving" cash flow, the figures for loans serviced by the division for the Department of Revenue and the Alaska Housing Finance Corporation were not included.

Depending on the size of the portfolio, its age and consistency of its expansion over the last five years, the figures on the cash flow projection will vary from conservative (for the older portfolios such as the Veterans, Small Business, Commercial Fishing and Tourism portfolios) to the ideal potential cash flow for those portfolios where very little history is available at the current funding level.

On the veterans' loan portfolio, only two types of loans are available with a large variance between loan amounts (\$10,000 for personal loans and \$125,000 for multiple dwellings). An estimate was made at the combination of personal and multiple dwelling loans which could be made on a continuing basis.

Sincerely,



D. A. Hostak
Director

DH/krb 5/11

Enclosure

Cash Flow on Loan Funds

Assuming All Fund Monies Were
Invested In Loans

	Estimated				# New Loans Possible Yearly
	Average Balance	Yearly Interest	Return of Principal	Total Principal + Interest	
Veterans' Loans	10,290,000-	893,900	443,200	1,337,100-	21 Personal 9 Multiple Dwellings
Small Business	75,000,000(-)	7,076,020	8,820,850-	15,896,870-	No Authority
Child Care	207,700	18,210-	14,250-	32,460	1 Loan Per Year
Commercial Fish	22,177,349-	2,106,850	1,143,790	3,250,640	66 Loans Per Year
Historical District	200,000	16,680	7,920	24,600	1 Loan Every 2 1/2 Years
Bulk Fuel	* 1,000,000	54,440-	1,000,000	1,054,440	
Tourism	4,500,000	384,900-	338,060-	722,960	No Authority
Mining	42,000,000-	4,401,600	10,380,550	14,782,150	18-19 Loans Per Year
Residential Energy	4,979,000-	501,650	248,790	750,440	200 Loans Per Year
Alternate Energy	6,410,210-	282,810-	775,450-	1,058,260-	211 Loans Per Year
Water Resources**	910,000-	74,900	-0-	74,900	No Authority
Fisheries Enhance- ment***	14,934,000-				

* These loans are for one year only and the monies go back to the General Fund.

** There is only one loan left in this fund and the authority and funding have been deleted (the one loan is interest only until 1987).

*** Payments on these loans are deferred for 6 years. Since the current loans are only 1-4 years old no revenues are expected until 1984.

Alaska
Renewable
Resources
Corporation

file

February 3, 1982

Box 1647
Juneau, Alaska
99802
(907) 465-4616

Senator Bettye Fahrenkamp
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Suite One
313 "E" Street
Anchorage, Alaska
99501
(907) 272-2500

Enclosed is an article which recently appeared in the Alaska Fisherman's Journal. It reports on the recent success of the Alaska Food Company in establishing its whitefish lines. In addition to being the only Alaskan shore based fish processor producing whitefish for domestic markets, we find it significant that it is the only processing plant of any kind presently operating in Kodiak. It is the establishment of such year round employment and economic diversity that encouraged the Board to invest in the development of this obviously risky and untried project.



It is far too early to determine whether this company will convert these encouraging signs into long term profitability, or even survival. However, in light of the considerable controversy concerning ARRC activities in its "sunset" year we think you should know that without ARRC financing, technical assistance and monitoring there is no realistic possibility that this Alaskan owned enterprise would have come into existence. While others studied and speculated about "bottomfish" development, ARRC, through its investees, was producing Alaskan fish for American tables.

We hope that this unique concept of enterprise development which produces demonstrable results and clearly identifiable benefits will not be lost during your consideration of economic development initiatives to be taken in Alaska.

Sincerely,

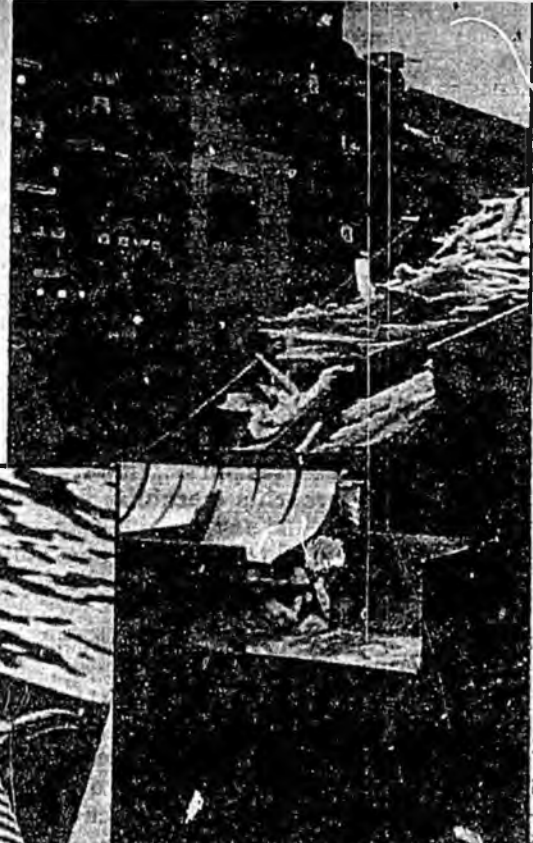
W. Spear
William Spear
Trustee

Bottomfish lines start producing at Alaska Food

by Chris Blackburn



A hand filleter cutting black cod.



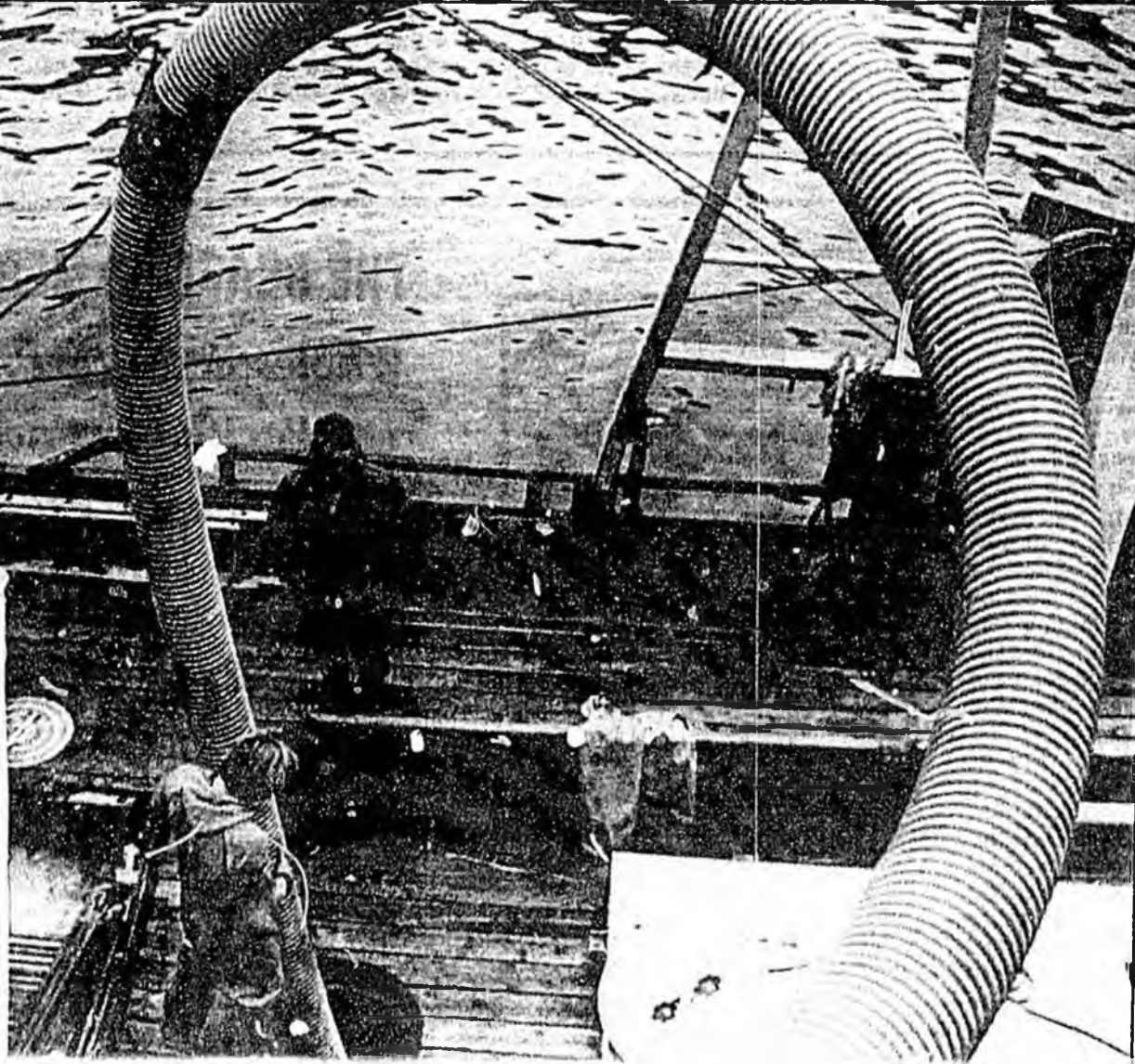
Frozen fillets slide down a chute from the plate freezer ready for boxing.

A Project of



Alaska Renewable Resources Corporation

THE JOURNAL, FEBRUARY 1982



Pumping fish from the Linda Jeanne's hold to start the first run through Alaska Food's bottomfish plant.

Alaska Food Company's four bottomfish lines went into production Jan. 14—right on schedule.

A huge vacuum pump sucked fish up from the *Linda Jeanne's* hold; conveyor belts carried the catch through heading and gutting machines, past mechanical filleting and skinning machines to the trimming tables. There, knife-wielding women made final cuts on the fillets which then went to the plate freezers and emerged 45 minutes later as individually frozen fillets.

Within a few months Alaska Food Company hopes to be processing 250,000 pounds of raw whitefish a day during two 10-hour shifts. Six vessels are currently delivering whitefish to the plant and receiving payment for their loads as soon as the fish tickets are made out.

Just last October, Alaska Food Company filed Chapter 11 bankruptcy in order to gain time in which to complete the bottomfish lines. The year-old company had been plagued by start-up problems and stung by unprofitable salmon, crab and shrimp seasons.

George Dickson, who took over as Alaska Food's chief executive just before the company filed bankruptcy, said in October that the bottomfish lines would be in production by mid-January of 1982.

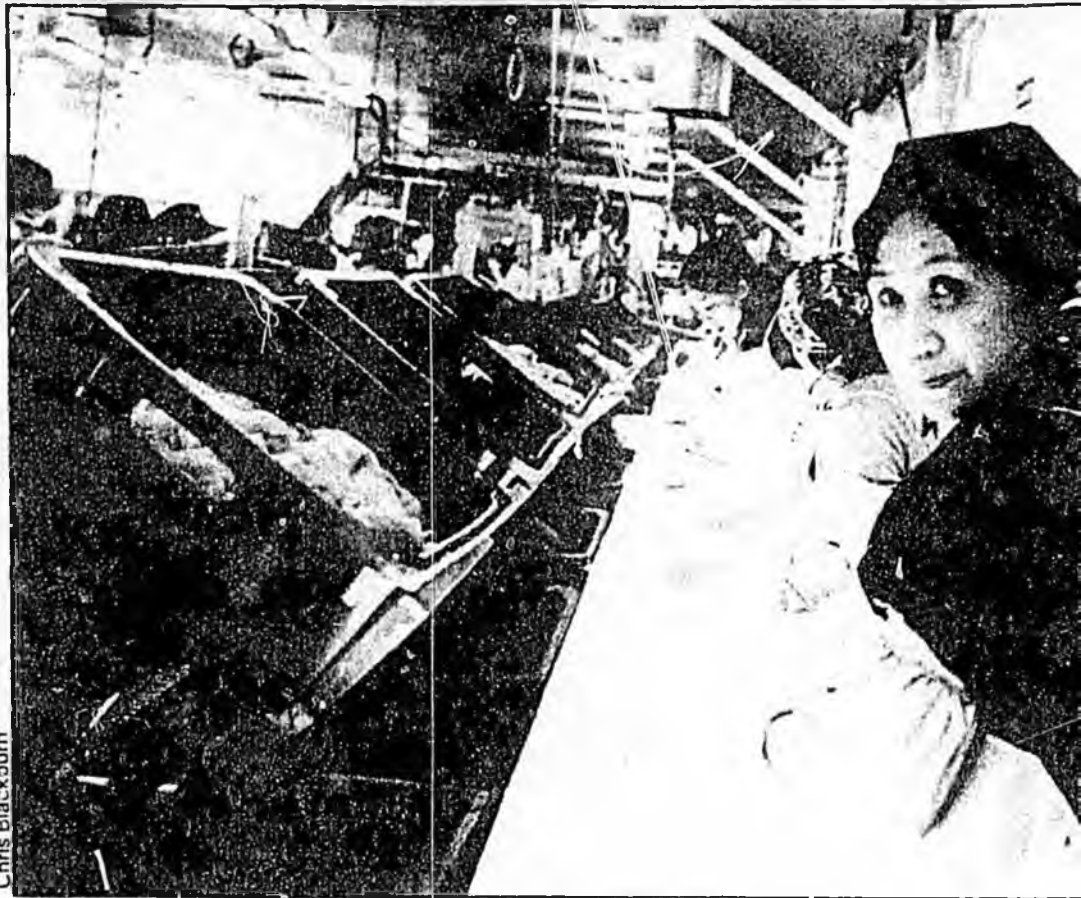
"It works!" Dickson exclaimed Jan. 14 as he stood in the middle of the whitefish plant watching fish move through the lines.

"Just look at these fish—they're firm; the gills are red; the eyes are clear," said Malcolm Yarborough, plant general manager.

"We've got a boat coming in tomorrow and another one due in Saturday," said vice-president Pete Harris.

The company is producing individually frozen fillets and minced flesh. The minced flesh is sold to companies in the continental U.S. for fish cake and fish ball production. "We're already applying fresh fish to markets in the Anchorage area," Yarborough said. Negotiations are underway to expand the fresh fish business into the lower 48.

"We're not competing with the 60 million pounds of fish blocks coming into the U.S. People tend to like individually frozen fillets with a natural shape," Harris explained.



Chris Blackburn

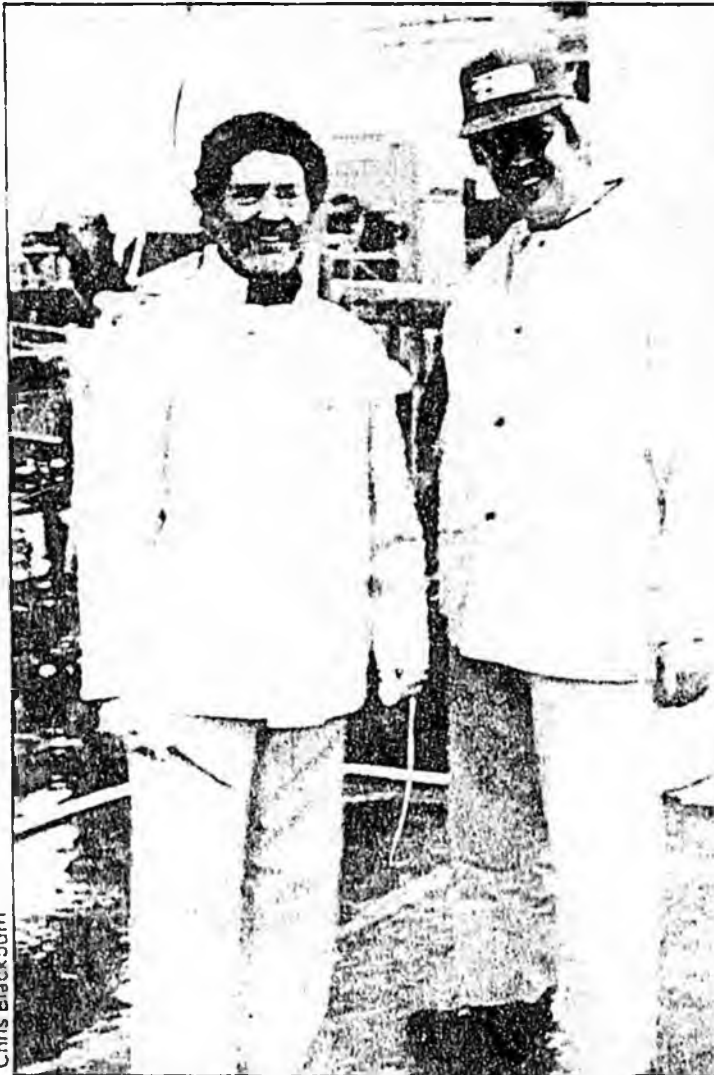
Machine cut fillets receiving final shaping at the trimming tables.

"We've got very good outlets for our fish. We get paid up front when we put up a container load," Yarborough said. "There's very good interest in frozen product throughout the U.S. Recently I returned to England and spoke to contacts there... much interest was expressed in procuring Alaskan fish."

In late October Dickson commented that the Alaska Food Company plant could be "a white elephant or a white hope." During the next three months there were times when it looked like the "white elephant" would emerge.

For starters, the U.S. Department of Immigration was reluctant to grant a visa to plant designer Finn Moo so he could return from Denmark to complete work on several critical pieces of equipment.

"And then we ran out of money," said Yarborough with a wave of his hands. The company requested permission from the bankruptcy court to borrow \$1 million. Permission was granted and the Alaska Renewable Resources Corporation made the loan. ARRC had already invested the majority capital in the company and holds 49



Chris Blackburn

A.F.C.'s chief executive George Dickson (left) and plant manager Malcolm Yarborough

percent of the stock.

The plant then shut down for two weeks over the holidays to finish work on the whitefish lines. "Monday (Jan. 11) nothing seemed to work," Dickson said. "But look at it now. It's all working!"

Finn Moe's new unloading system is not yet completed, but is expected to be on line sometime in March. When the new unloading system goes into operation fish will be pumped from a boat directly to the holding room where they can be graded by machine, conveyed to bins and mechanically layered with ice.

"This is a fish factory," Harris commented.

"It's a technical plant that relies on more than a knife. It means we have to have trained people to take care of the machines. We have one mechanic for each shift to tend the machines and an extra person to fill in during vacations and sick times," Dickson added. "If we take care of the machines, the machines will take

care of us."

The whitefish plant has one line for cod, a line for small pollock and a line for large pollock. The fourth line is the hand fillet line for miscellaneous fish. Jan. 14 the hand filleters were cutting rockfish and black cod, while pollock poured through the mechanized lines. Company officials expect production to increase steadily as the employees become trained.

For Kodiak's drag boats, Alaska Food Company is their only local market and the response from the fleet "has been excellent," Yarborough said. The plant manager was a little disappointed he was not getting cod, but felt the boats would start delivering more when the bait market, which was paying 30 cents a pound for fresh cod, stopped buying. As more and more boats deliver whitefish, Yarborough predicted, cod deliveries to the plant will be regular, since the fresh bait market is limited and can be filled by only a

few vessels.

Ex-vessel prices depend on the quality and size of the product. Fishermen are receiving four to ten cents a pound for pollock, depending on fish size and 19 cents a pound and up for gutted, head on cod. Ex-vessel prices, company officials hope, will rise as markets are developed.

There is a month gap between the Jan. 15 Kodiak king crab closure and the Feb. 10 tanner crab season opening—which leaves many of Kodiak's processing workers unemployed. On Jan. 14 Alaska Food Company's office was crowded with job seekers. "We should be able to provide year-round employment," Harris said. At full production Alaska Food Company expects to employ about 100 people per 10-hour shift.

Incentive programs are planned so that productive workers on the trimming and hand fillet tables "can make more here than anywhere else," Yarborough said.

Though on Jan. 14, full scale production appeared to be just around the corner, company officials know there are still bugs to be worked out of the system and questions about the availability of product to be answered.

"Just handling one boatload of fish doesn't make a success," Dickson said. "Pete (Harris) knows as much about the resources around Kodiak Island as anybody in the world—but even at that, information is a little scarce. No one has fished every where around here all year round."

Harris has been promoting development of an Alaskan whitefish industry most of his life—first as an employee of New England Fish Company whose plans for whitefish production at the Gibson Cove plant now owned by Alaska Food Company collapsed when the firm folded in 1980.

Plant general manager Malcolm Yarborough has 32 years experience in whitefish production both in England and in the U.S. at plants on the West Coast.

If the current operation is a success, Harris said, in the future the plant may expand its freezer space so that it can do secondary processing to keep busy between boat deliveries. "Ideally this plant should process volume year round." □



617-492-5461

COUNSEL FOR COMMUNITY DEVELOPMENT, INC.
10 CONCORD AVENUE, CAMBRIDGE, MASSACHUSETTS 02138

President:
Belden Hull Daniels
Senior Associates:
Nancy Barbe
Steven Klein
Beth Siegel
Comptroller:
Tom Tomosovic

Structural Reforms to the ARRC Which Will
Create a Viable Investment Vehicle to Help
Finance the Growth and Diversification of
the Alaska Economy

Final Report

prepared for

Senator Patrick Rodey, Chairman, Senate Special Committee on Banking

by

Belden Hull Daniels

President, Counsel for Community Development, Inc.

Counsel for Community Development, Inc. is a firm specializing in development finance and economic development in this country and overseas. Since 1971, we have been actively engaged in financing urban and regional economic development, especially for local development organizations, and designing development banks to support those activities at the federal, state and local level.

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The original, basic conception of the Alaska Renewable Resources Corporation (the ARRC) was one of the most innovative and creative ideas in development finance in the Western hemisphere. Unfortunately, at the time the Alaska legislature approved the creation of the ARRC, only a handful of legislators clearly understood that concept. It is also reasonable to say that few members of the Administration fully grasped its potential. Nor was it properly understood by the financial community and regional corporations who could have used its resources most beneficially or by potential user-borrowers or investors. The result has been a series of misunderstandings about the ARRC which have compromised the institution's effectiveness from its inception.

In addition, there are significant, legitimate criticisms and structural flaws which have undermined the ARRC in its current form.

If one were to summarize the concerns which have been expressed, they would include:

- The needs of the Alaska economy which the ARRC is intended to serve have not been as clearly defined as they should.
- Its purposes have appeared confused and contradictory to some.
- Its tools are not fully appropriate to carry out its tasks successfully.
- Its sources of funds are too unstable to allow for a sound, long-term financial management and business plan.
- Its legal structure is not fully appropriate.
- Its management structure is not fully appropriate.
- It does not appear to have clear measures of accountability to the legislature, the executive, the financial community, its users, and Alaskans in general.

For all these reasons there has been understandable confusion among the legislature, the executive, the financial community, ARRC users and Alaska citizens about this potentially important institution.

Based on our experience in designing, developing and monitoring development finance institutions in the United States, North America, Europe and other countries we would like to make two points:

- In our judgment, the ARRC's current purposes, tools, sources of funds, legal structure, management structure, and system of accountability can be reformed to take advantage of the experience of proven models from similar institutions in other jurisdictions.
- Moreover, there is a need for a properly structured, properly capitalized venture capital company in Alaska whose purposes, tools, sources of funds, legal and management structure, and system of accountability could be sound and could be seen by the legislature, the executive, the financial community and regional corporations as contributing substantially to both the strength of the Alaska economy and to the strength of the Alaska banking system.

The body of knowledge exists from which to build a successful, sound, high-risk investment vehicle in Alaska which could collaborate with the Alaska financial community and regional corporations in expanding and diversifying the economy.

In order to restructure the ARRC so that it deals genuinely with real needs in the Alaska economy on terms acceptable to the financial community, the legislature, and the citizenry, we present a step-by-step review and restructuring of the needs, purposes, tools, sources and uses of funds, legal and management structure, and accountability of the institution based on proven models in North America and overseas.

Attached is a separate appendix of relevant North American models. We note that all of the lower-48 institutions discussed have been designed in collaboration with lenders and investors in the private market and such potential co-investors as Alaska Regional Corporations. Once operating, the boards of the institutions always include leaders from both the private and public sectors, generally with a clear majority of private market leaders.

1. Need

Are there legitimate economic needs in Alaska which can best be met by a publicly chartered venture capital investing mechanism? How can those needs be defined? What are the constraints on the viability of the ventures in terms of markets, supply factors, and management? Is either the cost or availability of capital an essential missing ingredient for certain kinds of ventures for which there is a legitimate economic need? Is there a legitimate need for venture capital not now being sufficiently provided by the private financial market in Alaska? If there is a need for such an institution, can it be designed in collaboration with the private market in ways which complement and enhance the capability of the private market to expand and diversify the Alaska economy?

We are implementing for you a companion project which seeks to measure Alaska's existing financial markets in ways which should help us qualify these needs. Preliminary data indicates that the Alaska banking system is fully capable of meeting all short-term capital needs on its own and all long-term debt needs in collaboration with AIDA and

AHFC. Large "world class" projects are fully capable of attracting all their capital needs, if they are sound ventures.

If there is any capital need in Alaska, it would appear to be for higher-risk equity or subordinated "junior" debt that would facilitate private market lenders expanding their "senior" debt to small businesses. This is the kind of capital ordinarily provided by venture capitalists.

A clear need must be defined before we can proceed to define and structure an appropriate vehicle to fill that need. We therefore set out to measure as systematically as we could the availability of venture capital in Alaska.

Although our experience in Alaska has led us to the general conclusion that venture capital of any kind is scarce, we sought to obtain more precise information on the overall level of venture capital financing in the state and a more precise understanding of the reasons for the scarcity of venture capital. Although we recognized that it would be impossible to measure the informal market in equity capital, we tried to reach a broader understanding of the availability of formal sources of venture capital.

Our first step in trying to get a more accurate measure of venture capital availability was to contact the Venture Capital Journal. This organization maintains a sophisticated data base of where venture capital in the United States is based and where that venture capital is invested. When asked about Alaska, they responded that there was no point in doing a systematic quantitative data search because, besides the activities of the ARRC, they had no record of venture capital

based in the state or out-of-state venture capital being invested in Alaskan firms.

Since there was no quantitative data available on formal sources of venture capital in Alaska, we designed a survey of venture capitalists based primarily in the western United States. (See Attachment A for a list of groups surveyed.) Approximately 20 venture capital groups were contacted by telephone and asked the following questions:

- Did they have any deals in Alaska?
- Have they ever sought deals in Alaska? Why or why not?
- Have they ever received proposals from Alaskan firms?
- What did they perceive to be the general investment climate in Alaska?

Our primary conclusion based on this informal survey is that there is very current little interest in investment opportunities in Alaska for a variety of reasons which have little to do with the reality of venture capital demand in Alaska. These can be categorized as follows:

1. Current local demand (West Coast/Lower 48) is extraordinarily high.
2. Lack of knowledge and negative perceptions of Alaska, the Alaska economy and population limit the interest of venture capitalists.
3. The general behavior of venture capital companies work against investments in Alaska.

First, the current demand for venture capital in the West by high-growth firms is very substantial. Venture capitalists have little interest in pursuing investment opportunities outside of their local area as a general rule. When demand for their funds by local firms which meet their investment criteria is high, the interest in going outside

is further diminished. Innovative technology-based companies are the most appealing investments to most venture capitalists. The vital high-technology industry on the West Coast attracts most of the attention of West Coast venture capital companies. Most venture capitalists saw themselves in the role of assisting the small, promising entrepreneur to achieve a competitive stance in this burgeoning market.

Second, the lack of information and in some cases the general perception of Alaska by those surveyed also limited interest in investing in the state. Alaska is seen as being in an initial overall development phase, characterized by a limited population and natural-resource-based development activities. Lack of a university setting appropriate to entrepreneurial development, a trained labor pool, and the perceived difficult quality of life conditions were also viewed as deterrents to attracting and maintaining high-growth, technically advanced industries. One venture capitalist noted that even if Alaska companies were in the position to compete, high labor costs would, in his view, render them relatively unattractive to 'mainland' venture capitalist groups.

Many interviewees stated that 'necessary' (resource-related) development activities are being carried out by major exploration companies, state, local and indigenous development corporations and funding sources.

There was a general perception that Alaska already had enormous pools of capital available for venture development and therefore needed no outside assistance.

Some firms interviewed felt that Alaskan inexperience with certain management procedures or tools and lack of experience with

"lower 48" venture capitalists in general, often resulted in second-rate development plans. Others found that business plans from Alaska were not "unique" and promising enough in nature to be worthy of the extra effort and expense called for. Lastly, all those surveyed had simply received a minimal number of development proposals from Alaska.

Third, the general nature of venture capital groups and their business processes act as further constraints on external venture capital financing in Alaska. Many firms receive and pursue requests referred through informal communication networks. These 'contacts' are comprised of previous investors--banks, entrepreneurs, lawyers--and other venture capital firms. Alaskan development groups and individuals are not yet part of active western venture capital 'circles.'

Personal interests and relationships also play a key role: for instance, one venture capital group only 'keeps an eye' on Alaskan development because it has a gold mine located 200 miles north of Juneau. This investment facilitates good relationships with local banks and occasional 'scouting' efforts. The only venture capital firm with any significant interest in Alaska made its initial contacts because one of the principals had a college roommate who moved to the state.

The ability to carry out face-to-face negotiations during investment planning stages was regarded as imperative by a few venture capital groups. Transportation and information processing costs, exacerbated by Alaska's location, are a deterrent to investments.

Some venture capitalists offered suggestions regarding Alaska business activities to encourage venture capital investment and attract

mainland attention: First, "natural" area industries such as real estate, fish hatcheries, and food processing could be expanded by local development groups. Finally, and most importantly, West Coast venture capitalists noted that a local venture capital firm should be established to facilitate investment, enhance the Alaskan business community's reputation, and foster its involvement with "lower 48" networks and venture capital circles.

We suggest that a properly restructured ARRC could perform such an important "bridging" function.

We suggest that a properly restructured ARRC would focus only on the financing needs of young, small, growing, viable firms which are capable of productive growth and self-sufficiency, but

- lack sufficient or traditional collateralization;
- have an imbalanced capital structure which requires the infusion of equity or near equity before private lenders can prudently provide more senior debt;
- are growing so fast that more debt is needed to fuel the growth, but cannot be sustained without restructuring the capitalization;
- have an apparently sound proposal but the costs of evaluating the deal and then following it are higher than the returns warrant;
- have an apparently sound deal, but the rate of return to the lender or investor is insufficient in the short run to cover the risk;
- are proposing a product, service or project which is novel to the private lenders, making it difficult to assess risk.

Alaskan Regional Corporations are capable of meeting some of this high-risk need. Any new risk capital vehicle for small businesses should only be created if the regional corporations properly perceive it to be complementary and useful to their own purposes and for their

own customers in expanding and strengthening the Alaskan economy.

Finally, it should be noted that this single purpose corporation is only intended to address one capital need--risk capital for small enterprise in support of the private market. It does not address needs for (1) social overhead capital, (2) infrastructure development, or (3) very large-scale industrial projects. Other institutions such as those proposed by Commonwealth North are necessary to carry out these functions.

2. Simple Purposes

What are the legitimate purposes of such an institution to carry out these needs? Is there confusion or conflict among the ARRC's current goals? How can such confusion and conflict be eliminated in a soundly designed investment institution which has simple, straightforward purposes which are clearly understood by the financial community, potential users, the legislature, the executive, and the managers?

We suggest that a properly restructured ARRC:

- would be organized to provide risk capital to smaller enterprises in primary industries (manufacturing, fishing, agriculture, etc.) in ways that enhance senior lending or investment from the private market.
- would have only economic, not social, purposes.
- would invest only in firms which have a reasonable prospect of growth and profitability in ways that encourage and enhance additional investment from private investors.
- would be expected to make a reasonable, but not high, direct return over time. Its investments would be "patient money."
- would be limited to Alaska-situs, not residency, in the same manner as is now true of AIDA and AHFC.
- would be limited by size to a percentage of the corporation's capital--with a ceiling between \$250,000 and \$500,000.

These purposes fit the targeted need.

These simple, straightforward purposes (for risk capital financing of the expansion of small production enterprises in ways that enhance private capital investment) will eliminate confusion and conflict in the minds of the board, management, regional corporations, bankers and legislators. Although some senior bankers in Alaska have properly utilized the ARRC to make the kinds of equity investments or junior subordinated loans which would legitimately permit a prudent banker to extend or consolidate more senior debt, many bankers have unfortunately never had the opportunity to overcome the misunderstandings which originated with the ARRC's birth.

3. Proper Tools

For better or worse, the ARRC's powers and tools were borrowed from other public venture capital firms in the lower-48. Just as the purposes of any Alaska institution should be designed to meet Alaska's needs, so the instruments of such an institution should be appropriate to carry out its purposes. Drawing from our experience in designing, implementing, and overseeing development finance institutions in North America and overseas, we would suggest a simple, straightforward set of tools designed to be highly compatible with the existing Alaska financial system. The Alaska financial system should be able to look upon any high-risk investment mechanism as a tool that would help it better serve its customers and better serve the economy of Alaska. They should correctly see it as a complementary rather than as a contradictory or competitive instrument.

We suggest a properly restructured ARRC:

- would make no grants, only risk capital investments or loans.
- Risk capital would be provided primarily in the form of equity or junior debt.
- Debt could be subordinated or unsecured, intermediate or long term, with or without equity kickers, and could be structured with graduated payments or balloons.
- Short-term working capital would not be provided.
- Equity could not exceed 49%, except to protect an endangered investment.
- The institution could not provide 100% financing. A regional corporation, bank or other private financial institution or "lower 48" venture capital firm would have to participate, although generally on more favorable terms. Such a collaboration might often involve co-venturing between the corporation, banks and such other institutions as AIDA.
- All other essential tools should be empowered, such as the power to guarantee a private market loan.

The higher-risk, moderate-return, front-end tools should be correctly seen by the Alaska financial community and the Regional Corporations as complementary rather than competitive to their own activities and enhancing their productive, growing, small customers.

4. Appropriate Sources of Funds

If a development finance institution is to be soundly structured, its sources of funds must match its uses of funds. An institution whose sources of funds are not properly capitalized over the long term cannot afford to make sound long-term investments. An institution which is overcapitalized over the short term is more likely to invest in unsound, uncreditworthy enterprises than an appropriately capitalized long-term institution. An institution which requires annual

authorization and appropriations by a legislature will not be able to develop the long-term time frame that is the hallmark of the successful development finance institution.

It is also necessary that measures of accountability be found to ensure that its public purposes are maintained and its responsibilities to the legislature and to the executive are met and appropriately reported on an annual basis. Proper accountability is described under section 7, below.

We suggest:

- No new appropriations are required to create such a corporation. The existing appropriated capital to the ARRC of about \$43 million is sufficient to endow permanently the capital structure of such an institution.
- Approximately \$6 million of this is currently in cash. \$2 Million more is available for draw down. Properly invested by the Revenue Department, this \$8 million is capable of covering all reasonable administration costs, creating sufficient loss reserves, and maintaining the value of the corpus.
- Approximately \$35 million is in a portfolio of varying risk, size, quality, and terms of individual investment and loans. This portfolio needs to be independently evaluated in terms of its reasonable present value and recoverability. Reasonable estimates seem to suggest that 60% is recoverable for eventual return to the endowment and reinvestment.

In our judgment, this total net capital endowment is sufficient in Alaska at this time to cover reasonable administration, create appropriate loan reserves, preserve the portfolio and undertake a reasonable investment process in collaboration with the Alaska financial community.

5. An Appropriate Legal Structure

Just as the sources of funds must match their uses, such a vehicle requires an appropriate legal and management structure which can use

those funds and instruments. Furthermore, it must have a legal structure which assures its accountability to its various constituencies--the legislature, the executive, the users, and the private financial community.

Based on proven models in other parts of the world which incorporate mixed private-public boards not dissimilar from those Alaska has now established for both the Permanent Fund, we suggest:

- A small, mixed public-private board should be legally responsible for hiring the President, setting policy, approving investments and overseeing the performance of the corporation.
- We recommend a five-person board: three highly qualified persons drawn from private lenders, investors and users, and two commissioners (most reasonably Revenue and Commerce & Economic Development). This structure (and proposed qualities) are, as noted, not dissimilar to that of the current Permanent Fund Board.
- The three private market persons would be appointed by the Governor for staggered terms.
- One of the three private market board members would be chosen as Chair.
- Ideally, leaders of the board should have been actively involved in the design and creation of the corporation, as well as its oversight and management.

6. An Appropriate Management Structure

In the end, management matters the most. The management structure must attract and encourage outstanding management. Typically, successful development finance institutions are managed by chief executives and staffs who are not subject to civil service, can be hired and fired by the board at will, and are rewarded with incentives at least comparable to their counterparts in the private market, except with a longer-term time frame.

We suggest:

- Management should not be subject to the Executive Budget Act.
- Management should be eligible for state pensions as AIDA and AHFC are.
- Recruiting should be national.
- Rewards and incentives should be roughly comparable to the private market, but with a longer time horizon.

7. Measures for Performance and Accountability

To date, none of Alaska's development finance institutions are properly accountable to either the legislature, the executive or the citizens for their performance. We propose incorporating into the statute a clear set of accountability procedures in which the board and staff must report annually to the legislature their financial rate of return, as well as their fiscal rate of return to the state. These measures should be as simple and easily understandable as possible and should relate directly back to simple, straightforward purposes.

We suggest:

- In addition to its own annual report and independent accounts of auditors, this corporation should be accountable to periodic audit by the Legislative Budget and Audit Committee and staff.
- Standards, however, should be set in the legislation which would govern both the corporation's own reporting and the direction of the Budget and Audit Committee's independent efforts. These standards should be those appropriate to a development finance institution and not those of a state line agency.
- A "High Noon" commission should be established for fundamental review of the needs, purposes, tools, sources of funds, legal and management structure and accountability 9.5 years from establishment. This commission, jointly appointed by the executive and the legislature would include representatives of both of those bodies as well as bankers and users. In six months they would report their review.

In conclusion, with these clear definitions of need and purpose, tools, endowment of existing funds, revised legal and management structure, and systems of accountability, North American and international practice suggests that ARRC can play a valuable function on behalf of the Alaska economy in collaboration with the private market.

ATTACHMENT A

VENTURE CAPITAL FIRMS SURVEYED

Continental Capital Ventures, San Francisco, CA
The Early Stages Co, San Francisco, CA
Golden Gate Investments Inc., Palo Alto, CA
Cable, Howse & Cogadd, Inc., Bellevue, WA
Security Pacific Capital Corporation, Los Angeles, CA
Technology Venture Investors, Mento Park, CA
First Interstate Venture Capital Co., Los Angeles, CA
Institutional Venture Assoc., Menlo Park, CA
Institutional Venture Partners, Menlo Park, CA
Inter-West Partners, San Francisco, CA
California Northwest Fund, Inc., Menlo Park, CA
Financial Land Investment Corp. (private individual with interests in
Alaska), Los Angeles, CA
Ranier National Bank (Corporate Investment Group), Seattle, WA
Cascade Capital Corporation, Portland, Oregon
Cable & Howse, Inc., Seattle, WA
West-Ven, San Francisco, CA
Boston Hambro Corp., Boston (New York and local office)
BSC Private Investment Partners, New York
Charles River Partnership, Boston
Citicorp Venture Capital, Ltd., New York
Drexel Burnham Lambert, Inc., New York
Faneuil Hall Assoc., Boston, MA
Windcrest Partners, New York



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Comptroller:
Tom Tomasic

TO: Senator Pat Rodey, Chair, Senate Interim Banking Committee
Jim Kelly, Special Assistant

FROM: Belden Daniels, President
Counsel for Community Development, Inc.

DATE: December 7, 1981

RE: Appendix of Models to Consider in Designing a High Risk
Investment Vehicle to Meet the Needs of the Alaska Economy

As you consider the possibilities for creating such a high-risk investment institution in Alaska, you may want to consider other relevant models that have been established in North America. Attached are summaries of the following institutions:

Massachusetts Technology Development Corporation (MTDC).....	2
Connecticut Product Development Corporation (CPDC).....	7
Massachusetts Community Development Finance Corporation (MCDFC).....	12
Massachusetts Capital Resource Company (MCRC).....	17
Business and Industrial Development Corporations (BIDCO).....	22
Maine Capital Corporation (MCC).....	26
Louisiana Small Business Equity Corporation (LASBEC).....	31

Note that the conceptual framework developed in our November 11, 1981 memo to you entitled "Is There a Need for a High-Risk Investment Vehicle to Collaborate with the Alaska Banking Industry in Financing the Growth and Diversification of the Alaska Economy?" is a basis for describing these institutions.

MASSACHUSETTS TECHNOLOGY DEVELOPMENT CORPORATION:

High-Tech Venture Finance

Introduction

The Massachusetts Technology Development Corporation (MTDC) is a publicly financed and managed venture capital firm charged with making equity investments in new technologically oriented companies. It was established in 1979 by the state legislature to finance new technological ventures that, if successful over time, will continue to provide the state economy with the ability to produce new jobs and withstand fluctuations in the national economy.

Purpose

The Massachusetts economy has established a strong "high technology" base during the last decade, particularly in the Boston area, and the health of the state economy depends to a large degree on the continuing emergence of new firms producing technological products. In 1978, the state legislature recognized that entrepreneurs in the technology industries in Massachusetts often faced serious obstacles in obtaining risk capital. It established the MTDC to provide start-up capital to entrepreneurs who could demonstrate an inability to find financing in the private capital market.

MTDC is required by enabling legislation to make 50% of its investments in designated low-income areas. It is specifically required to evaluate prospective ventures in terms of the number of jobs that will be created by investment of MTDC funds.

The venture capital industry has experienced major cyclical swings over time, with money flowing into and out of venture capital companies depending on rates of return being achieved. Even when venture capital funds are fully subscribed, the sorts of start-ups in which MTDC is required to invest rarely receive financing. Thus, MTDC fills a critical capital gap for that sector of the economy.

Uses

MTDC is restricted to making equity investments in technologically oriented new ventures and can invest its funds only in start-ups. The Corporation is charged with providing technical and managerial counseling to its clients and is able to offer loan guarantees to private lenders to induce them to lend long-term debt to clients. MTDC has chosen not to use its loan guarantee authority because it feels the guarantee reserve fund that would have to be established to fund the guarantees would effectively divert needed resources away from MTDC's primary purpose: start-ups.

The Corporation's investment strategy, which is designed to stretch its limited initial capitalization as far as possible, is to co-venture with private venture capital firms and to leverage long-term debt from commercial banks. MTDC performs a comprehensive financial, management, and market analysis of each proposal it seriously considers for investment (two or three of every 25 applications) and develops a financial package that it presents to private venture capitalists for participation. MTDC invests between \$100,000 and \$250,000 of its own funds per venture, usually attaching warrants to buy stock at some future date. It aims to leverage long-term debt in a 3:1 ratio to its own investment.

Sources

The Corporation was initially capitalized by a \$2 million grant from the Federal Economic Development Administration and has made five investments since reaching full capitalization last year. The state initially provided \$150,000 (increased to \$190,000 in 1981) in operating expenses, and the EDA grant was used to establish a revolving fund, whereby returns on initial investments would be reinvested in new sets of ventures.

The Corporation is expected to face severe pressures during the next two years. It expects to invest the remaining \$1 million in EDA grants by the end of 1981, but an additional \$1 million in EDA matching grants promised for 1982 has been rescinded by the Reagan Administration. MTDC cannot turn to the state for increased funding, since a Massachusetts voter initiative passed in November 1980 limits local property taxes and has thus put greater strains on state funds. MTDC management has a goal of making MTDC fully self-sufficient by 1983. Events of the last year have demonstrated its vulnerability to changes in the economic and political environment.

Structure

MTDC is governed by an eleven-member board of directors composed of business and financial representatives. The board includes the Lieutenant Governor and the State Secretary of Economic Development. The professional staff includes three investment analysts, each experienced in evaluating technological products and markets and familiar with the operations of private venture capitalists. The Corporation is required to publish an annual audited financial report.

Analysis

MTDC has invested \$950,000 of its own funds in five ventures with concurrent private sector investments of \$3,020,000. MTDC projects the creation of 600 new jobs resulting from its investments. It has also assisted more than a dozen entrepreneurs and new companies in securing several millions of dollars in financing from various conventional sources without investing its own funds.

MTDC represents a useful model of a publicly managed provider of equity capital to entrepreneurs and new businesses who find it difficult, for reasons of risk and size, to acquire funds from conventional investors. MTDC does not finance start-ups which, after evaluation by MTDC analysts, appear to have only a slim chance for success. Its ability to accept significantly lower returns on investment than private venture capital firms and its longer time horizons allow MTDC to finance viable start-ups that conventional lenders will not consider. Its primary problems result from a dependency on annual public (federal grant and state appropriations) funds and from a slow start stemming from management problems during its early months.

The MTDC model works particularly well in Massachusetts because of the existence of large numbers of technologically oriented firms in the area and because of the continuing availability of entrepreneurs with new ideas. The model is replicable wherever states are willing to provide initial operating expenses, where potential new ventures are in large enough supply to make investments possible, and where staff experienced in risk capital analysis is available. To avoid the sort of dependency on continuing appropriation of public funds that MTDC now faces, states

considering the establishment of an MTDC-type organization should contemplate the use of bonding authority to provide a secure and long-term supply of funds to the organization.

CONNECTICUT PRODUCT DEVELOPMENT CORPORATION:

Product Development Finance

Introduction

The Connecticut Product Development Corporation (CPDC) is a quasi-public, non-profit organization authorized to provide risk capital to Connecticut businesses developing new products, procedures or techniques. Modeled after the National Research Development Corporation of Great Britain, CPDC seeks to bridge the gap between research and innovation on one side and product manufacture and sales on the other. In return for its investments, CPDC gets royalty payments.

Purpose

Creation of CPDC in 1973 was in response to a shortage of venture capital to promote development and exploitation of new products by small firms in the state. Since new products do not have track records and proven market shares, smaller firms have trouble obtaining the necessary financial assistance to develop new products. The Connecticut legislature felt that the venture capital shortage contributed to a serious decrease in the development of new business enterprise and job opportunities in the state. By making risk capital available for new commercial products, the state seeks to encourage new employment and generate public revenues.

New product development is an important form of expansion for existing enterprises and the creation of new firms. It is also a major vehicle for technological change and productivity gains. Investing in new products is inherently risky because there is so little information about production costs or marketing factors. With little private financing available for product development and federal research and

development contracts generally drying up, only the largest enterprises can afford the technological risks of product development. They can put R&D funds into several areas at once in the hope that one product will be a winner.

Uses

Debt is an extremely difficult source of funding for new product developers to obtain because lenders are so risk averse. It is also inappropriate, since it requires payments before the firm has even begun to generate profits. Traditional equity would be ideal, but it is largely unavailable for small firms. The funds CPDC can provide, direct investments in products, offer a welcome alternative to debt and equity for firms engaged in product development. CPDC does not use its funds to take an equity position in the firm but, rather, helps to underwrite a portion of the product development costs. In any case, CPDC's investment is "patient capital." It plans to concentrate on marketable products, not companies, which it deems to have the potential for job creator in Connecticut. Realistically, CPDC figures that only about 30% of its investments will pay off.

In the year ending June 30, 1980, CPDC approved investments in seven new development projects totaling \$742,000. In its seven-year life, it has invested a total of \$2.1 million in 26 projects. Generally, the investments are for joint ventures.

At present CPDC is not required to reimburse the state for interest and principal payments on the bond the state sells to finance the corporation. However, the State Bond Commission could ask the CPDC to make these payments.

Sources

The legislation creating CPDC authorized the sale of \$10 million in general obligation bonds by the Connecticut Bond Commission. The amount has since been reduced to \$6 million. The bonds are sold in series and the revenues are forwarded to CPDC for investment and operating purposes. In fiscal 1980, \$68,000 was generated through royalty income. Royalty income is expected to increase in 1981 when several new products are introduced into the market. Eventually, CPDC aims to become self-sufficient on its royalty income from products, which generally amounts to 5%. One advantage for CPDC is that, unlike normal equity investments, it receives its royalty payments off the top, before debt service payments and expenses have been met.

Structure

CPDC is supervised by a board of directors composed of six members who are appointed for six-year terms by the Governor. It seeks to have at least four directors with skill, knowledge, and experience in the development of technical innovation. The board meets monthly and is authorized to hire the president of the CPDC, to set general policies, and to approve all venture agreements. CPDC staff consists of the president, two senior project executives, and an executive secretary. CPDC also uses outside professional consultants. It does not have its own R&D or development facilities.

Analysis

Despite the many advantages of royalties, the CPDC is severely limited in the kinds of financing it can provide companies at different stages of their product development cycles. For example, CPDC believes that, following the development of the product, conventional financing will be available for the latter stages of the product cycle. For many products the development, tooling, and initial marketing stages tend to be intermixed. As a result, conventional financing will be difficult, if not impossible, to obtain.

A look at the Massachusetts Technology Development Corporation (MTDC) offers other ideas for financing mechanisms CPDC might develop to provide greater help to small businesses and new job generation in the state. The wide-ranging powers of MTDC include the abilities to make equity investments subordinated long-term loans, finance feasibility studies, and provide technical assistance to the management of the enterprise. Each of these financing mechanisms serves to meet the various needs of a firm, or product, over its life cycle. By employing such a wide range of financing arrangements, MTDC is not restricted to product development. It can also assist a firm in other stages of development. MTDC thus has a much greater capacity to stimulate and enhance the growth of young firms, and overall economic activity, than CPDC.

CPDC currently suffers from funding constraints. It has been prohibited from drawing down the entire amount of its authorization by the State Bond Commission, which is headed by the Governor. Under these circumstances, CPDC must apply for bond money on a project-by-project basis. The unfortunate result is that CPDC's independent judgement and evaluation of funding applications is compromised because it is

excessively sensitive to the shorter-run concerns of the state treasury and the Governor's office.

This is in sharp contrast to the operations of the Massachusetts Community Development Finance Corporation (CDFC) which received its entire \$10 million bond authorization at one time. This has enabled CDFC to plan ahead and to be relatively immune from political manipulation. There may be a danger in too much independence and insufficient accountability to the executive or legislative branches of government. Some form of oversight is necessary to ensure that the institution is both financially sound and making the economic impact consistent with its legislative purpose.

MASSACHUSETTS COMMUNITY DEVELOPMENT FINANCE CORPORATION:

Community-Based Venture Finance

Introduction

The Massachusetts Community Development Finance Corporation (CDFC) represents the nation's first publicly owned agency organized to provide venture capital for new enterprise development in depressed areas. CDFC is unique in that it is specifically authorized to provide equity investments in the creation of new businesses, precisely the form of capital most appropriate to the needs of new firms.

Purpose

CDFC was initiated by Massachusetts in 1975 to provide access to venture capital for the development of new enterprises in depressed areas. A corollary purpose of CDFC is to help correct the destabilizing shifts of private capital away from deteriorating areas. Areas seeking help from CDFC must be blighted or economically depressed, have less than 115,000 persons, and have an average household income at least 15% below that of the entire standard metropolitan statistical area (SMSA). These requirements are intended to assure that CDFC funds are well targeted.

The statute also directs that all CDFC investments be made to businesses controlled by local CDCs. A CDC, being community-sponsored and community-controlled, helps assure that capital will not flow out of poorer neighborhoods to more prosperous ones. To be eligible, a CDC must be a quasi-public,

non-profit corporation whose membership is open to all residents of the targeted area. A majority of the CDC board must be elected by its membership or appointed by elected government officials. These legal requirements ensure that the CDC is sufficiently "public" to overcome the state constitutional ban against the use of public monies for private gain. The use of CDC's as intermediaries is an integral element in achieving CDFC's purpose.

Uses

CDFC investments are intended for projects where there are expected social returns, but the businesses must be able to provide financial operating information. This assures the approving board that investments are both reasonably sound and that public purposes will be addressed. Private venture capitalists invest in firms having good profit potential, and they routinely seek a 25% to 40% return on their invested equity. CDFC by contrast, invests primarily to promote economic development, even if the funded ventures may be only marginally successful.

Since investments are specifically limited to depressed areas, by definition CDFC faces increased costs and higher risks. Being a public entity, though, means that higher risks do not necessarily need to be compensated by a higher rate of financial return. CDFC bridges a critical gap in capital markets as CDC-sponsored ventures rarely attract private investment.

While statutory safeguards exist to assure appropriate targeting of funds, CDFC must operate like any other investor whose future depends upon a history of profit-making investments which can provide a return on the agency's initial capitalization.

To date, CDFC has packaged a variety of venture deals which total more than \$2 million in committed CDFC funding. Almost every deal has involved some form of equity investment in the form of common or preferred stock in the borrowing venture. Additionally, most investments have included a long-term, market interest rate loan. CDFC financing is usually but one part of a larger package where the participating CDC and a local bank, or other institutional investor, join together. The CDFC portion often acts as security for other lending commitments, which would not have been made without the up-front provision of company capital. Every CDFC dollar invested serves to leverage about two private dollars.

Sources

CDFC was capitalized by a one-time issue of Massachusetts general obligation bonds. The state used the \$10 million bond proceeds to purchase one million shares of CDFC common stock at \$10 par value. CDFC is required to invest at least \$3 million in government and high-grade corporate securities, which are contained in a reserve fund that backs CDFC investments and provides interest income for its annual operating budget. CDFC does not have to pay off the state bonds. To do so would have forced it to pass the charges on to the businesses it finances. Since the goal of

the program was to provide equity capital, the state chose not to require any definite payback. Massachusetts' returns are indirect: from increased personal and corporate income taxes originating in successful ventures and new employment and from the reduced unemployment benefits the state has to pay. The potential for stock dividend payments also hold the possibility for direct financial returns to the state. CDFC's uses of funds do not match it's sources, since its very existence and freedom to invest stem from a willingness of the state to forego debt paybacks.

Structure

CDFC is run by a nine member board of directors and managed on a day-to-day basis by a four-person staff. The board is comprised of three state cabinet officers: the Secretaries of Administration, Manpower, and Communities and Development. The remaining six members are appointed by the Governor to five-year terms expiring in different years. Two directors must be experienced in investment finance, three must be members of Community Development Corporations and reside in geographic areas eligible for CDFC investments, and one must represent organized labor.

Analysis

CDFC has proven to be a highly skilled investor. It has been rigorous in its analysis, with the result that its investment portfolio is quite conservative. The Board has been especially careful to follow its statutory directive and to assure that all projects applying for assistance meet each eligibility requirement.

CDFC is a prime example of a capital market perfecting organization. It was mandated to operate only in those areas not being served effectively by existing private investors. Its ability to invest in a variety of enterprises helps spread risks that would occur if it funded only one business. CDFC is self-perpetuating and does not depend on constant injections of public funds to continue operating, and it appears that it's original capital has been of sufficient size to be reasonably effective in helping new ventures in low income areas.

Being an equity financier and faced with the need to screen applicants for a variety of statutory reasons, CDFC must necessarily process a great deal of information on potential and existing borrowers with a small staff. High information and transaction costs that can limit small firms' access to capital markets are still concerns. However, CDFC plays a key role in packaging loans in that it can prevent other investors from having to spend time gathering information.

MASSACHUSETTS CAPITAL RESOURCE CORPORATION:

Insurance Industry Investment Pool

Introduction

The Massachusetts Capital Resource Corporation (MCRC) is a publicly chartered, privately managed and capitalized organization charged with providing long-term loans and equity investments to small firms traditionally denied access to private capital markets. By March, 1981, MCRC had invested \$54.7 million in 49 companies and had exceeded its legislatively mandated investment schedule.

Purpose

Small businesses traditionally find it difficult to obtain long-term debt financing from commercial banks and institutional lenders who find the transaction and information costs of small business prohibitively expensive or who consider small business lending inherently risky. Life insurance companies, potentially a large source of long-term funds, tend to restrict investments to large purchases of the relatively liquid securities of publicly traded firms. They make relatively few investments in small, riskier firms already denied access to other sectors of the capital market. To help channel funds to well-managed small firms with need for expansion capital, the Massachusetts legislature agreed to reduce taxes on insurance company investments and premiums over a seven-year period. The completion of the scheduled tax reduction was made contingent upon the capitalization of MCRC at \$100 million by 1982 after five years of \$20 million installments, and the investment by MCRC of \$60 million by 1982 in a variety of "qualified investments" designated in the enabling legislation. In addition, MCRC was charged with meeting