

ALABAMA DEPARTMENT OF REVENUE
1916 SRES. SB 697 - SB 702

minimum requirements concerning the number of jobs created by virtue of its investments.

Uses

The average MCRC loan is more than \$900,000, with the range extending from \$125,000 to the statutory maximum of \$5 million. The average maturity of investments is just under 11 years. MCRC has been contacted by more than 850 companies during its first three years of operation and has concentrated its resources on providing subordinated debt to a variety of firms. Some 30% to 40% of its investments have been in high-technology firms. Typically, its clients have an annual sales revenue ranging from \$5 million to \$10 million. Loans carried in the MCRC portfolio are substantially more risky than investments normally made by life insurance companies. Consequently, the general partners expect a somewhat higher level of default than life insurers usually experience. The important point, however, is that MCRC seeks to achieve the highest possible return on its investments and does not make loans to firms whose weak market position or lack of management depth does not warrant the investment.

MCRC is required to evaluate loan applications in terms of the business's ability to obtain capital on similar terms from conventional lenders. MCRC applicants must attempt to obtain financing on terms similar to MCRC requirements from three other sources before they are considered for financing. MCRC is not required to invest in marginal firms. In fact, its evaluation criteria aim to select only those businesses whose history and management qualify the firm for investment. It is required to make unsecured loans to small firms whose size or product make it difficult to obtain capital, but whose potential for growth and

profitability is good. Specific investment guidelines prohibit investment in real estate development, public utilities, construction contracting, or retail trade.

Having satisfied these general limitations, MCRC must restrict its placements to debt and equity in businesses whose senior debt is rated Baa or below, investments with a maturity greater than five years, and investments up to a maximum of \$5 million. MCRC must reserve at least \$3 million to invest in firms that meet the eligibility requirements for a small business investment company (SBIC) loan. Further, MCRC can establish a reserve of up to 25% of loanable funds for secured loans, debt with maturity less than five years, and certain investments made through financial intermediaries.

MCRC's charter established job-performance quotas for 1981 to 1983 of 4,000 direct jobs maintained or created. Tax penalties are prescribed for the insurance industry if they fail to meet this target. Should MCRC not be able to find sufficient investments to meet its schedule, it may invest up to 10% of total contributed capital in short-term securities. However, such investments cannot be counted against "qualified" requirements.

Sources

MCRC was capitalized in 1977 with \$100 million in funds provided by a consortium of eight Massachusetts-based life insurance companies in return for a sweeping restructuring of state taxes on insurance company investments and premiums. Operating expenses in 1979 amounted to just over \$567,000. MCRC is a fully self-sufficient organization, dependent only on continuing contributions from its life insurance industry sponsors for both operating expenses and loanable funds.

Structure

MCRC has a full-time staff of five investment analysts and loan officers and two additional support staff. Each professional staff member has substantial experience in bank lending and venture capital investing. One staff member has specific experience as an urban loan specialist dealing with issues relating to minority lending. A four-member Executive Committee, made up of officers from the contributing life insurance companies, approves investments. An Investment Committee, with one public member appointed by the Governor, sets overall policy for MCRC. The State Commissioner of Insurance must certify MCRC investments, and the Secretary of Manpower Affairs must certify the number of jobs created by MCRC investments. In addition, the company is required to file an annual report with the legislature summarizing its investments, employment-generating effects, and financial condition.

Analysis

An evaluation of MCRC's first three years must necessarily be grounded on incomplete data. It is clear, however, that what success MCRC has had in making capital available to small businesses can be attributed to:

1. sufficient incentive to motivate the private sector to make investments it might otherwise ignore;
2. expert staff able to identify profitable investments and experienced management that works closely with its clients; and
3. a large enough capitalization to enable it to have an immediate effect on the expansion plans of small businesses.

The particular political and tax considerations that determined its structure and mandate may limit its replicability in other states, particularly in the Four Corners region. The existence of a large, well-developed private capital market in New England, and the historically

high level of taxes on the insurance industry enabled the Massachusetts legislature to negotiate a deal. It traded reduced taxes for the creation of MCRC.

Since MCRC was capitalized by life insurers trying to reduce industry taxes, an analysis of tax losses to the state is also important. The best estimate of the Department of Revenue points to a revenue loss to the state of \$81 million between 1977 and 1987, even after incorporating a projected \$62 million growth in revenues from out-of-state insurers (who were not subject to the tax reduction). The tax package reduces the annual growth in tax revenues from \$1.6 million (pre-1977) to \$700,000 after 1981. Taxes paid by in-state insurers will not reach the 1976 peak (\$25 million) until sometime during the 1990s, though substantial growth in revenues from out-of-state insurers will cause total state revenues from the insurance industry to increase beyond 1976 levels by 1987. It is important to keep in mind that these figures do not reflect estimates of tax benefits that will result from MCRC investments, i.e., increased tax revenues that stem from newly created jobs and expanded business production.

Despite the costs involved, Western states could capitalize on highly taxed industries (oil producers, for example) to induce them to capitalize similar institutions charged with providing development finance to specified categories of borrowers. Creative use of legislative "carrots" and "sticks" can induce private sector firms and industries to establish quasi-public organizations charged with making investments that bring profitable returns both to investors and the public.

BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS:

Business Development Lending

Introduction

The Business and Industrial Development Corporation (BIDCO) as an institutional form was developed by the state of California in 1977 as an offshoot of the Business Development Corporation (BDC). Under California law, BIDCOs are a new class of independent financial institution licensed and regulated by the California State Banking Department but privately capitalized and managed. BIDCOs act to facilitate access to the wide variety of federal matching and guarantee programs which provide financing assistance to small businesses.

Purpose

BIDCOs were formed to promote the establishment and expansion of business firms in the state. Generally, BIDCOs are a source of long-term debt and, in some cases, equity to enterprises considered too risky by conventional lenders. Thus, they are a financing alternative to the thinly capitalized, highly regulated, and conservative commercial banking institutions.

Uses

When BIDCOs utilize federal funding programs, they must conform to the restrictions of the respective federal program. In other lending they operate under few restrictions. BIDCOs, which may be formed either as profit or non-profit institutions, may finance several types of business organizations. These include proprietorships, partnerships, corporations or cooperatives. In addition, BIDCOs may provide financing

to certain types of financial intermediaries such as Small Business Investment Companies and Minority Small Business Investment Companies.

Of course, the BIDCOs' sources of funds must match its uses. To the extent that the BIDCO receives its funds from commercial banks, it will largely be a provider of short-term debt. Through the use of federal programs the BIDCO can provide long-term debt. Only infrequently can it provide equity capital.

Sources:

BIDCOs are primarily capitalized by industrial and financial investors within the state. These can include manufacturing firms, insurance companies, banks, and local development organizations. Secondly, since BIDCOs are licensed and regulated by the state, they are eligible to be lenders and participants in most of the federal government funding programs, such as Economic Development Administration (EDA), Farmers Home Administration (FmHA), and the Small Business Administration (SBA) loan guarantee programs. By utilizing the SBA's 90% loan guarantees, BIDCOs can leverage their funds significantly and earn income on the sale of guaranteed securities in the secondary market. A third source of funds is borrowing from commercial banks, savings and loan associations, and insurance companies. Since the bulk of this borrowing is obtained from commercial banks, whose liabilities are principally short-term deposits, BIDCOs are generally limited to lending these funds for short term working capital or intermediate credit.

Structure

Unlike Business Development Corporations in other states, the California legislation authorizing BIDCOs created a whole new class of financial institution rather than just a single entity. Since any number of BIDCOs may be licensed, they may compete with one another. The structure and management of a particular BIDCO will vary from one organization to the next depending on its size and success in providing financial assistance. The legislation authorizing BIDCOs mandates only that the company have a board of directors consisting of not less than nine individuals and that they meet not less than once each calendar quarter.

BIDCOs are licensed by the state banking department. To be eligible for a license, an applicant must have 1) a net worth of not less than \$500,000, 2) lendable funds of not less than \$500,000, 3) an adequate quantity of other financial resources, 4) knowledgeable and skilled directors and officers, and 5) an ability to promote the public good. BIDCOs are monitored by the state banking department. They must submit annual certified financial statements and are subject to at least one audit per year by the banking department.

Analysis

To achieve their public policy purposes, BIDCOs are designed to work primarily with federal funding programs. However, as a result of proposed federal budget cuts, many of these services could dry up. That would require BIDCOs to seek their funds from conventional lenders. To the extent that they are successful in obtaining funds, they would not only be constrained by the short-term nature of this money, but

they could also internalize the norms of conventional debt lenders, becoming more passive and risk-averse lenders.

Another problem with BIDCOs is that they often lose their "good" borrowers to the conventional lenders who own the BIDCOs and lend to them (i.e., commercial banks). Also, this structural arrangement facilitates the dumping of marginal loans from the banks into the portfolios of the BIDCOs. Additionally, the small initial capitalization of \$500,000 requires a BIDCO to operate under a far too high debt/equity ratio to finance high-risk, growing firms. Thus, the BIDCO is forced to avoid the riskier and potentially more profitable loans. Finally, it is unclear how the BIDCO is to be evaluated regarding its achievement of its public policy objectives. While the state banking department will monitor the financial condition of all BIDCOs, there is no designee for evaluating whether the organization is fulfilling its public policy objectives.

MAINE CAPITAL CORPORATION:

Publicly Chartered Venture Capital Company

Introduction.

The Maine Capital Corporation (MCC) is a publicly chartered venture capital company. It is capitalized by stock purchases by individual private investors and managed by a private development foundation. MCC is legislatively mandated to make equity investments in new Maine businesses or existing firms needing equity capital for purposes of expansion within Maine. It is capitalized at \$1 million, and it derives its quasi-public status from the fact that the state provides a 50% investment tax credit against state income taxes for purchases of MCC stock. Although MCC was chartered in 1979, it had only begun to invest its funds in 1981.

Purpose

Maine's economy has historically been weak. Its manufacturing sector is concentrated largely in the processing of the state's natural resources, primarily forestry, fisheries, and agriculture. Maine's capital market is small and uncoordinated. There are a few "old money" venture capitalists, only one major life insurance company, and the state's commercial banks prefer to provide traditional, secured short and medium-term lending. Capital market imperfections, therefore, limit the availability of risk capital (equity and long-term unsecured debt) to the state's small business sector. In 1977, the state legislature recognized that the lack of equity capital presented severe obstacles to statewide economic development and responded by establishing MCC.

The legislature charged MCC with investing equity funds in businesses in order to "enhance their productive capacities" or to facilitate their

ability to generate value-added on goods or services for export to out-of-state markets.

Uses

The legislature places only broad limitations on MCC's ability to invest its funds. The Corporation can make investments only in firms located in Maine and cannot invest more than \$200,000 in any one firm. The Corporation's charter does not specify particular categories of eligible firms nor does it include a specific mandate requiring the creation of jobs. MCC investments are limited to common and preferred stock or debt convertible to stock or rights to purchase stock.

The Corporation made its first investment in February 1981, a \$50,000 investment in an electronic assembly plant. Presently, it is evaluating a range of possible ventures, including a manufacturer of housing components and the start-up of a saw mill.

General goals of the MCC investment strategy include 1) diversifying its portfolio in terms of size, product, and maturity of companies, 2) aggressively pursuing risk-taking investment strategies with their potential for large gains, and 3) investing in company expansions, buy-outs, acquisitions, and start-ups while avoiding "rescues" with little chance of success. Maine Capital intends to subordinate job generation to a secondary consideration, focusing instead on evaluations of profitability and a determination of the degree to which MCC equity investments make it easier for companies to achieve greater access to long-term debt.

Maine Capital recently received a license to operate as a Small Business Investment Company (SBIC), which enables it to receive \$4 million in SBA-guaranteed funds. These funds will enable MCC to provide comprehensive financing packages to its borrowers, including both equity and subordinated debt. The problem presented by the SBIC structure for the Corporation is that MCC must pay back the funds over time, which will require it to lend the money to borrowers in such a manner as to guarantee a steady cash flow to MCC. New firms rarely have the ability to meet ongoing debt service payments, so the supply of SBA funds may affect MCC's ability to structure its investment to the best advantage of its borrowers.

Sources

The state induces investors to buy shares in MCC by providing a 50% tax credit against personal and corporate income taxes. Individuals, corporations, and trusts and estates can use the tax credit. Because Maine investors are relatively unfamiliar with venture capital investing and the Maine Capital Market is small, it took almost a year of hard work by MCC's management to raise the \$1 million seed capital. The shares were eventually sold to six individuals, six corporations, and nineteen banks. Management believes that it would have been easier to raise initial capital had the Corporation been established as a limited partnership rather than a stock company. This would have facilitated MCC's ability to pass capital gains to investors. Maine Capital's \$1 million capitalization consists of 10,000 shares of common stock with a par value of \$100 per share. In any taxable year, investors can credit the lesser of 10% of the investment or 50% of the total tax imposed on the investor for

the taxable year. There is a four-year carry forward provision, enabling investors to spread the unused portion of the credit over a maximum five-year period. If the investor disposes of MCC stock within six years of purchase, the investment credit is recaptured in full. Individual investors are limited to a maximum of 1,000 shares of MCC stock, and MCC cannot pay dividends during its first five years of operation. MCC does provide periodic returns of capital, which enable it to distribute accumulated capital gains. The limit on payment of dividends is intended to enable MCC to acquire sufficient capital to make it financially self-sufficient within a reasonable period of time.

Structure

Maine Capital was organized by a five-member committee appointed by the Governor, and the organizing committee contracted with a professional management firm to oversee MCC investments and to provide technical assistance to start-up ventures financed by the Corporation. Only one full-time manager is responsible for evaluating potential investments. Though the MCC is a relatively small organization, the time constraints and technical nature of its activities would seem to require several analysts and a full support staff. MCC is required to submit annual financial reports to the Governor and legislature. Investment decisions are made by a three-member executive committee.

Analysis

The Maine Capital Corporation represents a relatively small effort to broaden the base of the capital market in Maine: \$1 million of venture capital will not finance more than a few start-up investments. The MCC spreads and pools risk that would otherwise overwhelm an individual

investor. MCC's equity capitalization, however, is not a large pool, and the maximum number of investors is relatively small due to restrictions on the way in which MCC stock was marketed.

Although the creation of MCC did not require direct appropriation of state funds, the investment tax credit effectively costs the state \$500,000 in foregone tax. The importance of the MCC model, however, lies in its demonstration of one method by which states can encourage the allocation of venture capital in areas that are distant from regional money centers, since an underdeveloped local capital market makes it difficult for entrepreneurs to locate risk capital. MCC's two major weaknesses, small capitalization and lack of managerial depth, can be avoided wherever the model is replicated.

LOUISIANA SMALL BUSINESS EQUITY CORPORATION:

Targeted Venture Finance

Introduction

The Louisiana Small Business Equity Corporation (LASBEC) currently is being formed to stimulate the flow of private equity capital, long-term loans, and other financial assistance to small business concerns within Louisiana. It is a response to a 1980 law passed by the Louisiana Legislature. It can be used to finance new firms and expansions, as well as to encourage companies to remain in the state.

Purpose

Three types of small businesses qualify for assistance from LASBEC. They are: 1) those contributing directly to increased employment, productivity, innovation and income in the state; 2) those owned by disadvantaged persons; and 3) those providing investment in distressed areas.

In keeping with the legislative mandate to insure maximum public and private leverage and involvement, LASBEC will attempt to induce private financial institutions to make investments in state licensed Small Business Investment Corporations, Minority Enterprise Small Business Investment Corporations, local development corporations, and community development corporations. The licensees would, in turn, leverage the private funds (generally with federal funding) and make investments in qualifying small firms.

In addition to being sanctioned by the state, companies seeking to qualify must demonstrate that they have sound management, that they

are capable of providing at least \$1 of private capital for every \$4 loaned or guaranteed by the state, and that they will place funds only in those small firms meeting the criteria outlined above and in such a manner as to qualify as "venture capital" as defined by the Small Business Administration.

Uses

LASBEC is authorized to initiate, participate in, or guarantee long-term, subordinated loans. It can provide guarantees directly or jointly with other lenders. It can also guarantee equity investments by financial institutions in the types of investment companies mentioned above. LASBEC is also capable of guaranteeing loans to help fund feasibility studies of small firms working on projects (either products or services) that will enhance the economic development of the state.

There are several reasons why LASBEC's lending to small business through SBICs and other locally licensed development corporations is important. First, it provides a pooling mechanism for LASBEC to invest in the portfolio of each licensee. Loans to the riskiest projects are pooled with the other, more secure investments in the portfolio, helping LASBEC reduce its overall risk exposure. Second, the intermediaries are apt to have better information on the borrower. SBICs and other such locally-based entities are often more knowledgeable about their communities than any centralized agency could be, and they have a body of expertise on small businesses. Third, LASBEC can pass on some of its administrative and operating costs to the intermediary. Finally, if LASBEC lends to development organizations matching their capital four to one and the organization then repeats this feat at the federal level through SBA

STATE OF ALASKA

A REVIEW OF THE
DEPARTMENT OF REVENUE
ALASKA RENEWABLE
RESOURCES CORPORATION

November 13, 1981

AUDIT CONTROL NUMBER
04-012-0001-R



DIVISION OF LEGISLATIVE AUDIT
Juneau, Alaska

A REVIEW OF THE
DEPARTMENT OF REVENUE
ALASKA RENEWABLE
RESOURCES CORPORATION

November 13, 1981

AUDIT CONTROL NUMBER
04-012-0001-R

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JUNEAU, ALASKA 99811

December 1, 1981

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A REVIEW OF THE
DEPARTMENT OF REVENUE
ALASKA RENEWABLE
RESOURCES CORPORATION

November 13, 1981



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

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PURPOSE OF THE REVIEW

In accordance with the provisions of Title 24 of the Alaska Statutes and the "sunset" provisions of AS 44.66, we conducted a review of the Department of Revenue, Alaska Renewable Resources Corporation (ARRC) to determine if the Corporation should be allowed to terminate on June 30, 1982, be continued in its existing form, or if alternatives exist to better accomplish ARRC's purpose. In addition, we reviewed the effectiveness and efficiency of ARRC's operations and its compliance with applicable statutes.

ORGANIZATION AND FUNCTION

The Alaska Renewable Resources Corporation (ARRC) was created by Chapter 179, SLA 1978 as a public corporation and instrumentality of the State within the Department of Revenue but with a legal existence independent of and separate from the State.

The 1978 Legislature found that Alaska has renewable resources that are not being utilized to their full potential. Therefore, ARRC was given the following statutory purposes:

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.

To accomplish its purposes, ARRC may provide financial assistance to qualified applicants through such methods as equity financing, debt financing, grants and technical assistance.

ARRC is governed by a three-member, full-time Board of Trustees responsible for all investment decisions. The Trustees are appointed by the Governor and confirmed by the Legislature for four-year terms. The Board employs an Executive Director who may, with the approval of the Board, select and employ additional staff as necessary.

RECENT HISTORY

The Alaska Renewable Resources Corporation began its organization effort in January of 1979 following the appointment of the Board of Trustees.

ARRC received its first capital investment appropriation through Chapter 80, SLA 1979 which appropriated \$4.8 million for fisheries projects, \$2.7 million for timber projects, \$2.7 million for agriculture projects and \$0.4 million for renewable energy projects. Chapter 93, SLA 1980 later reduced these appropriations by \$5.6 million and added the Forest Product Producers Assistance Fund with a \$5.2 million appropriation and a \$0.4 million appropriation to the Commercial Fish Processors Assistance Fund.

Chapter 32, SLA 1980 gave ARRC the responsibility of administering the \$15 million Commercial Fish Purchasers Assistance Fund and because of the urgency of providing the assistance, Chapter 32 also waived certain of ARRC's normal investment decision criteria.

Although ARRC received a FY'81 investment appropriation of \$20 million, FY'82 legislation required ARRC to lapse the unexpended and unobligated portion of \$18 million of the FY'81 appropriation. \$2 million was carried into FY'82, but can only be invested with the expressed approval of the Governor. ARRC received no other FY'82 investment appropriation.

The responsibilities of administering the Commercial Fish Purchasers Assistance Fund have had a major impact on ARRC's operations. Because of the limited time available to provide assistance to commercial purchasers of the 1980 salmon harvest, ARRC was forced to spend the majority of its efforts on these investments. At September 30, 1981, approximately 65% of ARRC's total debt and equity investments were from this Fund. Other venture capital investments were, by necessity, overshadowed by these investments in the fisheries industry.

As of September 30, 1980, ARRC's outstanding debt and equity investments totaled \$26,205,413 and ARRC had \$13,128,889 in investment commitments (see Appendix A).

POLICY ISSUE

The 1978 Legislature found that one of the factors that has contributed to the slow development of renewable resource industries was the insufficiency of research and development financing and venture capital financing. As a result, it was declared the State's policy to rehabilitate, enhance, and develop its renewable resources by utilizing State funds derived from mineral lease bonuses, rentals of State land, and royalties from minerals produced on State land to assist the development of viable industries through the private sector.

The sunset review process includes a review of prior policy decisions. Therefore, the Legislature should again consider whether or not it is in the State's best interest to continue venture capital financing.

In making this decision, it is important to note that although there presently exist many sources of debt financing available through the State and commercial institutions, there are very few sources of high risk equity financing available.

If the Legislature decides the State should not be providing venture capital financing, the Alaska Renewable Resources Corporation should be allowed to terminate on June 30, 1982. The Legislature should then repeal all ARRC statutes and provide for the transfer and ultimate disposition of ARRC's portfolio. All cash and liquid assets should be transmitted to the Treasury. Guidelines should be established for the disposition of ARRC's equity investments. In doing so, the Legislature should provide sufficient time and flexibility to allow for a maximum return to the State. It should be recognized that this may well take longer than the one year wind-down period of ARRC. Priority consideration should be given to existing equity investors of each project. Again, a sufficient time frame should be provided so as not to unduly burden the financial stability of the projects.

Several alternatives exist for the disposition of the debt portion of ARRC's portfolio. These include but are not limited to transferring all loans to either the Department of Revenue or the Department of Commerce and Economic Development's Division of Business Loans. Commercial lending institutions could be allowed to purchase loans, with the State guaranteeing a portion of the loans. Loans could also be separated by resource sector, with Fisheries loans sold to the Commercial Fishing and Agriculture Bank or transferred to the Division of Business Loans; Agricultural loans could be transferred to the Agriculture Revolving Loan Fund; and Timber and Energy loans could be transferred to the Division of Business Loans.

If the Legislature determines it is in the State's best interest to continue venture capital financing, consideration should be given to the Findings and Recommendations section of this report.

It is our opinion that ARRC should not be continued as it is currently structured under the existing statutes. Recommendation No. 1 describes alternatives for consideration in restructuring ARRC and its related statutes.

If ARRC should be continued in its existing form, other recommendations are made to bring ARRC into statutory compliance.

Regardless of the final policy decision made, the Legislature should address the constitutionality issue surrounding the Alaska Renewable Resources Development and Investment Funds (AS 37.11.010-090) and ARRC's allocation from these funds as described in AS 37.12.020. It is the opinion of the Attorney General's Office that these statutes provide for an unconstitutional dedication of funds. This has led to differing opinions from the Attorney General and ARRC's counsel on certain aspects of ARRC's operations that could have a serious impact on the financial structure of ARRC as described in Recommendation No. 2.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Legislature should consider alternatives to the current organizational structure and statutory provisions of ARRC.

It is our opinion that ARRC should not continue to exist in its present form under the existing statutes. The current structure and statutes do not provide an efficient or economical use of the corporation's resources. The statutory purpose of ARRC and related statutes do not provide the necessary legislative guidance to dictate the direction of ARRC efforts.

If the Legislature determines it is in the State's best interest to continue venture capital financing, the following alternatives should be included for consideration:

1. New Program of the Alaska Industrial Development Authority (AIDA).

In recent years, there has been increasing emphasis on centralizing the State's loan programs within the purview of AIDA. Including a new renewable resource venture capital program within AIDA would provide certain efficiencies and economies, since AIDA could most easily absorb the investment review and approval responsibilities. AIDA would also be in a position to best determine if other loan programs within AIDA would better serve the venture capital applicant.

Due to the unique nature of venture finance decision making, a separate section of AIDA would be required. With proper statutory direction and a reduction of responsibilities currently required of ARRC, a small staff of investment officers and a director should be adequate to analyze investment applications and make recommendations to the Authority for formal action.

Operating costs of the program should be subject to the Executive Budget Act. Investment funding could be through annual appropriations or a revolving loan fund within AIDA.

2. Renewable Resource Revolving Investment Fund Board.

Due to the nature of venture capital financing, it may be desirable to separately administer the program. This program could be administered by a Renewable Resource Revolving Investment Fund Board under the Commissioner

of the Department of Commerce and Economic Development or the Department of Natural Resources, much in a format like the Agriculture Revolving Loan Fund.

The Board should have final investment decision authority but could delegate limited disbursing authority to an Executive Director. The Board should not be full-time salaried employees as ARRC is currently structured, but should be compensated for travel and per diem when the Board meets.

Again, proper statutory direction and reduced scope would promote a more effective use of the Fund's resources.

Operating costs of administering the Fund should be subject to the Executive Budget Act and could be appropriated from the General Fund or program receipts.

Regardless of the alternative ultimately selected, the Legislature should review the current purposes and responsibilities of ARRC and consider, where necessary, providing a clear definition of the duties, responsibilities, and direction of investment efforts. Narrowing the scope of responsibilities would promote more intensive efforts in defined resource development areas. For example, ARRC is currently required to promote the marketing of renewable resource products. In a broad sense, this is also a responsibility of the Department of Commerce and Economic Development; more specifically, the creation of entities such as the Alaska Seafood Marketing Institute (Chapter 106, SLA 1981) should greatly decrease the need for ARRC's involvement in industry-wide marketing promotion.

Recommendation No. 2

The Legislature should consider the repeal of AS 37.11.010-090 and AS 37.12.020.

According to opinions issued by the Attorney General's Office, the Alaska Renewable Resources Development Fund (AS 37.11.010-040) and the Alaska Renewable Resources Investment Fund (AS 37.11.050-090) are in conflict with the constitutional prohibition against dedicated funds and are, therefore, a nullity.

AS 37.12.020 provides for the allocation to ARRC of five percent of the total receipts paid the State from mineral lease bonuses, rental of State lands, and royalties derived from minerals produced on State land. The Attorney General has also opined that this section, like the resource funds, is unconstitutional and, therefore, a nullity.

However, supported by their corporate counsel's opinions, ARRC has adopted several cash management and investment practices based on their interpretation of AS 37.12.020. It is the Attorney General's opinion that, since this section of Title 37 is a nullity, certain ARRC practices are not authorized by any other provisions of the Alaska Statutes.

As a result, ARRC is caught between differing legal opinions while still required to continue their day to day operations.

Therefore, to resolve ARRC's current dilemma and to provide clarification of intended fiscal procedures, the Legislature should consider repealing AS 37.11.010-090 and AS 37.12.020. In conjunction with Legislative action on these statutes, consideration should be given to affirming, revising, or enacting legislation to address findings contained in Recommendations No. 3 through No. 5. Those recommendations are made to bring ARRC into statutory compliance based on statutory interpretations by the Attorney General.

Recommendation No. 3

ARRC should discontinue expending repaid principal from previous loans.

AS 37.12.905(a) states that ARRC may expend money only as appropriated by the Legislature. However, it is a common practice of ARRC to use repaid principal from loans made from original appropriations to make additional loans. According to ARRC records, as of September 30, 1981, ARRC has made approximately \$3.9 million of loans from repaid principal.

The Attorney General has stated that no legislative appropriations have been made to ARRC which would allow the expenditure of the repaid principal, and that any expenditure of those funds violates AS 37.12.095.

Recommendation No. 4

ARRC's funds should be deposited with and invested through the Treasury Division of the Department of Revenue.

In a prior ARRC audit report dated July 23, 1980, we found that ARRC was investing \$242,000 in a repurchase agreement. We recommended that those funds be deposited with and invested through the Treasury Division. The recommendation was supported by an Attorney General's opinion which states the Department of Revenue has control over the investment of ARRC funds.

According to ARRC's records at September 30, 1981, ARRC's cash and investment accounts total in excess of \$16.7 million. These deposits consist of principal and interest payments received from investees, loan commitment funds drawn out of Treasury, and interest earned on ARRC's investment of those idle commitment funds.

In line with the Attorney General's opinion, we make the following recommendations:

1. ARRC should remit all funds on deposit to the Treasury Division.
2. ARRC should review current loan commitments for which funds have been drawn out of the Treasury to determine if those commitments are still valid.
3. Funds for currently valid loan commitments should be deposited in the General Fund and ARRC should request the Department of Administration's Division of Finance to establish prior year encumbrances for these commitments.
4. Loan commitment funds that will not be disbursed should be lapsed to the General Fund.
5. ARRC, the Department of Revenue, and the Department of Administration should cooperate in the development of a procedure that provides for the timely disbursement of loan commitment funds to ARRC investees. Disbursement of these funds should only be made to the investee, and the Department of Revenue should not process vouchers requesting warrants made payable to ARRC.

Recommendation No. 5

ARRC trustees and employees should immediately resign from positions on the Board of Directors of ARRC investees.

ARRC's statute, AS 37.12.080(b)(4), states that they may not assume the responsibility for management of any project or exercise voting rights for any purpose within the scope of managerial control of its investees.

As a means of monitoring its investees, it is a common practice of ARRC to have a trustee or employee serve on the Board of Directors of its investees. However, the role of the Board of Directors of any business is to set management policy and direction. To protect against the possibility of an actual conflict of interest, or equally important, the appearance of a conflict, ARRC officials should not serve on the Board of Directors.

This recommendation does not apply to situations in which ARRC has determined that the directorship is necessary to protect its financial interest as provided by and under the circumstances described in AS 37.12.080(c).

Recommendation No. 6

ARRC should improve the documentation of its analysis of applications for financial assistance.

AS 37.12.080(a) specifies criteria ARRC must use in analyzing applications for financial assistance. Certain written findings of fact are required prior to the Board of Trustees' approval of assistance.

In a test of 32 resolutions approving financial assistance, written findings of fact could not be located for 9 applications, although reference was made to 8 of those written findings in the related resolutions.

In addition, although we found applicant files did contain documentation on proposals, plans of implementation, residency, and meeting the statutory purpose of ARRC, documentation supporting other required findings was not located in all cases. In a test of 16 applicant files, 13 did not contain documentation that ARRC considered the preferences and priorities of the residents in the area where the project is to be located as required by AS 37.12.080(a)(3). None contained documentation of a review of potential resource use conflicts, or that the applicant agreed to keep the project activity in the State if new industrial activity results as required by AS 37.12.080(a)(1). Nine of the files did not document that sufficient capital was not available from other sources at reasonable terms as required by AS 37.12.080(a)(i).

Similar documentation weaknesses were also noted in our review of resolutions and files approving grants to applicants.

We recommend that ARRC adequately document its analysis of the required criteria and prepare written Board findings prior to the approval of grant and financial assistance applications.

Recommendation No. 7

ARRC should implement procedures that provide public competition for technical assistance contracts.

AS 37.12.115 states that ARRC may provide financing for pre-investment activities such as feasibility studies and may provide funding for management advice and assistance to its investees as it considers necessary in the circumstances.

Presently, ARRC does not provide for public competition for professional service technical assistance contracts related to venture projects. These contracts typically are for feasibility studies, marketing studies, and accounting services. ARRC usually makes these contracts with professional firms or individuals they have had prior contract experience with.

ARRC has developed detailed contracting procedures for professional and technical services which were reviewed and approved by the Department of Administration's contract review committee. The procedures include provisions for pre-qualification of contractors, public advertising, proposal evaluations, final contract negotiations, and contract monitoring.

However, ARRC has not yet implemented these procedures. We recommend implementation of these procedures to provide all interested parties the opportunity to compete for ARRC contracts.

Recommendation No. 8

ARRC should ensure that all equity investment agreements provide an option for the dispossession of ARRC's interest within a specified time.

To provide for the repayment of ARRC's equity investment capital, contract provisions should provide options that permit ARRC, at its discretion, to divest itself from an equity position. Without such provisions, equity capital could be held indefinitely by investees.

A specific time frame should be designated in each equity agreement that does not unduly burden the financial stability of the projects but does enable ARRC to recover its capital within a reasonable time.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicates both positive and negative attainments of ARRC and how its activities relate to the public need factors as defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature.

- I. The extent to which the board, commission or program has operated in the public interest.

As of September 30, 1981, ARRC had outstanding equity and debt investments in excess of \$26 million and had commitments totalling over \$13 million for renewable resources new or expanding businesses/projects.

However, ARRC has not developed procedures to accurately measure its effect on the State's economy.

- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

Chapter 32, SLA 1980 gave ARRC the responsibility of administering the \$15 million Commercial Fish Purchasers Assistance Fund, which had a major impact on ARRC's operations. Because of the limited time available to provide the assistance to purchasers of the 1980 salmon harvest, ARRC was forced to spend the majority of its efforts on these investments. Other venture capital investments were, by necessity, overshadowed by this involvement in the fisheries industry.

In addition, it is our opinion that the current ARRC structure and statutes do not provide an efficient and economical use of the Corporation's resources. The statutory purpose of ARRC and related statutes do not provide the necessary legislative guidance to dictate the direction of investment efforts (see Recommendation No. 1).

- III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

To date, ARRC has not submitted statutory change recommendations although most everyone involved agrees changes are necessary. ARRC does intend to submit proposed legislation changes to the 1982 Legislature.

- IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

ARRC has prepared a plain language question and answer brochure that explains their purpose and investment procedures and encourages interested potential applicants to contact ARRC.

However, our test of applicant files showed that ARRC did not always consider the preferences and priorities of the residents in the area where the project was located as required by AS 37.12.080(a)(3) (see Recommendation No. 6).

- V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.

All regular meetings of the Board of Trustees are advertised in major newspapers in the State.

- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

The State Ombudsman's Office lists three complaints against ARRC. One was closed as being premature and the other two were closed because the complainant failed to provide additional information.

- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

Not applicable to ARRC.

- VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.

We found no evidence of problems in this area.

IX. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
SCHEDULE OF INVESTMENTS
as of September 30, 1981
(UNAUDITED)
(Note 1)

<u>Investee</u>	<u>Location</u>	<u>Business</u>	<u>Equity</u>	<u>Outstanding Debt</u> (Note 2)	<u>Commitments</u> (Note 3)	<u>Total</u> (Notes 4 & 5)
<u>Fisheries</u>						
Alaska Food Company	Kodiak	Seafood Processing	\$ 500,000	\$ 5,581,332	\$ 48,668	\$ 6,130,000
Icicle Seafoods	Various/Alaska	Seafood Processing	3,077,466	400,000	22,534	3,500,000
Martin Clark	Naknek	Seafood Processing	-0-	394,290	-0-	394,290
American Eagle Seafoods	Gulf of Alaska	Floating Processor	-0-	200,000	-0-	200,000
New Seward	Kenai Peninsula	Icicle Leaseback	150,000	1,282,500	-0-	1,432,500
Ball Brothers	Dillingham	Seafood Processing	500,000	3,650,000	-0-	4,150,000
Salamatof Seafoods	Kenai	Seafood Processing	300,000	3,161,833	1,500,000	4,961,833
Sea Fisher	Southeast Alaska	Floating Processor	-0-	150,000	-0-	150,000
Kokechik	Cape Romanzof	Herring Fishery	490	278,588	-0-	279,078
TEPA	Coos Bay, Oregon	Fish Meal Products	200,000	354,615	911,485	1,466,100
Seaward Shipyard	Ketchikan	Vessel Maintenance	150,000	480,000	-0-	630,000
Pacific Boat and Barge	Eagle River	Boat Building	-0-	127,836	38,748	166,584
Trinity Resources	Kodiak	Fishing/Processing	255,000	296,048	-0-	551,048
Martin's Seafoods	Anchorage	Seafood Processing	-0-	454,719	-0-	454,719
Alaska F.I.S.H.	Soldotna/Homer/Kodiak	Fishing Gear/Supply	125,000	103,702	-0-	228,702
Alaska Bait Producers	Tenakee Inlet	Bait Herring	85,000	357,129	42,871	485,000
Sterling Seafoods	Gulf/Southeast	Floating Processor	100,000	1,112,341	1,225	1,213,566
Kachemak Seafoods	Togiak	Seafood Processing	-0-	250,000	-0-	250,000
Seafoods of Alaska	Sterling	Smoker' Salmon	120,000	428,000	-0-	548,000
Smokwa Shell	Kodiak	Seafood Processing	-0-	-0-	500,000	500,000
Alaska Venture Corp.	Interior Alaska	Identify Projects	-0-	-0-	500,000	500,000
Chugach Fisheries	Cordova	Seafood Processing	-0-	-0-	1,500,000	1,500,000
<u>Agriculture</u>						
Wild Berry Confections	Anchorage	Confectionery	-0-	34,245	300,000	334,245
Anchor Renewable Farms	Anchor Point	Greenhouse/Produce	-0-	119,468	532	120,000
Great Land Farms	Palmer	Mushroom Farm	50,000	170,000	-0-	220,000
Peninsula Greenhouse	Kenai	Greenhouse/Produce	-0-	-0-	550,000	550,000
Rice Fur Farm	North Pole	Fox Farm	-0-	-0-	154,000	154,000
Arctic Farm and Garden	North Pole	Feed Mill	-0-	-0-	1,500,000	1,500,000
Alaska Venture Corp.	Interior Alaska	Identify Projects	-0-	-0-	200,000	200,000

(continued next page)

APPENDIX A

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
SCHEDULE OF INVESTMENTS
as of September 30, 1981
(UNAUDITED)
(Note 1)

<u>Investee</u>	<u>Location</u>	<u>Business</u>	<u>Equity</u>	<u>Outstanding Debt (Note 2)</u>	<u>Commitments (Note 3)</u>	<u>Total (Notes 4 & 5)</u>
<u>Timber</u>						
Schnabel Lumber Co.	Haines	Waste Wood/Electricity	-0-	44,783	3,555,217	3,600,000
Alaska Timber Co.	Klawock	Waste Wood/Electricity	-0-	400,361	1,199,639	1,600,000
The Woodyard	Juneau	Firewood	-0-	39,167	11,970	51,137
Pine's Sawmill	Tok	Sawmill	-0-	16,500	-0-	16,500
Steik Enterprises	Anchor Point	Sawmill	-0-	55,000	-0-	55,000
Mastercraft/Alaskan Wood	Anchorage	Wood Furniture	200,000	315,000	-0-	515,000
Chugach Natives, Inc.	Montague Island	Timber Survey	-0-	35,000	-0-	35,000
Seaward Shipyard	Ketchikan	Vessel Maintenance	-0-	100,000	-0-	100,000
Wood's Trawlers	Anchor Point	Fiberglass Vessels	-0-	-0-	50,000	50,000
<u>Other</u>						
Renewable Gas Develop- ment Corporation	Homer	Home Wood Gasification	-0-	-0-	242,000	242,000
Alaska Venture Corp.	Interior Alaska	Identify Projects	-0-	-0-	300,000	300,000
<u>Total</u>			<u>\$5,812,956</u>	<u>\$20,392,457</u>	<u>\$13,128,889</u>	<u>\$39,334,302</u>

Note 1: The Schedule of Investments was prepared from ARRC records. The information contained in the schedule was not audited by us and accordingly, we do not express an opinion on it.

Note 2: The outstanding debt amounts consist of principal only and do not include accrued interest payable to ARRC.

Note 3: Commitments represent funds drawn out of Treasury but not yet disbursed to investees.

Note 4: The total investments include debt and equity financing and do not include grants, technical assistance or miscellaneous pledges.

Note 5: The following investees are in bankruptcy proceedings:

- Salamatof Seafoods
- Alaska Food Company
- Pacific Boat and Barge
- Martin's Seafoods

APPENDIX B

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
SCHEDULE OF GRANTS
April 1, 1980 - September 30, 1981
(UNAUDITED)
(Note 1)

<u>Grantee</u>	<u>Location</u>	<u>Purpose</u>	<u>Amount</u>
Alaska Pacific University	Anchorage	Entrepreneurial chair	\$100,000
Future Farmers of America	Palmer	Livestock auction	2,344
University of Alaska Fairbanks Cooperative Extension	Anchorage	Agricultural symposium	13,700
Trinity Resources Corp.	Kodiak	Bottomfish demonstration project	36,395
Longline Fishermen's Association	Southeast	Bottomfish marketing project	15,000
Alaska Council on Economic Education (Note 2)	Fairbanks	Promote free enterprise	<u>5,000</u>
<u>Total</u>			<u>\$172,439</u>

Note 1: The Schedule of Grants was prepared from ARRC records. The information contained in the schedule was not audited by us and accordingly, we do not express an opinion on it.

Note 2: The grant to the Alaska Council on Economic Education was approved by the Board of Trustees on April 29, 1981 but is undisbursed as of September 30, 1981.

APPENDIX C

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
SCHEDULE OF TECHNICAL ASSISTANCE
April 1, 1980 - September 30, 1981
(UNAUDITED)
(Note 1)

<u>Investee</u>	<u>Location</u>	<u>Business</u>	<u>Amount Disbursed</u>	<u>Amount Committed (Note 2)</u>	<u>Total</u>
<u>Fisheries</u>					
Pacific Barge and Boat	Eagle River	Boat Building	\$ 4,000	\$ -0-	\$ 4,000
Kokechik	Cape Romanzof	Herring Fishery	6,841	25,000	31,840
Stoknavik	Cape Romanzof	Herring Fishery	215	-0-	215
Sea Fisher	Southeast Alaska	Floating Processor	1,930	50,000	51,930
SeaWard Shipyard	Ketchikan	Vessel Maintenance	3,668	50,000	53,668
Alaska Bait Producers	Tenakee Inlet	Bait Herring	7,201	25,000	32,201
Martin's Seafoods (Note 3)	Anchorage	Seafood Processing	10,000	25,000	35,000
Martin Clark	Naknek	Seafood Processing	25,612	-0-	25,612
Salamatof Seafoods	Kenai	Seafood Processing	6,751	100,000	106,751
Ball Brothers	Dillingham	Seafood Processing	18,612	35,000	53,612
Trinity Resources	Kodiak	Fishing/Processing	754	-0-	754
Sea Catch	Kenai	Seafood Processing	500	-0-	500
Flying Fish and Crab (Note 3)	Homer	Test Quik-Pik Machine	-0-	20,000	20,000
TEPA	Coos Bay, Oregon	Fish Meal Products	-0-	25,000	25,000
Sterling Seafoods	Gulf/Southeast	Floating Processor	-0-	25,000	25,000
Sadie Cove Boat (Note 3)	Kachemak Bay	Wood Boat Market Study	-0-	10,000	10,000
Bob Woodward (Note 3)	Kodiak	Sea Urchin Feasibility	-0-	35,000	35,000
Swokwa Shell	Kodiak	Seafood Processing	-0-	50,000	50,000
Kachemak Seafoods	Togiak	Seafood Processing	-0-	20,000	20,000
Seafoods of Alaska	Sterling	Smoked Salmon	-0-	30,000	30,000
Alaska Seafood Marketing Institute	Juneau	Seafood Marketing	41,993	-0-	41,993
<u>Agriculture</u>					
Alaska Mushroom	Anchorage	Market Study	225	-0-	225
Anchor Renewable Farms	Anchor Point	GreeProduce	1,411	-0-	1,411
Great Land Farms	Palmer	Mushroom Farm	-0-	20,000	20,000
WildBerry Confections	Anchorage	Confectionery	-0-	50,000	50,000
DeVanney	Aleutian Islands	Livestock Farm	-0-	50,000	50,000
Rice Fur Farm	North Pole	Fox Farm	-0-	25,000	25,000
Commercial Berry Farms	Palmer	Market Study	-0-	25,000	25,000

(continued next page)

APPENDIX C

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
SCHEDULE OF TECHNICAL ASSISTANCE
April 1, 1980 - September 30, 1981
(UNAUDITED)

<u>Investee</u>	<u>Location</u>	<u>Business</u>	<u>Amount Disbursed</u>	<u>Amount Committed (Note 2)</u>	<u>Total</u>
<u>Timber</u>					
Pine's Sawmill	Tok	Sawmill	\$ 1,359	\$ -0-	\$ 1,359
Mastercraft/Alaskan Wood	Anchorage	Wood Furniture	12,038	50,000	62,038
Schnabel Lumber Co.	Haines	Sawmill	12,543	150,000	162,543
Interior Village Assoc.	Fairbanks	Rural Development	6,600	-0-	6,600
The Woodyard	Juneau	Firewood	1,219	-0-	1,219
Kuskokwim Corp.	Upper Kuskokwim River	Timber Study	15,000	-0-	15,000
The Fitzsimmins (Note 3)	Interior Alaska	Firewood Study	-0-	25,000	25,000
Just Logs (Note 3)	McGrath	Log Market Study	-0-	10,000	10,000
<u>Total</u>			<u>\$178,772</u>	<u>\$930,000</u>	<u>\$1,108,472</u>

Note 1: The Schedule of Technical Assistance was prepared from ARRC records. The information contained in the Schedule was not audited by us and accordingly, we do not express an opinion on it.

Note 2: Commitments represent funds drawn out of Treasury but not yet disbursed to applicants/investees.

Note 3: Amounts committed for these projects were subsequently returned to Treasury and will not be used.

APPENDIX D

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
SCHEDULE OF OTHER USE OF FUNDS
as of September 30, 1981
(UNAUDITED)
(Note 1)

<u>Investee</u>	<u>Location</u>	<u>Purpose</u>	<u>Amount</u>
<u>Pledged Assets and Guarantees</u>			
Flying Fish and Crab	Homer	Damage deposit	\$ 25,000
Pits Solar Home	Anchorage	Mortgage guarantee	120,000
Ball Brothers	Dillingham	Note guarantee	180,000
Seafoods of Alaska	Sterling	Note guarantee	500,000
<u>Licensing Agreements</u>			
Anchor Renewable Farms	Anchor Point	Royalty from sales	4,500
Alternative Energy Development Corporation	Anchorage	Royalty from sales	<u>53,900</u>
<u>Total</u>			<u>\$883,400</u>

Note 1: The Schedule of Other Use of Funds was prepared from ARRC records. The information contained in the Schedule was not audited by us and accordingly, we do not express an opinion on it.

APPENDIX E

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
SCHEDULE OF DELINQUENT LOANS
April 1, 1980 - September 30, 1981
(UNAUDITED)
(Note 1)

<u>Investee</u>	<u>Principal Balance</u>	<u>Principal Past Due</u>	<u>Due Date</u>	<u>Interest Balance</u>	<u>Interest Past Due</u>	<u>Due Date</u>	<u>Total Past Due</u>
Alaska Food Company	\$1,451,332	\$ -0-	N/A	\$ 84,132	\$ 73,247	09/15/81	\$ 73,247
Alaska Food Company	1,000,000	-0-	N/A	91,000	81,000	08/31/81	81,000
Alaska Food Company	2,000,000	-0-	N/A	295,528	262,056	08/31/81	262,056
American Eagle Seafoods	150,000	150,000	07/31/81	16,639	14,639	09/01/81	164,639
American Eagle Seafoods	50,000	50,000	09/01/81	644	644	09/01/81	50,644
Ball Brothers	150,000	150,000	07/31/81	5,528	5,528	07/31/81	155,528
Ball Brothers	350,000	350,000	07/31/81	12,306	12,306	07/31/81	362,306
Martin's Seafoods	454,719	-0-	N/A	26,636	20,600	09/01/81	20,600
Pacific Boat and Barge	91,455	91,455	10/30/80	8,363	8,363	10/30/80	99,818
Pacific Boat and Barge	36,381	36,381	07/31/80	931	931	07/31/80	37,312
Sea Fisher	150,000	-0-	N/A	10,374	7,551	09/01/81	7,551
Seafoods of Alaska	130,000	-0-	N/A	4,983	2,817	09/01/81	2,817
SeaWard Shipyard	210,000	210,000	03/05/81	7,245	7,245	03/05/81	217,245
SeaWard Shipyard	20,000	20,000	03/05/81	690	690	03/05/81	20,690
Trinity Resources	175,000	-0-	N/A	6,563	6,563	08/31/81	6,563
Trinity Resources	61,048	61,048	06/30/81	4,629	4,629	06/30/81	65,677
Trinity Resources	60,000	60,000	06/30/81	4,425	4,425	06/30/81	64,425
Great Land Farms	50,000	-0-	N/A	1,080	447	09/01/81	447
Steik Enterprises	55,000	-0-	N/A	2,530	1,705	09/01/81	1,705
The Woodyard	39,167	39,167	Unknown	4,598	4,598	Unknown	43,765
Alaska Timber Company	400,361	-0-	N/A	9,097	4,434	08/01/81	4,434
<u>Total</u>	<u>\$7,084,463</u>	<u>\$1,218,051</u>		<u>\$597,921</u>	<u>\$524,418</u>		<u>\$1,742,469</u>

Note 1: The Schedule of Delinquent Loans was prepared from ARRC records. The information contained in the Schedule was not audited by us and accordingly, we do not express an opinion on it.

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
ATTORNEY GENERAL OPINIONS

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

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
ATTORNEY GENERAL OPINIONS

Gerald R. Wilkerson.

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July 29, 1980

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 preceding 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,

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
ATTORNEY GENERAL OPINIONS

Gerald R. Wilkerson

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July 29, 1980

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

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
ATTORNEY GENERAL OPINIONS

Gerald R. Wilkerson

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July 29, 1980

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.

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
ATTORNEY GENERAL OPINIONS

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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,

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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.

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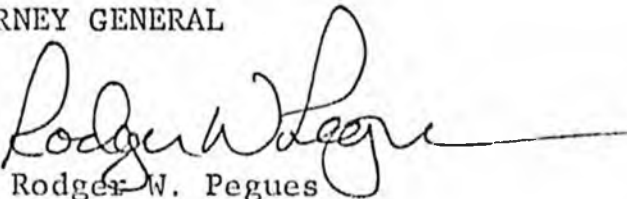
penditure is by an appropriation. Alaska Const., art. IX, § 13. Appropriations can be made solely in appropriation bills. Alaska Const., art. II, § 13.

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. CONDON
ATTORNEY GENERAL

By:



Rodger W. Pegues
Assistant Attorney General

RWP/pjg

DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
ATTORNEY GENERAL OPINIONS

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.

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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.

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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.

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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 little 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.

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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. News-Miner, 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 editor 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,

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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.

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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. I.A.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.

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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

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

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DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
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MEMORANDUM

State of Alaska

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

DATE: November 2, 1981

FILE NO: J-66-058-82

TELEPHONE NO: 465-3600

RECEIVED

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.

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

November 2, 1981
Page 2

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.

DEPARTMENT OF REVENUE
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Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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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.

LJL:vrp

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DEPARTMENT OF REVENUE
ALASKA RENEWABLE RESOURCES CORPORATION
ATTORNEY GENERAL OPINIONS

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

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

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ALASKA RENEWABLE RESOURCES CORPORATION
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Gerald Wilkerson, CPA
Legislative Auditor

December 17, 1981
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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:vrh

Alaska
Renewable
Resources
Corporation

RECEIVED

JAN 11 1982

LEGISLATIVE
AUDIT

January 6, 1982

Gerald L. Wilkerson, Auditor
Budget and Audit Committee
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to respond to the audit recommendations in your Preliminary Review. We appreciate the time you have spent in analysing our activities.

For the most part, items 2, 3, 4, and 5 are matters which have been the subject of continuing debate and legal analysis since the beginning of our brief history. Responses to these items are unlikely to be surprising to you as they have been discussed at length in the course of the audit. Items 6 and 7 are operating matters which are discussed and for which remedial action is suggested. Item 8 is a matter which the Board feels is its prerogative to decide under the legislation. Although your basis for making the recommendation is understandable, we feel it does not take into account the practical realities of certain types of investments.

Recommendation No. 1 suggests that certain alternatives to the AKRC statute be considered. Although the Board is in agreement that changes are desirable, or even necessary, the alternatives it would suggest if asked, and the reasons therefore, would be very different from the ones offered in the letter.

Policy approaches

As general comment, the Board sees the overall audit as fair comment on a complex piece of legislation set in an extremely

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volatile practical and political landscape. On the other hand, since the document may stand as the only legislatively developed comment of substance for the legislature to consider in ARRC's sunset year, we had hoped perhaps for more detail and depth. It may be that such matters were outside the scope of the audit or, justifiably, the Division may have determined that it was ill equipped to consider the economic and industry-wide issues and data needed to make a thorough evaluation.

A leading authority on development finance has recently described the original basic concept of ARRC as "...one of the most innovative and creative ideas in development finance in the Western Hemisphere."* Such enthusiasm is not generated by the simple fact that the Corporation has the ability to provide equity financing, as the audit seems to suggest, but rather because it represents major a commitment to a number of specific premises in the field of development financing. Substantial resources are assigned to bottom up, enterprise development, pursuant to specific economy-wide goals, and yet the audit seems to characterize the ARRC and the recommended successor organizations, as something akin to a midrange Small Business Investment Corporation. Thus, "venture capital financing", which is referred to repeatedly in the audit, represents only a small portion of the mature organization's function and investment program.

We note some tendency in the letter to base recommendations on abstract possibilities or literal readings of the statute rather than on the actual operation of the statute or its applied implementation. Without question, the Act is long and complex and, as well, has nuances and ambiguities, as most statutes do, which could be given various interpretations. There is much that could have happened and priorities could have been established and readings made in different ways by different persons or circumstances. But the purpose of a performance audit, as opposed to a critique of legislation, is to evaluate what did happen. The Act no longer stands alone as a

* Belden Hull Daniels in a report to Senator Pat Podey, Chair, Senate Interim Banking Committee, November 11, 1981.



speculative abstraction, but has been in the process of implementation for three years or more. There are particular events and personalities attached to the law; it has a history, a portfolio and a daily existence. It has established certain priorities and has taken some paths while avoiding others.

A critique which departs from a legalistic point of view is not as misleading as the narrowness referred to above, however, it lends a certain confusion to the audit, raises questions that are not really questions, and makes some recommendations less substantial than they could have been. An example would be the objection that ARRC's capitalization is a constitutionally prohibited "dedicated fund" as suggested on page 3 and in Recommendation No. 2. This is, as a practical matter, a non-issue.

Response to Recommendation No. 1

AGREE.

The letter states that ARRC should not continue to exist in its present form under the existing statutes. Support for this recommendation is that the enabling legislation lacks sufficient guidance and direction for the Board, and, that the structure and the statutes "...do not provide an efficient or economical use of the corporation's resources." Unfortunately these assertions are not supported by explanation, examples, or analysis which could be rebutted or explained.

It is not possible in our view to evaluate actual performance or to consider design alternatives without reference to a particular mission, strategies and standards of performance. The identification and characterization of the problems to be solved will dictate, to a very large extent, the preferred design of any organization established to solve them. In short, effectiveness requires that form must follow function. In this regard it is suggested that too little has been understood of the functions sought to be filled by an economic development entity such as ARRC. As a result we fear that the omission has lead to unwarranted conclusions, about ARRC's actual performance and, as well, to premature recommendations for a successor organization.



At the outset, a distinction must be made between legislative direction, as actually set forth in the statute, and the direction that various parties-- legislative, executive and public--thought such an effort should take after the implementation had begun. Popular wisdom to the contrary, read as a whole, the ARRC legislation provides, or at the very least can be read to provide, very substantial guidance and direction. When analyzed, most objections to ARRC's activities were not to the effect that it didn't have direction, but that people didn't like the direction; they said they wanted or expected something different. The causes for this situation were various, but a root cause can be traced to the facts that (1) the provisions of the law were never publicized and debated prior to passage, and, (2) that passage was obtained without first securing the basic consensus it needed to get the company enough breathing space to get started.

Incidents illustrating this point are too numerous to list, but their cumulative effect was fatal to the organization. The ink was not yet dry on the Trustee appointment letters before a bill was introduced by the administration to usurp the first year's capitalization to clear land for the Barley project at Delta. The legislature held the company hostage, i.e., as interhouse trading stock, two sessions running, and in addition, plopped a 15 million dollar/one month operating problem (Emergency fish fund) on the company in its first year of investment. When pressed, bankers and others in the private sector approved "the concept" (as well they might since it was perhaps the most pro-private sector bill ever passed by the legislature) but not only failed to express their approval in any important way but were privately critical.

These examples are given not as any sort of excuse or rationalization but to serve notice of the extremely important nature of "bringing everyone along" if a successor organization is being contemplated. Likewise, and nearly as important, the very many excellent features of the ARRC should not be summarily tossed out simply because the Corporation is perceived as a political failure. With skillful consensus building and a few important legislative changes, ARRC, or an ARRC-like organization, can provide leadership and a national model for the



most innovative, exciting and successful development financing in the United States.

Such a model will not be created, however, by the deepened control, reduced scope and limited nature of an organization recommended by the letter. In fact, one would have to seriously question, in spite of the substantial need for any source of equity financing in the Alaska economy, whether there is value at all in a "state agency" or "loan program" which is run by bureaucrats and/or part time volunteers, subject to annual appropriations, the Executive Budget Act and contracting procedures, and having limited latitude in its ability to structure deals. Such an approach not only ignores the ARRC experience, which was exactly the opposite, but the experience of every other similar fund established in the United States, public or private.

ARRC's difficulties in operating have not flowed from a lack of accountability or control--we have had legislative auditors actually sitting in our offices for about half of our operating existence. On the contrary, the difficulties have arisen from too much control and too much accessibility. Had the legislature, for instance, actually cut off ARRC's operations with less than two weeks notice, as it nearly did last session, and set adrift a 40-some-odd million dollar portfolio, it would have resulted in an embarrassment of national proportions. This does not say that the legislature would not be entitled, or even justified, in doing so. It merely points up that a credible, effective financing institution which asks people to put their life's work in its hands must be insulated from short term political change no matter how justified it may seem.

Thus the Board would not only recommend that any amended ARRC or future organization not only be freed from the requirements of the Executive Budget Act, but that it be freed from the annual appropriations problem by being endowed with capitalization in the form of a fund, established all at once, or contributed to over time. Of the 400 or so equity yielding investment firms in the United States, all have such a character.

It is further recommended that considerably more thought be given to the advantages and disadvantages



of various structural options when the organization's mission and functions are more fully described. Much confidence has been expressed, for instance, in the establishment of a public board, although no reasons for this have been given. (Indeed, no reasons have been given as to why the existing organization is insufficient, although the trustees themselves have noted some limitations.)

A part time public board is ordinarily used as a political buffer and as a bridge to the public of some government function. Both elements are necessary to an ARRC-like organization. It is difficult, however, to think of a volunteer, part time board which has, on its own, developed, or even overseen, an important overall policy, replete with necessary strategies, implementation objectives, and management oversight. Neither are part time boards suited to making and maintaining complex individual investment decisions. They are notorious for being the captives of their executive directors and are more likely than most to indulge in log rolling and vote trading based on economic, geographic or other external consideration. When investment decisions must be based on subjective and personal elements, strategic considerations, and solid technical analysis, the success of a part time public board would be a rare accident. Odds for its failure, or even scandal, would be high.

Trustee Spear has made the subject of organizational structure a part of a draft paper concerned with legislative design considerations if more discussion on this topic is desired. He has argued for a hybrid board of four public part time members and three full time trustees as are presently provided. The structure not only provides avenues to the private sector, buffering and public access but provides continuity, expertise and attention as well as protection against the inherent instability and fragile nature of the triumver.

Recommendation No. 2

The Legislature should consider the repeal of AS 37.11.010-090 and AS 37.12.020.

DISAGREE.



Corporate counsel has been requested to review his opinion on the statutes cited in this recommendation, and he has informed us that he stands behind that opinion, a copy of which is attached. See the February 20, 1980 opinion entitled "Stewardship of the Renewable Resources Fund." It is not clear what cash management and investment practices are found lacking by the auditor.

Recommendation No. 3

ARRC should discontinue expending repaid principal from previous loans.

DISAGREE.

This practice is supported by the opinion of corporate counsel; he stands behind that opinion, a copy of which is attached. See the December 2, 1980 opinion entitled "Reinvestment of Returned Investment Principal and Accounting Procedures." Reinvestment of returned principal is permitted by ARRC's enabling legislation.

Recommendation No. 4

ARRC's funds should be deposited with and invested through the Treasury Division of the Department of Revenue.

DISAGREE.

Again, see the two opinions of counsel attached, dated February 20, 1980 and December 2, 1980. ARRC's enabling legislation gives it responsibility for capital budget appropriations to it. ARRC's enabling legislation also provides for reinvestment of returned investment principal. That legislation does not, however, provide for reinvestment of earnings on investments. To the extent that ARRC's investment practices are in accord with those principles, the corporation's practices are supported by opinion of counsel.

Recommendation No. 5

ARRC trustees and employees should immediately resign from positions on the Board of Directors of ARRC Investees.

DISAGREE.

ARRC trustees and employees have from time to time



been placed on investees' boards. ARRC requested and received an opinion of counsel on this practice, a copy of which is attached. See the opinion dated June 28, 1981 entitled "Trustees on Investees' Boards." ARRC has adopted this practice as a policy matter. Clearly, ARRC must maintain a careful watch over recipients of ARRC funding. The only truly effective way to monitor investments is by placing ARRC representatives on the investees' boards. In the commercial world, to do otherwise would be highly unusual; indeed, the failure of an investor to follow that course could very well be deemed to be less than prudent according to normal investment practices. It is the trustees' collective opinion that the policy is a sound one. To the extent that it is not permitted by ARRC's enabling legislation, the legislation should be changed.

Recommendation No. 6

ARRC should improve the documentation of its analysis of applications for financial assistance.

AGREE.

The staff throughout the past eighteen months has been developing, modifying and improving its practices and procedures with respect to documentation of investments.

The nine of 32 application files not evidencing written findings merely received conditional approval for financial assistance, subject to further review of financing plans and findings in the affirmative in accordance with AS 37.12.80(a), as was required to obligate FY81 appropriated capital prior to year-end.

There are no excuses for the incompleteness of other applicant files. Immediate steps will be taken to assure the appropriate documentation of each portfolio company.

Recommendation No. 7

ARRC should implement procedures that provide public competition for technical assistance contract.

AGREE.

Final approval for the procedure was obtained from



the Department of Administration in July, 1981. ARRC will begin implementation of its sequential elements in January, with completion of the first cycle of activity estimated to require 90 days.

Recommendation No. 8

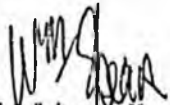
DISAGREE.

ARRC has buy/sell provisions in several of its investment agreements, and has attempted during negotiations of investment terms to arrive at buy/sell provisions in all equity investments it has made. It should be understood that buy/sell provisions effectively place a ceiling on ARRC's return. Prospective investees have frequently regarded the 25 to 30% return expectation proposed by ARRC as unacceptably high, and have themselves elected not to include buy/sell formulas in final documents. It would, of course, be imprudent for ARRC to agree to return ceilings which fail to offer the prospect of rewards commensurate to risks taken.

As to the timing for the execution of stock options, all investment documents contain provisions attesting to ARRC's willingness to negotiate the sale of its interest at any time.

Thank you for your consideration of these comments.

Sincerely,


William E. Spear
Trustee

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COMMITTEE REPORT
SENATE

2/3/82

Finance

FURTHER:

Date: 2/3/82

Mr. President:

The Committee on RESOURCES has had SSRB 707

transferring parts of certain fiscal year 1982 Agricultural Action Council appropriation allocations to the Nevada-Tehachan Agricultural Development Fund.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN



MA - 548-102

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 19, 1982

The Honorable Jalmar Kerttula
President of the Senate
and
The Honorable Joe Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President and Mr. Speaker:

I have signed the following bill and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

HOUSE COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTITUTE FOR SPONSOR SUBSTITUTE FOR
SENATE BILL NO. 702 (Finance) am H
(Transferring parts of certain Agricultural Action Council appropriation allocations to the Nenana-Totchaket agricultural development project; amending an appropriation made in ch. 50, SLA 1980; making a special appropriation to the Department of Commerce and Economic Development for distribution of additional salmon enhancement tax receipts to regional associations; making a supplemental appropriation for the operation of the legislature; and providing for an effective date)

Chapter 42, SLA 1982

This measure passed less than one week ago. Upon receipt in this office it was immediately submitted for review by appropriate agencies. All have not yet responded. Yesterday, for the first time, pleas were made to me for prompt action on the supplemental appropriation for legislative functions. I can appreciate the desire for prompt action on legislative priorities having experienced frustration myself over the sometimes ponderous deliberative process delaying legislative action on priorities of the Administration. However, let me assure you I have no intent

May 19, 1982

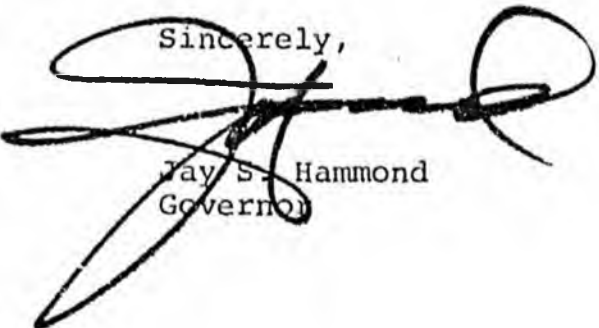
whatsoever of holding hostage legislation which, if not passed, could further inhibit that process.

Regrettably, however, the legislative funding was appended to another issue which requires more extensive review before it could be accepted. Since time required for appropriate review does not permit me to accommodate both issues without further delay, I have determined to veto sec. 1 and sec. 2 of House Committee Substitute for Committee Substitute for Sponsor Substitute for Senate Bill 702 (Fin) am H in that my Administration is not yet convinced that sufficient justification has been made for implementing the Nenana-Totchaket Agricultural Development Project at this time, no matter its prospective merit.

I strongly feel that the legislature, the executive and certainly the public should be fully apprised of all the costs projected to bring such a project into full production. Bridges, roads, land clearing, loan subsidies, grain rail cars, elevators, grain storage facilities, and other capital needs will require unknown amounts of funding. I want to know the ultimate cost prior to giving approval to begin this project. Surely we have learned this lesson from the Delta Project.

While this Administration remains committed to the vigorous pursuit of a viable agricultural economy, several factors call for constraint and reevaluation. Substantially reduced state revenues; the yet unresolved grain terminal issue; question of Alaska Railroad acquisition, unanticipated financial demands of the salmon crisis, and other concerns demand that before we commit substantial resources to expanded agricultural endeavors, no matter how worthy, prudence dictates that the above first be resolved. Once resolved, I am hopeful the next Administration can pursue this project with dispatch. I only regret that I in good conscience cannot do so at this time.

Sincerely,



Jay S. Hammond
Governor



LAWS OF ALASKA

1982

Source

Chapter No.

HCS CSSSSB 702(Fin) am H

42

AN ACT

Transferring parts of certain Agricultural Action Council appropriation allocations to the Nenana-Totchaket agricultural development project; amending an appropriation made in ch. 50, SLA 1980; making a special appropriation to the Department of Commerce and Economic Development for distribution of additional salmon enhancement tax receipts to regional associations; making a supplemental appropriation for the operation of the legislature; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 17

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

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AN ACT

Transferring parts of certain Agricultural Action Council appropriation allocations to the Nenana-Totchaket agricultural development project; amending an appropriation made in ch. 50, SLA 1980; making a special appropriation to the Department of Commerce and Economic Development for distribution of additional salmon enhancement tax receipts to regional associations; making a supplemental appropriation for the operation of the legislature; and providing for an effective date.

~~* Section 1. Section 30, ch. 82, SLA 1981, page 157, lines 4 - 5 is amended to read:~~

	ALLOCATIONS
Delta II - Clearing Loans	<u>3,000,000</u> [4,000,000]
Delta II - Roads	<u>2,000,000</u> [2,622,800]

~~* Sec. 2. Section 30, ch. 82, SLA 1981, page 157, is amended by adding the following after line 7:~~

	ALLOCATIONS
Nenana-Totchaket Agricultural Development Project	1,622,800

* Sec. 3. Representing the additional amount of salmon enhancement tax collected, the sum of \$704,300 is appropriated from the general fund to the Department of Commerce and Economic Development for distribution to regional

1 associations qualified by the commissioner of fish and game under AS 16.10.-
2 380.

3 * Sec. 4. Section 286, ch. 50, SLA 1980, page 78, line 4 is amended to
4 read:

	APPROPRIATION	GENERAL
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* Sec. 5. The sum of \$850,000 is appropriated from the general fund to
the Legislative Affairs Agency for the operation of the Twelfth Legislature -
Second Session from the 106th through the 122nd legislative day.

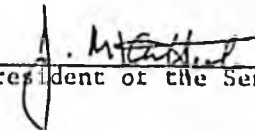
* Sec. 6. The unexpended and unobligated portion of the appropriation
made by sec. 5 of this Act lapses into the general fund June 30, 1982.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.10.-
070(c).

Authentication

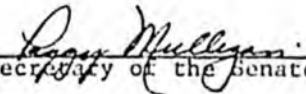
The following officers of the Legislature certify that the
HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE
attached enrolled bill, FOR SENATE BILL NO. 702 (Finance) am H
consisting of 2 pages, was passed in conformity with the
requirements of the constitution and laws of the State of Alaska
and the Uniform Rules of the Legislature.

Passed by the Senate May 13, 1982



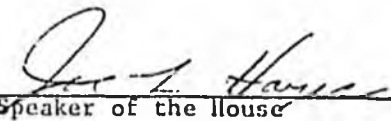
President of the Senate

ATTEST:



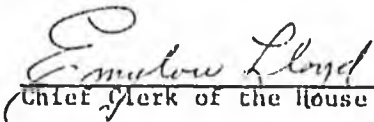
Secretary of the Senate

Passed by the House May 12, 1982



Speaker of the House

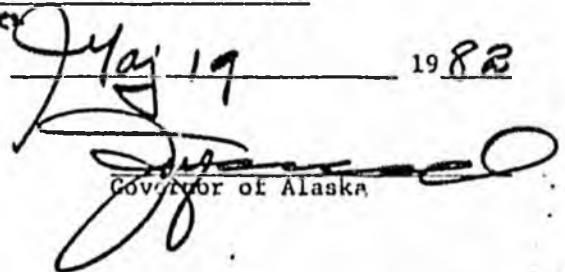
ATTEST:



Chief Clerk of the House

ACTION BY GOVERNOR

With Item Vetoed
Approved by the Governor



Governor of Alaska

May 19 1982

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 5, 1982

SUBJECT: Nenana-Totchaket agricultural project
(SB 702)

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

FROM: Richard A. Bradley *RB*
Legislative Counsel

You have asked that we review the need for legislation to confirm the authority of the Agricultural Action Council to manage funds originally appropriated to the Delta II West project but transferred by SB 702 to the Nenana-Totchaket project.

You note that AS 44.33.470(b)(6) provides that

(b) The council has the duty to

(6) act as administrator of the Delta agricultural development project and any other agricultural development project authorized under AS 44.33.475; [Emphasis added]

I note that AS 44.33.475(b) provides in part that:

An agricultural development project recommended under (a) of this section may not be implemented unless authorized by law.

Two points may be noted about sec. 475. First, I do not read sec. 475 as requiring the proposal for the project to be initiated by the agricultural council. The inference that some have gained from sec. 475(a) that this is true is wrong, in my opinion.

Senator Bettye Fahrenkamp

Page 2

March 5, 1982

Second, in my view, the legislature may authorize a project in an appropriation act. I believe that SB 702 is this kind of authorization.

Thus, in my opinion there is no problem requiring specific legislation for its resolution as you suggested.

If I may assist further, please advise.

RAB:ljb

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

MEMORANDUM

TO: Billy G. Berrier, Director
Division of Legal Services, LAA

FROM: Bettye Fahrenkamp, ~~Chairman~~
Senate Resources Committee

DATE: March 3, 1982

RE: SB 702

The Senate Resources Committee recently passed out SB 702, "An Act transferring parts of certain fiscal year 1982 Agricultural Action Council appropriation allocations to the Nenana-Totchaket agricultural development project; and providing for an effective date."

It is the intent of the Committee that the designated funds should be used for development of the proposed Nenana-Totchaket agricultural project. The funds were originally allocated to the Delta II West project, which has been postponed.

A question has arisen regarding the statutory authority of the Agricultural Action Council to administer the funds for agricultural development in other than the Delta area.

AS 44.33.470(b) states, in relevant part:

The council has the duty to...act as administrator of the Delta agricultural development project and any other agricultural development project authorized under AS 44.33.475.

AS 44.33.475 establishes a process whereby the Agricultural Action Council proposes legislation to authorize agricultural development projects. The proposed legislation must meet certain criteria, and must be passed into law before the council is authorized to proceed with the proposed project.

On the surface, then, it appears that some sort of enabling legislation is required to authorize the Council to expend the funds to be transferred on the proposed Nenana-Totchaket project. If, in your opinion, this is indeed the case, I would appreciate your division preparing authorizing legislation to this effect, to be sponsored by the Senate Resources Committee, and to be delivered to the Committee staff in final version as soon as possible.

Alaska State Legislature

3/31
hard Delivered
to House Liaison

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

February 10, 1982
1:40 p.m.

Beltz Room
211 - Capitol

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Bradley
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

Hearing:

SB 275 An Act relating to the compensation of persons collecting hunting and fishing license and tag fees.

SB 702 An Act transferring parts of certain fiscal year 1982 Agricultural Action Council appropriation allocations to the Nenana-Totchaket agricultural development project; and providing for an effective date.

SJR 60/HJR 74
Requesting the Secretary of Commerce to disapprove certain portions of the Bering-Chukchi Sea Fishery Management Plan.

SB 275

Lou Bandirola, Deputy Director, Division of Sport Fish, Alaska Department of Fish and Game, testified that the Department could support the bill if the compensation to the vendors came from the general fund, and if on page 2, line 6 the word 'permit' was changed to 'tags'.

Senator Fahrenkamp stated that the Committee's intent was that the money would come from the general fund.

Senator Sturgulewski moved that the bill be changed to list the funding source as the general fund, and on page 2, line 6 to delete 'permit' and insert 'tags' in its place.

Senator Fahrenkamp directed that a transmittal letter be sent to Finance along with the bill, stating that the source of the increased compensation would depend upon whether license fees are substantially increased.

Senator Gilman moved the bill with individual recommendations.

SB 702

Carl Amstrup, Executive Director, Alaska Agriculture Action Council, stated that a portion of the funds SB 702 would transfer to the Nenana-Totchaket project are needed to carry the Delta II East project to completion, and to pursue the problems associated with Delta II West. If funds are transferred, he would like them used for roads into the tracts so work can begin.

Senators Sturgulewski and Fischer expressed concern over the economic feasibility of the Nenana-Totchaket project, with Senator Fischer referring to the fact that no funds are provided for Nenana in the Governor's proposed FY '83 budget.

Amstrup stressed the need for an in-state feed base for livestock. He anticipates a yearly savings of \$100 million in food costs from in-state production by 1990.

Bob Palmer, Coordinator of Special Projects, Office of the Governor, said Alaska barley is selling for \$130 ton; barley in Seattle is \$130 ton plus \$60 ton for shipping. At present, nearly all the barley produced in the state (approximately 8,000 tons in 1981) is being consumed in-state.

Nick Carney, Director, Division of Agriculture, Department of Natural Resources, expressed concern that the amount of money in SB 702 is inadequate. Money is needed first for survey, so there can be a good description of the land being sold. The town of Nenana has estimated a total cost of \$17,650,000 for roads.

Senator Mulcahy moved the bill with individual recommendations.

SJR 60/HJR 74

Senator Mulcahy's subcommittee on fisheries heard testimony on this resolution. He stated that it is supported by the Alaska Department of Fish and Game and the United Fishermen of Alaska. The resolve clauses have been amended to be identical with HJR 74.

Senator Gilman moved HJR 74 with individual recommendations.

The meeting was adjourned at 2:50 p.m.