

ALASKA LEGISLATURE COMMITTEE FILE 1965-1966 0072

3214.21

HCRA HB 293

21

Introduced: 3/15/85
Referred: Community & Regional
Affairs, Judiciary and Finance

FILES: BONDS
CC: NORDELL -
BOLEHO -
BARKER -
BOUAIN -
WOHLFORTH -

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 293

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to municipal default on bonded indebtedness; establishing the Municipal Financial Emergency Commission; and providing for an effective date."

7

8

9

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

11 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

12

(1) while the power of municipalities to contract debt for capital improvements is granted by the Alaska Constitution, revenues that may be raised to repay the debt are limited by the extent to which the state has delegated taxing authority to the municipalities under art. X, sec. 2 of the Alaska Constitution;

17

(2) the state has a strong interest in debt issuance by municipalities because of the impact on state revenue as a result of municipal assessment to repay debt and because of the effect on the marketability of bonds issued by the state and its agencies, by public corporations of the state, by other municipalities, and by the Alaska Municipal Bond Bank Authority;

23

(3) bonds issued by municipalities are not legal obligations of the state, nor are the bonds supported by the moral obligation of the state; and

26

(4) it is in the public interest, and is declared to be a public purpose, to promote the prosperity and general welfare of all the people of the state by assisting in the development and implementation of refinancing plans for municipalities that have defaulted on outstanding debt.

1 * Sec. 2. AS 29.58 is amended by adding new sections to read:

2 ARTICLE 7. DEFAULT ON BONDED INDEBTEDNESS.

3 Sec. 29.58.400. MUNICIPAL FINANCIAL EMERGENCY COMMISSION. (a)

4 The Municipal Financial Emergency Commission is established in the
Department of Community and Regional Affairs.

5 (b) The members of the commission consist of the commissioner of
6 the Department of Community and Regional Affairs, the commissioner of
7 the Department of Revenue, and the commissioner of the Department of
8 Administration. Members of the commission may appoint a designee to
9 serve on the commission.
10

11 (c) The commissioner of the Department of Community and Regional
12 Affairs shall chair the commission. A quorum of the commission con-
13 sists of two members.

14 (d) The commission may employ staff as is necessary to accom-
15 plish the purposes of the commission.

16 Sec. 29.58.410. DUTIES AND POWERS OF THE COMMISSION. (a) Upon
17 receipt of a written notice of a default by a municipality, as provid-
18 ed in AS 29.58.420, the Municipal Financial Emergency Commission may

19 (1) investigate the defaulting municipality's fiscal af-
20 fairs, consult with the assembly or council of the defaulting munici-
21 pality, and negotiate with creditors in order to assist the municipal-
22 ity in developing a plan for satisfaction of the outstanding debt;

23 (2) direct a state agency holding money on behalf of or
24 payable to the defaulting municipality to pay the money either to the
25 commission for payment to creditors, or to the defaulting municipality
26 for disposition as required under an adopted plan;

27 (3) determine whether a proposed plan is fair and equitable
28 and within the ability of the defaulting municipality to meet, and, if
29 so, enter an order finding that it is fair, equitable, and within the

*What will happen in state
what about leg committee of leasing*

1 ability of the municipality to meet;

2 (4) advise the defaulting municipality to take the neces-
3 sary steps to implement the plan;

4 (5) order the defaulting municipality to take the necessary
5 steps to implement the plan if the municipality fails to implement the
6 plan within 30 days after receiving the advice of the commission to
7 implement the plan;

8 (6) require periodic reports on the defaulting municipali- *if don't take plan - the more stringent power*
9 ty's financial affairs during the period in which the plan is imple-
10 mented;

11 (7) approve or reject the defaulting municipality's annual
12 budget ordinance during the period in which the plan is implemented;

13 (8) approve or reject the issuance of additional bonds,
14 notes, or other debt, whether short- or long-term, during the period
15 in which the plan is implemented;

16 (9) impound the books and records of a defaulting municipi-
17 tality and assume full control of its financial affairs, including the
18 levying of taxes, expenditure of money, and adoption of budgets, if
19 the municipality fails to implement a plan, or if, in the opinion of
20 the commission, the defaulting municipality will default on a future
21 debt service payment under the plan if the financial policies and
22 practices of the municipality are not improved; and

23 (10) order a defaulting municipality to pay for the cost of
24 developing and implementing a plan.

25 (b) The power and authority granted to the commission continues,
26 with respect to a defaulting municipality, until the commission is
27 satisfied that the defaulting municipality has performed or will
28 perform the duties required of it in the plan, and until agreements
29 made with the defaulting municipality's creditors have been performed

1 in accordance with the plan.

2 (c) The commission is authorized to take all actions necessary
3 to accomplish the purposes of AS 29.58.400 -- 29.58.490, including,
4 but not restricted to, the authority to issue subpoenas necessary for
5 the production of documents and the authority to issue orders. A
6 superior court may, upon application of the commission, compel obedi-
7 ence with a subpoena or order issued by the commission.

8 Sec. 29.58.420. NOTICE OF DEFAULT. (a) A municipality shall
9 give notice of default to the commissioner of community and regional
10 affairs within 10 calendar days after actual knowledge of the default.

11 (b) A creditor may give notice to the commissioner of community
12 and regional affairs any time after a default by a municipality.

13 (c) A municipality may request the assistance of the commission
14 at any time before default if, in the judgment of the municipality,
15 assistance from the commission will assist the municipality in reliev-
16 ing financial distress.

17 Sec. 29.58.430. ACTION UPON RECEIVING NOTICE OF DEFAULT. The
18 commissioner of community and regional affairs shall convene a meeting
19 of the commission within 15 days after the receipt of a notice of de-
20 fault, or of a request for assistance, under AS 29.58.420. The de-
21 faulting municipality must be given notice of the meeting, and shall
22 send an authorized representative to the meeting to represent the
23 defaulting municipality during the development of a plan under AS 29.-
24 58.410.

25 Sec. 29.58.440. STAY OF COURT PROCEEDING. (a) A proceeding
26 initiated in court by a creditor must be stayed until 90 days after
27 the first meeting of the commission following the receipt of the no-
28 tice of default by the commissioner of community and regional affairs.

29 (b) The court may grant one or more 30-day extensions of the

1 stay, at the request of the commission, unless the court finds that
2 the defaulting municipality or the commission has not made a good
3 faith effort to negotiate a plan under AS 29.58.410.

4 Sec. 29.58.450. BANKRUPTCY PETITION. AS 29.58.400 -- 29.58.490
5 do not limit or otherwise affect the authority of a municipality to
6 file a petition in bankruptcy under 11 U.S.C. secs. 901 -- 946.

7 Sec. 29.58.460. PENALTY. A municipal official, employee, or
8 agent who knowingly violates a provision of a plan developed under
9 AS 29.58.410 is guilty of a class C felony.

10 Sec. 29.58.490. DEFINITIONS. In AS 29.58.400 -- 29.58.490,

11 (1) "commission" means the Municipal Financial Emergency
12 Commission;

13 (2) "creditor" means a person having standing to bring an
14 action for default on outstanding debt against the defaulting munici-
15 pality;

16 (3) "default" means the failure by a municipality to pay an
17 installment of principal or interest on its outstanding debt, on or
18 before the due date;

19 (4) "defaulting municipality" means a municipality that has
20 defaulted, or which continues to be subject to the jurisdiction of the
21 commission after the implementation of a plan under AS 29.58.410;

22 (5) "outstanding debt" means revenue anticipation notes,
23 bond anticipation notes, general obligation bonds, revenue bonds, or
24 refunding bonds issued under this chapter.

25 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
26 10.070(c).



Alaska State Legislature

House of Representatives

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

HEARING DATE: *March 21, 1986*

HB 293, HB 521

NAME (Please Print)	ADDRESS	REPRESENTING	TESTIFY (Yes or No)	PHONE NUMBER
<i>George Carté</i>	<i>231 W. Evergreen, Palmer</i>	<i>Mayor City of Palmer (521)</i>	<i>Yes</i>	<i>745 3271</i>
<i>Jack R. Foster, Sr.</i>	<i>Box 125 Sand Point</i>	<i>Mayor City of Sand Point</i>	<i>Yes</i>	<i>383-2252</i>
<i>DAVID SOUTER</i>	<i>271 W. Evergreen</i>	<i>Mayor of Palmer, City Rep</i>		<i>745-3271</i>
<i>PHIL SHEALY</i>	<i>3670 LAKE ST. HOMER</i>	<i>CITY OF HOMER</i>	<i>YES</i>	<i>235-8121</i>
<i>Alan Robert</i>	<i>Box 2037 Palmer, AK</i>	<i>Mat-Su Borough</i>	<i>YES</i>	<i>745-9630</i>
<i>Sally Burgess</i>	<i>Juneau</i>	<i>AKL</i>	<i>Yes</i>	<i>6-1325</i>
<i>Eric Wohlforth</i>	<i>900 W. 5th Ave. & 600 Anch AK</i>	<i>self (must testify by 2:45 p.m.)</i>	<i>yes</i>	<i>276-6401</i>
<i>John Rubini</i>		<i>AG's office</i>	<i>✓</i>	
<i>Tam Cook</i>		<i>Log Log & Service</i>	<i>✓</i>	
<i>Conrad Nordale</i>		<i>Dept. Rev</i>	<i>✓</i>	
<i>Rita Unsworth</i>	<i>Box 409</i>	<i>City of Sitka</i>	<i>✓</i>	<i>262 9107</i>

Briefing Materials

Debt Management Plan

February, 1986

State of Alaska
Office of the Governor

February 1986

DEBT MANAGEMENT PLAN

Governor Bill Sheffield

Through careful management, the State of Alaska has maintained the best credit rating we've ever had. The AA rating, in turn, has allowed local governments across Alaska to keep their investment grade ratings as well. This good credit rating translates into lower property taxes for Alaskans.

With dropping world oil prices, however, Alaska's annual debt payments automatically become a larger part of our expenses.

So, I have asked the 14th Alaska Legislature to approve a package of new laws which, viewed as a whole, will give our young state a plan for comprehensive debt management for the first time. None of these proposed improvements in our laws is flashy or exciting, but as a package they are vital to the continued financial health of Alaska. I encourage you to read the enclosed information.

In short, the debt management plan I have placed before the Alaska Legislature will keep the commitments voters have made to our future, particularly in regards to local school construction. The plan also will guarantee we can continue to incur a reasonable amount of debt for school construction and other improvements in the future, while we preserve our good credit rating.

DEBT MANAGEMENT PLAN

An Overview

Without firm control of public debt the credit rating of all debt issuers in Alaska could be in jeopardy. Right now the State has an AA rating, the highest it's ever had, and all issuers within the State are rated as investment grade. But as oil prices decline, the share of revenues devoted to debt service will become an increasingly heavier burden. The State of Alaska cannot control the price of oil. What we can and must control is the amount of public debt.

Proper stewardship of public debt in Alaska can be accomplished through enactment of legislation covering four distinct needs. Taken separately, each of the four bills brings reasonableness to a different aspect of public debt. But viewed as a whole, this legislation provides a plan for comprehensive debt management for the first time. It assures that all State-supported debt, which is any debt paid from the State general fund, is subject to the control of the State Bond Committee. It is this total of State supported debt which the rating agencies look to in establishing the State's credit rating.

The first bill, House Bill 293, provides for orderly financial management in the event of a default by a municipality of its debt obligations. This legislation protects both issuers of public debt in Alaska and creditors.

House Bill 519 provides for the lease financing of public buildings through the Alaska State Housing Authority, acting as

the Alaska State Building Authority. The bill gives the State Bond Committee control over issuance of this debt as well as debt of the University of Alaska.

House Bill 520 gives the State Bond Committee control over the total amount and maturity of municipal school debt to be reimbursed by the State. The investment community needs to see some control on this fast-growing part of State supported debt.

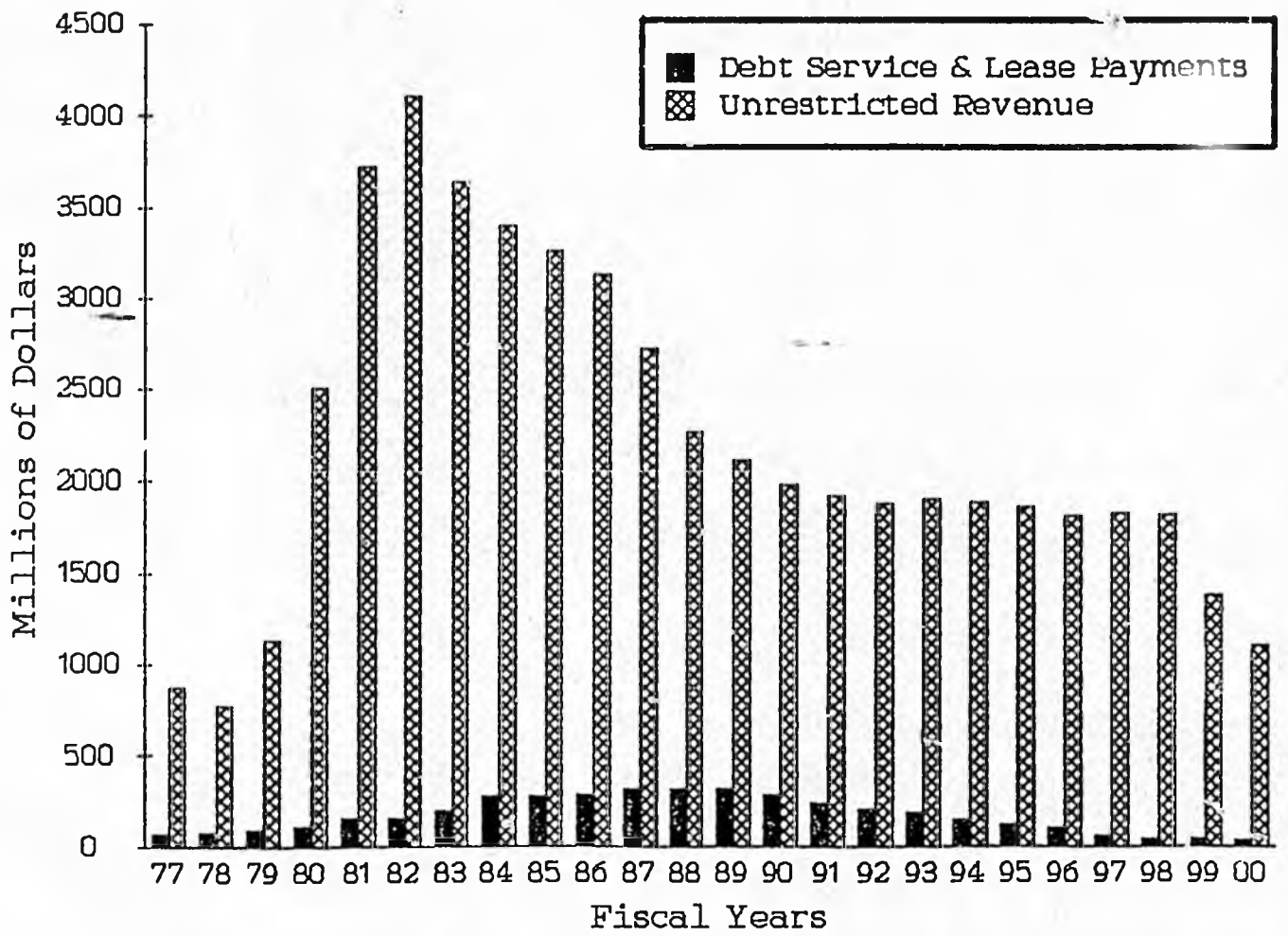
The fourth bill, House Bill 521 places a limit on the issuance of general obligation debt by municipalities. Even with this limit some municipalities in Alaska will have some of the highest debt ratios in the United States. This legislation does not limit the ability to issue revenue bonds.

As background, Alaska's combined debt (State, municipal and school district) through the issuance of general obligation bonds was \$2.9 billion as of June 30, 1985. That amounts to about \$5,500 per Alaskan. When the amount of G.C. Bond debt for veterans' housing is included in the total, Alaska's per capita debt load is \$7,000.

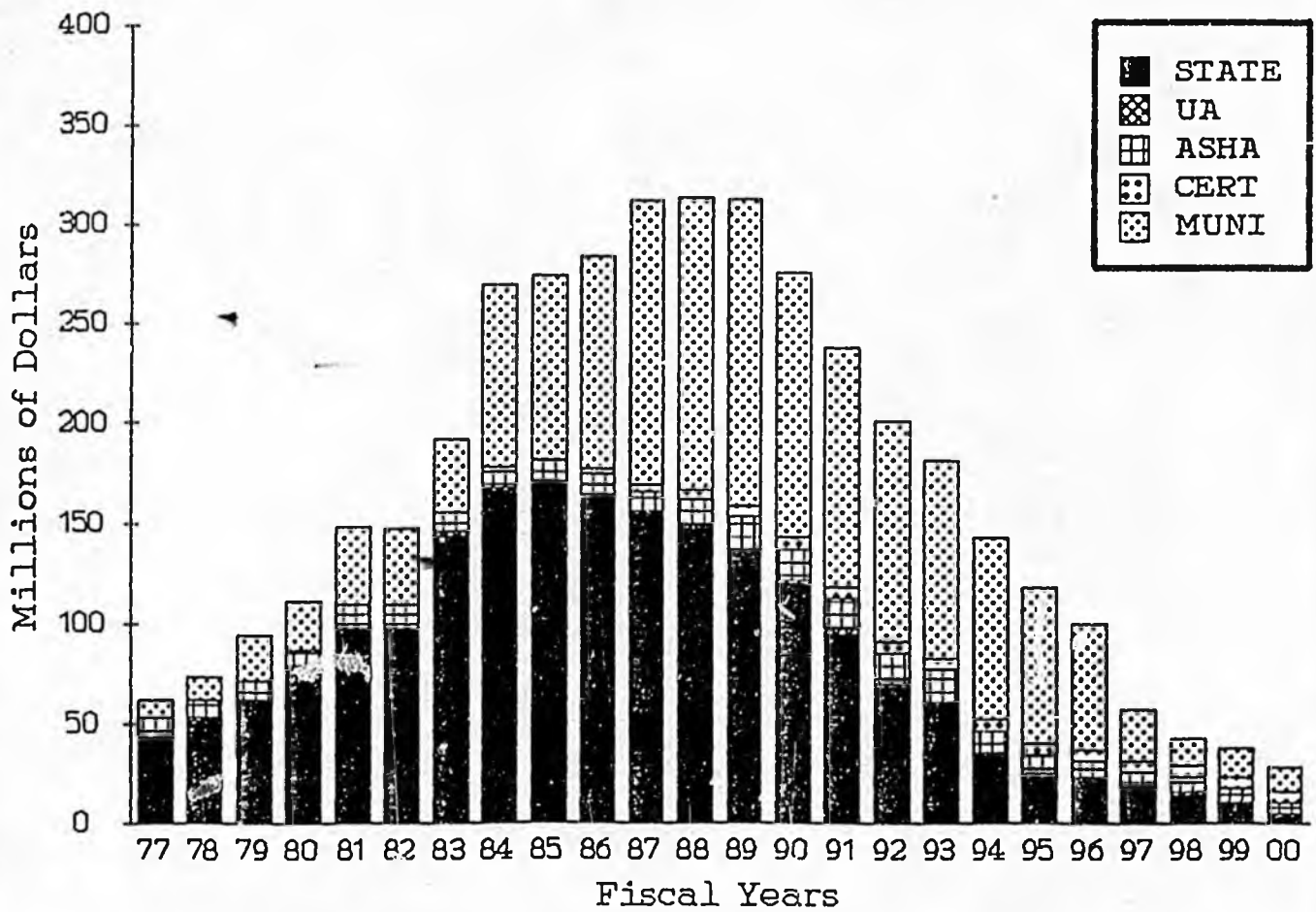
That debt is manageable, but it takes planning. The State of Alaska has not had a bond authorization since 1980. Yet, the per capita interest on the State's general obligation bond debt is 20 times the national average. State policy limits debt service to five percent of unrestricted revenues, but that ratio is about 10 percent now and could climb to 16 percent by fiscal year 1989.

Again, this is a result of a combination of factors. World oil markets have seriously eroded the revenue Alaska receives from oil and gas production. At the same time, Alaska voters have authorized new debts, including \$325.0 million in school construction bonds so far in fiscal year 1985 alone. That translates into a possible 30 percent increase in State

Debt Service vs. Unrestricted Revenue



Total Debt Service & Lease Payments (January 28, 1986)



DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

SEVEN PERCENT CAP

Borough	FULL VALUE	G. O. DEBT	7% OF FULL VALUE	PERCENT OF G.O. DEBT/CAP	CURRENT PERCENT DEBT
Anchorage	\$15,755,411,000.00	\$358,759,900.00	\$1,102,878,770.00	32.53%	2.29%
Bristol Bay	\$101,798,800.00	\$3,535,000.00	\$7,125,916.00	49.61%	3.47%
Fairbanks	\$4,210,997,700.00	\$90,928,500.00	\$294,769,839.00	30.85%	2.16%
Haines	\$93,945,500.00	\$1,300,000.00	\$6,576,185.00	19.77%	1.38%
Juneau	\$1,613,388,900.00	\$47,651,000.00	\$112,937,223.00	42.19%	2.95%
Kenai Peninsula	\$3,290,219,200.00	\$137,919,000.00	\$230,315,344.00	59.89%	4.19%
Ketchikan Gateway	\$675,985,100.00	\$31,930,000.00	\$47,318,957.00	67.48%	4.72%
Kodiak	\$572,370,700.00	\$28,270,000.00	\$40,065,949.00	70.56%	4.94%
Mat-Su	\$2,357,406,200.00	\$112,208,000.00	\$165,718,434.00	67.71%	4.74%
North Slope	\$12,876,786,900.00	\$1,155,680,000.00	\$901,375,083.00	128.21%	8.97%
Sitka	\$396,227,900.00	\$12,400,000.00	\$27,735,953.00	44.71%	3.13%
Total Boroughs	\$41,954,537,900.00	\$1,980,631,400.00	\$2,936,817,653.00	67.44%	4.72%

CITIES

Bethel	\$182,296,700.00	\$556,500.00	\$12,760,783.00	4.36%	0.31%
Cordova	\$120,373,000.00	\$0.00	\$8,447,110.00	0.00%	0.00%
Craig	\$34,707,400.00	\$0.00	\$2,429,518.00	0.00%	0.00%
Delta Junction	\$30,870,500	\$0	\$2,160,935.00	0.00%	0.00%
Dillingham	\$94,669,900.00	\$0.00	\$6,626,893.00	0.00%	0.00%
Eagle	\$9,104,500.00	\$0.00	\$637,315.00	0.00%	0.00%
Galena	\$19,149,500.00	\$900,000.00	\$1,340,465.00	67.14%	4.70%
Hoonah	\$27,845,200.00	\$0.00	\$1,949,164.00	0.00%	0.00%
Hydaburg	\$12,688,900.00	\$0.00	\$888,223.00	0.00%	0.00%
Kake	\$11,608,000.00	\$0.00	\$812,560.00	0.00%	0.00%
King Cove	\$23,230,800.00	\$0.00	\$1,626,156.00	0.00%	0.00%
Klawock	\$5,563,000.00	\$0.00	\$389,410.00	0.00%	0.00%
Kotzebue	\$93,245,100.00	\$0.00	\$6,527,157.00	0.00%	0.00%
Nenana	\$12,881,500.00	\$2,717,000.00	\$901,705.00	301.35%	21.09%
Noe	\$116,712,900.00	\$2,161,200.00	\$8,169,903.00	26.45%	1.85%
Peirican	\$10,155,400.00	\$0.00	\$710,878.00	0.00%	0.00%
Petersburg	\$161,219,300.00	\$6,195,000.00	\$11,285,351.00	54.89%	3.84%
Sand Point	\$71,086,800.00	\$0.00	\$4,576,076.00	0.00%	0.00%
Skagway	\$58,447,100.00	\$820,000.00	\$4,091,297.00	20.04%	1.40%
St. Mary's	\$4,239,400.00	\$0.00	\$296,758.00	0.00%	0.00%
Tanana	\$11,195,000.00	\$0.00	\$783,678.00	0.00%	0.00%
Unalakleet	\$19,714,500	\$0	\$1,380,015.00	0.00%	0.00%
Unalaska	\$105,309,400.00	\$3,299,000.00	\$7,371,658.00	44.75%	3.13%
Valdez	\$1,740,431,900.00	\$75,833,000.00	\$121,830,233.00	62.24%	4.36%
Whittier	\$19,419,200.00	\$0.00	\$1,359,344.00	0.00%	0.00%
Wrangell	\$111,757,000.00	\$10,750,000.00	\$7,822,990.00	137.42%	9.62%
Yakutat	\$17,679,400.00	\$235,200.00	\$1,237,558.00	19.01%	1.33%

TOTAL CITIES \$3,125,901,900.00 \$103,467,200.00 \$218,813,133.00 47.29% 3.31%

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

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

Amendment to
HB 293

Page 1, lines 23 - 25:

delete subsection 3 and relabel subsection 4 as
subsection 3

Page 5, after line 9: insert

Sec. 29.58.470. BONDS NOT STATE OBLIGATIONS. Bonds
issued by municipalities are not legal or moral
obligations of the state.

**SHEARSON
LEHMAN
BROTHERS**

Shearson Lehman Brothers Inc.
Foster & Marshall Inc.
The Robinson-Humphrey Company, Inc.

An American Express company



Credit Survey Of State General Obligation Debt

1985

ALASKA

Moody's: Aa

SLB: Mid AA
Trend: Stable

S & P: AA-

The State, which relies on oil taxes and royalties for close to 80% of its revenues, was hurt in 1984 as oil prices remained weak. Revenues in the General Fund decreased 2.2%, with expenditures also declining, at a rate of 11.9%. The General Fund balance fell, albeit modestly, to a level of \$2.09 billion. Every \$1 decrease in the price of a barrel of oil translates into a loss of revenues of approximately \$150 million, which has placed the State under a great deal of revenue pressure. Some oil analysts are currently projecting a price for oil below \$20 a barrel within the next few years. Oil and gas production taxes, the single largest revenue source, fell 6.8% in 1984.

With an economy dependent on oil and gas, revenue projections have been sharply reduced for the 1985 fiscal year. What the State has in its favor is a huge General Fund balance and the Alaska Permanent Fund, which currently has a principal balance of over \$6 billion. The Permanent Fund serves as a constitutionally established "savings account". Fifty percent of the income generated by the Permanent Fund is transferred to the General Fund. Debt ratios are extremely high, with State unemployment also on the high side. Alaska does, however, possess very high wealth levels and a rapidly expanding population base. While the situation in terms of oil related revenues is deteriorating at a fast pace, the ability to control expenses, large fund cushions, and as yet untapped tax sources (i.e. sales and personal income taxes) provide adequate security for the State's debt, although the situation bears watching.

Population (1983): 510,550
% change 1980-1984: +22.9%

Employment Distribution

Manufacturing:	6.7%
Wholesale and Retail Trade:	17.9%
Service Industries:	17.2%
Government:	32.2%

Unemployment (1984): 10.6%
5 year average: 9.96%

Wealth Statistics

Per capita income: \$17,194
% change 1980-1984: +32.2%
Families below poverty level: 8.6%

General Fund (G.F.) Balance

1981	\$ 2,187,100,000
1982	\$ 2,334,300,000
1983	\$ 2,154,700,000
1984	\$ 2,091,285,000

1984 G.F. Balance as % of G.F. revenues: 54.1%

Debt Ratios

	<u>Outstanding</u> (000,000)	<u>Per Capita</u>	<u>% of</u> <u>Personal Income</u>	<u>% of Full</u> <u>Market Value</u>
G.O. + Special Oblig.	1085.1	\$ 2,125	13.1%	2.7%

Original sponsor: Rules/Governor

1
2 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

3 CS FOR HOUSE BILL NO. 293 (C&RA)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

7 For an Act entitled: "An Act relating to municipal default on bonded in-
8 debtedness; establishing the Municipal Financial
9 Emergency Commission; and providing for an effective
10 date."

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

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16 delegated taxing authority to the municipalities under art. X, sec. 2 of
17 the Alaska Constitution;

18 (2) the state has a strong interest in debt issuance by municipali-
19 ties because of the impact on state revenue as a result of municipal as-
20 sessment to repay debt and because of the effect on the marketability of
21 bonds issued by the state and its agencies, by public corporations of the
22 state, by other municipalities, and by the Alaska Municipal Bond Bank Au-
23 thority;

24 (3) bonds issued by municipalities are not legal obligations of the
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27 (4) it is in the public interest, and is declared to be a public
28 purpose, to promote the prosperity and general welfare of all the people of
29 the state by assisting in the development and implementation of refinancing

1 plans for municipalities that have defaulted on outstanding deb.

2 * Sec. 2. AS 29.10.200 is amended by adding a new paragraph to read:

3 (47) AS 29.47.500 - 29.47.590 (default on bonded indebted-
4 ness)

5 * Sec. 3. AS 29.47 is amended by adding new sections to read:

6 ARTICLE 7. DEFAULT ON BONDED INDEBTEDNESS.

7 Sec. 29.47.500. MUNICIPAL FINANCIAL EMERGENCY COMMISSION. (a)

8 The Municipal Financial Emergency Commission is established in the
9 Department of Community and Regional Affairs.

10 (b) The members of the commission consist of the commissioner of
11 community and regional affairs, the commissioner of revenue, and the
12 commissioner of administration. Members of the commission may appoint
13 designees to serve on the commission.

14 (c) The commissioner of community and regional affairs shall
15 chair the commission. A quorum of the commission consists of two
16 members.

17 (d) The commission may employ staff as is necessary to accom-
18 plish the purposes of the commission.

19 Sec. 29.47.510. DUTIES AND POWERS OF THE COMMISSION. (a) Upon
20 receipt of a written notice of a default by a municipality, as provid-
21 ed in AS 29.47.520, and after consulting with the state bond committee
22 the commission may

23 (1) investigate the defaulting municipality's fiscal af-
24 fairs, consult with the governing bodies of the defaulting munic-
25 pality, and negotiate with creditors in order to assist the municipal-
26 ity in developing a plan for satisfaction of the outstanding debt;

27 (2) direct a state agency holding money on behalf of or
28 payable to the defaulting municipality to pay the money either to the
29 commission for payment to creditors, or to the defaulting municipality

1 for disposition as required under an adopted plan;

2 (3) determine whether a proposed plan is fair and equitable
3 and within the ability of the defaulting municipality to meet, and, if
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15 (7) approve or reject the defaulting municipality's annual
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17 (8) approve or reject the issuance of additional bonds,
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20 (9) impound the books and records of a defaulting munic-
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24 the commission, the defaulting municipality will default on a future
25 debt service payment under the plan if the financial policies and
26 practices of the municipality are not improved; and

27 (10) order a defaulting municipality to pay for the cost of
28 developing and implementing a plan.

29 (b) The authority granted to the commission continues, with

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2 isfied that the defaulting municipality has performed or will perform
3 the duties required of it in the plan, and until agreements made with
4 the defaulting municipality's creditors have been performed in
5 accordance with the plan.

6 (c) The commission may take all actions necessary to accomplish
7 the purposes of AS 29.47.500 - 29.47.590, including issuing subpoenas
8 necessary for the production of documents and issuing orders. A
9 superior court may, upon application of the commission, compel obedi-
10 ence with a subpoena or order issued by the commission.

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15 and regional affairs any time after a default by a municipality.

16 (c) A municipality may request the assistance of the commission
17 at any time before default if, in the judgment of the municipality,
18 assistance from the commission will assist the municipality in reliev-
19 ing financial distress.

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21 commissioner of community and regional affairs shall convene a meeting
22 of the commission within 15 days after the receipt of a notice of de-
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24 faulting municipality shall be given notice of the meeting, and shall
25 send an authorized representative to the meeting to represent the
26 defaulting municipality during the development of a plan under AS 29.-
27 47.510.

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1 AS 29.47.520, a creditor of the municipality may not file an action
2 based upon the outstanding debt until 90 days after the first meeting
3 of the commission convened under AS 29.47.530 to consider the matter.

4 Sec. 29.47.550. PENALTY. A municipal official, employee, or
5 agent who knowingly violates a provision of a plan developed under
6 AS 29.47.510 is guilty of a class C felony.

7 Sec. 29.47.560. BANKRUPTCY PETITION. Nothing in AS 29.47.500 -
8 29.47.590 limits or otherwise affects the authority of a municipality
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10 Sec. 29.47.565. NO STATE OBLIGATION FOR MUNICIPAL DEBTS. (a)
11 Bonds issued by municipalities are not legal obligations or moral
12 obligations of the state.

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15 municipality. An action taken by the commission may not be construed
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18 Sec. 29.47.570. APPLICATION. AS 29.47.500 - 29.47.590 applies
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20 Sec. 29.47.590. DEFINITIONS. In AS 29.47.500 - 29.47.590

21 (1) "commission" means the Municipal Financial Emergency
22 Commission;

23 (2) "creditor" means a person who has standing to bring an
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25 pality;

26 (3) "default" means the failure by a municipality to pay an
27 installment of principal or interest on its outstanding debt, on or
28 before the due date;

29 (4) "defaulting municipality" means a municipality that has

1 defaulted, or that continues to be subject to the jurisdiction of the
2 commission after the implementation of a plan under AS 29.47.510;

3 (5) "outstanding debt" means revenue anticipation notes,
4 bond anticipation notes, general obligation bonds, revenue bonds, or
5 refunding bonds issued under this chapter.

6 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
7 10.070(c).
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Original sponsor: Rules/Governor

Cook ✓
4/5/86

*Committee
working copy for
last hearing*

1
2 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

3 CS FOR HOUSE BILL NO. 293 (C&RA)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

7 For an Act entitled: "An Act relating to municipal default on bonded in-
8 debtedness; establishing the Municipal Financial
9 Emergency Commission; and providing for an effective
10 date."

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

12 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

13 (1) while the power of municipalities to contract debt for capital
14 improvements is granted by the Alaska Constitution, revenue that may be
15 raised to repay the debt are limited by the extent to which the state has
16 delegated taxing authority to the municipalities under art. X, sec. 2 of
17 the Alaska Constitution;

18 (2) the state has a strong interest in debt issuance by municipali-
19 ties because of the impact on state revenue as a result of municipal as-
20 sessment to repay debt and because of the effect on the marketability of
21 bonds issued by the state and its agencies, by public corporations of the
22 state, by other municipalities, and by the Alaska Municipal Bond Bank Au-
23 thority;

24 (3) bonds issued by municipalities are not legal obligations of the
25 state, nor are the bonds supported by the moral obligation of the state;
26 and

27 (4) it is in the public interest, and is declared to be a public
28 purpose, to promote the prosperity and general welfare of all the people of
29 the state by assisting in the development and implementation of refinancing

1 plans for municipalities that have defaulted on outstanding debt.

2 * Sec. 2. AS 29.10.200 is amended by adding a new paragraph to read:

3 (47) AS 29.47.500 - 29.47.590 (default on bonded indebted-
4 ness)

5 * Sec. 3. AS 29.47 is amended by adding new sections to read:

6 ARTICLE 7. DEFAULT ON BONDED INDEBTEDNESS.

7 Sec. 29.47.500. MUNICIPAL FINANCIAL EMERGENCY COMMISSION. (a)

8 The Municipal Financial Emergency Commission is established in the
9 Department of Community and Regional Affairs.

10 (b) The members of the commission consist of the commissioner of
11 community and regional affairs, the commissioner of revenue, and the
12 commissioner of administration. Members of the commission may appoint
13 designees to serve on the commission.

14 (c) The commissioner of community and regional affairs shall
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26 (2) direct a state agency holding money on behalf of or
27 payable to the defaulting municipality to pay the money either to the
28 commission for payment to creditors, or to the defaulting municipality
29 for disposition as required under an adopted plan;

1 (3) determine whether a proposed plan is fair and equitable
2 and within the ability of the defaulting municipality to meet, and, if
3 so, enter an order finding that it is fair, equitable, and within the
4 ability of the municipality to meet;

5 (4) advise the defaulting municipality to take the neces-
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7 (5) order the defaulting municipality to take the necessary
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9 plan within 30 days after receiving the advice of the commission to
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11 (6) require periodic reports on the defaulting municipali-
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14 (7) approve or reject the defaulting municipality's annual
15 budget ordinance during the period in which the plan is implemented;

16 (8) approve or reject the issuance of additional bonds,
17 notes, or other debt, whether short- or long-term, during the period
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19 (9) impound the books and records of a defaulting municipi-
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4 agent who ^{INTENTIONALLY} knowingly violates a provision of a plan developed under
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4 refunding bonds issued under this chapter.

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M. S. Working Draft II

Cook
4/4/86

Original sponsor: Rules/Governor

1
2 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

3 CS FOR HOUSE BILL NO. 293 (C&RA)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

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3 Sec. 29.47.560. BANKRUPTCY PETITION. Nothing in AS 29.47.500 -
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22 commission after the implementation of a plan under AS 29.47.510;

23 (5) "outstanding debt" means revenue anticipation notes,
24 bond anticipation notes, general obligation bonds, revenue bonds, or
25 refunding bonds issued under this chapter.

26 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).
28
29

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 2, 1986

The Honorable Peter Goll, Chairman
House Community and Regional
Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 293, establishing a Municipal Financial
Emergency Commission, our file: 66-3-86-0405

Dear Representative Goll:

In response to your memorandum dated March 26, 1986, to Jonathan Rubini, Assistant Attorney General, I will answer the following questions regarding federal bankruptcy law.

(1) You have asked whether the Municipal Financial Emergency Commission under its broad authority of assisting and developing a plan under section 410 of the proposed legislation could force a municipality to file for bankruptcy. Generally, the United States Bankruptcy Code provides that a debtor, in this case a municipality, may file for protection under the Bankruptcy Code, or creditors, meeting certain jurisdictional requirements, of the debtor may place the debtor in an involuntary bankruptcy proceeding. There appears to be no provision in the Bankruptcy Code which would permit a state that was not the creditor of a municipality to force a municipality to file for protection under Chapter 9 of the United States Bankruptcy Code (Municipal Debt Adjustment).

As a practical matter, the reasonableness of the proposal for debt adjustment made by the Municipal Financial Emergency Commission will be the determining factor whether a municipality decides to file for bankruptcy, or whether the creditors of the municipality decide to file an involuntary petition for the municipality. 11 U.S.C. § 903 provides that "a proposal by the state or law by the state prescribing a method of composition of indebtedness" of a municipality "may not bind any creditor that does not consent to such composition." Consequently, the creditors of the municipality will be looking at any debt adjustment proposal by the Commission to determine whether they would receive more money under the Bankruptcy Code than they would by a proposal by the Commission. If the creditors would receive a better arrangement under the Bankruptcy

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

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

Code, they would be likely to ignore a proposal by the Commission. A similar analysis would probably be undertaken by the municipality. If the Commission proposes debt restructuring that is more onerous in its payments than what would be required under the Bankruptcy Code then the municipality would have an incentive to ignore a proposal by the Commission and file its own bankruptcy proceedings.

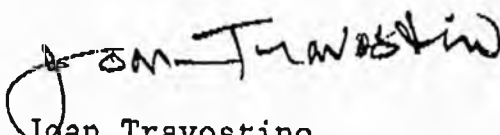
② You have asked whether the State of Alaska or the Commission would become an intervenor in bankruptcy proceedings by having convened a Municipal Financial Emergency Commission. There is no provision of the Bankruptcy Code or the Bankruptcy Rules that would require that the State of Alaska or the Commission become an intervenor in bankruptcy proceedings. The State of Alaska or the Commission could petition the court as a party in interest to participate in the proceedings, or if the State of Alaska or the Commission were a creditor of the municipality, then the right to participate in the bankruptcy proceeding would be a matter of course. The creation of the Commission does not improve or hinder the State's ability or responsibility to participate in a bankruptcy proceeding.

In summary, the provisions of House Bill 293 appear not to be in conflict, in general, with the United States Bankruptcy Code, 11 U.S.C. §§ 901 - 946 (Municipal Debt Adjustment). However, the effectiveness of the Commission set up in HB 293 will be determined by how the Commission adjusts the debt of the municipality and whether this debt adjustment is reasonable. State law cannot prevent either the creditor or the municipality from availing themselves of the remedies provided in the United States Bankruptcy Code.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By:


Joan Travostino
Assistant Attorney General

JT:ihr

cc: Arthur H. Peterson
Jonathan B. Rubini

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
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JUNEAU, ALASKA 99811
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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 21, 1986

Honorable Peter Goll, Chairman
House C&RA Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 293, establishing a Municipal Financial Emergency Commission
Our file: 66-3-86-0405

Dear Representative Goll:

By memorandum of March 18, 1986, you raised a series of questions relating to HB 293, a bill which proposes the establishment of a Municipal Financial Emergency Commission to assist municipalities in default on bonded indebtedness. Mr. Bob Berry of your staff requested a response to those inquiries before your Friday, March 21, 1986 committee hearing. In the limited time available, our response to your third and fourth questions are stated in preliminary form.

You first ask whether the powers of the proposed commission are consistent with the "home rule" principles set out in article X of the Alaska Constitution. We considered the issue at length in drafting this measure. As you know, the bill empowers the commission with broad supervisory responsibilities in the extraordinary event of municipal default. While we are aware of no court which has directly addressed the question of the extent to which a state agency may assume control of the financial affairs of a municipality in default, we believe the proposed powers are consistent with article X of the Alaska Constitution. See generally Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978); Jefferson v. State, 527 P.2d 37 (Alaska 1974). A significant factor in support of this conclusion, we believe, is that state fiscal intrusion is conditioned upon the extraordinary instance of municipal default -- an occurrence which, as noted in the proposed legislative findings, may harbor profound repercussions to the state and to other neighboring municipalities.

Honorable Peter Goll, Chairman
House C&RA Committee
Alaska State Legislature

March 21, 1986
Page #2
663-86-0405

You also ask, "Does the state incur obligation for municipal bonded indebtedness by adopting the active role set out in HB 293?" We believe the clear answer is that the state does not incur any such legal obligation. Whether the state elects to assist a municipality to meet any outstanding debt obligations will derive exclusively from policy considerations, not any legal obligations implicitly assumed through active debt management oversight.

The most difficult inquiry concerns whether proposed section 29.58.440 modifies Rule 62 of the Alaska Rules of Civil Procedure and Administration. As you know, article IV, section 15 of the Alaska Constitution commits to the Alaska Supreme Court rule-making authority for judicial proceedings, subject to legislative change by two-thirds vote of each body of the legislature. Amendment of a court rule by legislative enactment, however, will not be implied, and may be accomplished only where the enactment specifically states an intent to modify a court rule. Leege v. Martin, 379 P.2d 447 (Alaska 1963). Civil Rule 62 states, without reference to any time limitations, the courts' inherent authority to extend injunctive relief. To the extent that proposed section 29.58.440 is perceived as a procedural restriction of the court's authority under Civil Rule 62, we do not believe that the bill states the intent to modify a court rule with the requisite specificity to effectuate an amendment of established judicial procedures. In present form, therefore, a court would consider the legislative directive, but would not likely view itself as bound by the mandatory stay provision. If the committee elects to more specifically address this matter, we would be happy to provide further assistance.

You finally ask whether there is a conflict with federal bankruptcy law. Proposed section 29.58.450 expressly recognizes the authority of a municipality to file a petition in bankruptcy under 11 U.S.C. §§ 901 -- 946. Quite fortunately, Alaska has not as yet confronted the unique legal considerations which arise where a sovereign political subdivision files a petition in bankruptcy. Without addressing the respective procedures under federal bankruptcy law and HB 293, it is our understanding that federal bankruptcy courts have extended substantial deference to "work-out" procedures provided for under state law. Ultimately, of course, any irreconcilable procedural conflicts will be resolved in favor of the federal bankruptcy procedures.

If you require further review of the issues raised in

Honorable Peter Goll, Chairman
House C&RA Committee
Alaska State Legislature

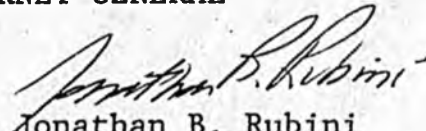
March 21, 1986
Page #3
663-86-0405

your March 18, 1986 memorandum, please contact me at your earliest convenience.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By:


Jonathan B. Rubini
Assistant Attorney General

JBR/pjg

cc: Hon. Mary Nordale, Commissioner
Department of Revenue

Art Peterson, Asst. Attorney General
Legislation and Regulations Section
Department of Law - Juneau



Alaska State Legislature

House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

March 26, 1986

TO: John Rubini
Alaska Department of Law

FROM: Bob Berr *BB*
Staff
House Community and Regional Affairs Committee

SUBJECT: House Bill 293

Bankruptcy:

Bob (Is there a conflict with the language of page 2, lines 19-21 (development of plan) and page 5, lines 4-6 (sec. 29.58... 450)?

1 *yo* (Sec. 450 states there is no limit or effect on a municipality regarding bankruptcy. Could the commission under its broad authority of assisting in developing a plan under Sec. 410 force a municipality to file for bankruptcy?

2 (Does the state or commission become an intevenor under HB 293?

Bob (Is the cite on page 5, line 6 (11 U.S.C. 901-946) subject to obsolescence or does it act as a limit? Should the cite be deleted, altered, or replaced with "under Federal law"?

Penalty

Is Sec. 29.58.460 too severe? Is a Class C felony for this offense in line with other non-violent, white-collar crime? Would "intentionally violates" be better than "knowingly violates"?

Representative Goll asks that you answer these questions or contact someone the Department of Law would deem an expert in bankruptcy law and put them in touch with Rep. Gruenberg as soon as possible. The next hearing for HB 293 will be Wednesday, April 3.

ljb

M.G. Worley draft
AA

Cook ✓
4/5/86

Original sponsor: Rules/Governor

1
2 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

3 CS FOR HOUSE BILL NO. 293 (C&RA)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - SECOND SESSION

6 A BILL

7 For an Act entitled: "An Act relating to municipal default on bonded in-
8 debtedness; establishing the Municipal Financial
9 Emergency Commission; and providing for an effective
10 date."

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

12 * Section 1. LEGISLATIVE FINDINGS. The legislature finds that

13 (1) while the power of municipalities to contract debt for capital
14 improvements is granted by the Alaska Constitution, revenue that may be
15 raised to repay the debt are limited by the extent to which the state has
16 delegated taxing authority to the municipalities under art. X, sec. 2 of
17 the Alaska Constitution;

18 (2) the state has a strong interest in debt issuance by municipali-
19 ties because of the impact on state revenue as a result of municipal as-
20 sessment to repay debt and because of the effect on the marketability of
21 bonds issued by the state and its agencies, by public corporations of the
22 state, by other municipalities, and by the Alaska Municipal Bond Bank Au-
23 thority;

24 (3) bonds issued by municipalities are not legal obligations of the
25 state, nor are the bonds supported by the moral obligation of the state;
26 and

27 (4) it is in the public interest, and is declared to be a public
28 purpose, to promote the prosperity and general welfare of all the people of
29 the state by assisting in the development and implementation of refinancing

1 plans for municipalities that have defaulted on outstanding debt.

2 * Sec. 2. AS 29.10.200 is amended by adding a new paragraph to read:

3 (47) AS 29.47.500 - 29.47.590 (default on bonded indebted-
4 ness)

5 * Sec. 3. AS 29.47 is amended by adding new sections to read:

6 ARTICLE 7. DEFAULT ON BONDED INDEBTEDNESS.

7 Sec. 29.47.500. MUNICIPAL FINANCIAL EMERGENCY COMMISSION. (a)

8 The Municipal Financial Emergency Commission is established in the
9 Department of Community and Regional Affairs.

10 (b) The members of the commission consist of the commissioner of
11 community and regional affairs, the commissioner of revenue, and the
12 commissioner of administration. Members of the commission may appoint
13 designees to serve on the commission.

14 (c) The commissioner of community and regional affairs shall
15 chair the commission. A quorum of the commission consists of two
16 members.

17 (d) The commission may employ staff as is necessary to accom-
18 plish the purposes of the commission.

19 Sec. 29.47.510. DUTIES AND POWERS OF THE COMMISSION. (a) Upon
20 receipt of a written notice of a default by a municipality, as provid-
21 ed in AS 29.47.520, the commission may

22 (1) investigate the defaulting municipality's fiscal af-
23 fairs, consult with the governing bodies of the defaulting munici-
24 pality, and negotiate with creditors in order to assist the municipali-
25 ty in developing a plan for satisfaction of the outstanding debt;

26 (2) direct a state agency holding money on behalf of or
27 payable to the defaulting municipality to pay the money either to the
28 commission for payment to creditors, or to the defaulting municipality
29 for disposition as required under an adopted plan;

*Finance
may
include
bond
person*

1 (3) determine whether a proposed plan is fair and equitable
2 and within the ability of the defaulting municipality to meet, and, if
3 so, enter an order finding that it is fair, equitable, and within the
4 ability of the municipality to meet;

5 (4) advise the defaulting municipality to take the neces-
6 sary steps to implement the plan;

7 (5) order the defaulting municipality to take the necessary
8 steps to implement the plan if the municipality fails to implement the
9 plan within 30 days after receiving the advice of the commission to
10 implement the plan;

11 (6) require periodic reports on the defaulting municipali-
12 ty's financial affairs during the period in which the plan is imple-
13 mented;

14 (7) approve or reject the defaulting municipality's annual
15 budget ordinance during the period in which the plan is implemented;

16 (8) approve or reject the issuance of additional bonds,
17 notes, or other debt, whether short- or long-term, during the period
18 in which the plan is implemented;

19 (9) impound the books and records of a defaulting munic-
20 ipality and assume full control of its financial affairs, including the
21 levying of taxes, expenditure of money, and adoption of budgets, if
22 the municipality fails to implement a plan, or if, in the opinion of
23 the commission, the defaulting municipality will default on a future
24 debt service payment under the plan if the financial policies and
25 practices of the municipality are not improved; and

26 (10) order a defaulting municipality to pay for the cost of
27 developing and implementing a plan.

28 (b) The authority granted to the commission continues, with
29 respect to a defaulting municipality, until the commission is sat-

1 isfied that the defaulting municipality has performed or will perform
 2 the duties required of it in the plan, and until agreements made with
 3 the defaulting municipality's creditors have been performed in
 4 accordance with the plan.

5 (c) The commission may take all actions necessary to accomplish
 6 the purposes of AS 29.47.500 - 29.47.520, including issuing subpoenas
 7 necessary for the production of documents and issuing orders. A
 8 superior court may, upon application of the commission, compel obedi-
 9 ence with a subpoena or order issued by the commission.

10 Sec. 29.47.520. NOTICE OF DEFAULT. (a) A municipality shall
 11 give notice of default to the commissioner of community and regional
 12 affairs within 10 calendar days after actual knowledge of the default.

13 (b) A creditor may give notice to the commissioner of community
 14 and regional affairs any time after a default by a municipality.

15 (c) A municipality may request the assistance of the commission
 16 at any time before default if, in the judgment of the municipality,
 17 assistance from the commission will assist the municipality in reliev-
 18 ing financial distress.

19 Sec. 29.47.530. ACTION UPON RECEIVING NOTICE OF DEFAULT. The
 20 commissioner of community and regional affairs shall convene a meeting
 21 of the commission within 15 days after the receipt of a notice of de-
 22 fault, or of a request for assistance, under AS 29.47.520. The de-
 23 faulting municipality shall be given notice of the meeting, and shall
 24 send an authorized representative to the meeting to represent the
 25 defaulting municipality during the development of a plan under AS 29.-
 26 47.510.

27 Sec. 29.47.540. LIMITATION ON ACTIONS. If a notice of default
 28 or request for assistance has been provided by a municipality under
 29 AS 29.47.520, a creditor of the municipality may not file an action

*Does this
 amend
 a civil
 rule*

1 based upon the outstanding debt until 90 days after the first meeting
2 of the commission convened under AS 29.47.530 to consider the matter.

3 Sec. 29.47.550. PENALTY. A municipal official, employee, or
4 agent who ^{intentionally} [knowingly] violates a provision of a plan developed under
5 AS 29.47.510 is [guilty of a class C felony] ^{subject to a civil penalty}
^{not to exceed 5000.}

6 Sec. 29.47.560. BANKRUPTCY PETITION. Nothing in AS 29.47.500 -
7 29.47.590 limits or otherwise affects the authority of a municipality
8 to file a petition in bankruptcy under 11 U.S.C. 901 - 946.

9 Sec. 29.47.565. NO STATE OBLIGATION FOR MUNICIPAL DEBTS. (a)
10 Bonds issued by municipalities are ^{neither} [not] legal obligations ^{nor} [or] moral
11 obligations of the state.

12 (b) Nothing in AS 29.47.500 - 29.47.590 may be construed to
13 create liability on the part of the state for outstanding debts of a
14 municipality. An action taken by the commission may not be construed
15 as an assumption of liability or responsibility by the state for
16 outstanding debts of a municipality.

17 Sec. 29.47.570. APPLICATION. AS 29.47.500 - 29.47.590 applies
18 to home rule and general law municipalities.

19 Sec. 29.47.590. DEFINITIONS. In AS 29.47.500 - 29.47.590

20 (1) "commission" means the Municipal Financial Emergency
21 Commission;

22 (2) "creditor" means a person who has standing to bring an
23 action for default on outstanding debt against the defaulting muni-
24 - pality;

25 (3) "default" means the failure by a municipality to pay an
26 installment of principal or interest on its outstanding debt, on or
27 before the due date;

28 (4) "defaulting municipality" means a municipality that has
29 defaulted, or that continues to be subject to the jurisdiction of the

1 commission after the implementation of a plan under AS 29.47.510;

2 (5) "outstanding debt" means revenue anticipation notes,
3 bond anticipation notes, general obligation bonds, revenue bonds, or
4 refunding bonds issued under this chapter.

5 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
6 10.070(c).

Cook
4/10/F

Original sponsor: Rules/Governor

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17 the Alaska Constitution;

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22 the commission may

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28 payable to the defaulting municipality to pay the money either to the
29 commission for payment to creditors, or to the defaulting municipality

1 for disposition as required under an adopted plan;

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1 defaulted, or that continues to be subject to the jurisdiction of the
2 commission after the implementation of a plan under AS 29.47.510;

3 (5) "outstanding debt" means revenue anticipation notes,
4 bond anticipation notes, general obligation bonds, revenue bonds, or
5 refunding bonds issued under this chapter.

6 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
7 10.070(c).

Max - Re: The appropriate Criminal Penalty, Class "C" Felony does seem to be out of line with the penalties imposed for similar white collar crimes (enclosed). § 2 of Official Misconduct (Page 3) fits the actions penalized in this bill almost to a tee. It only carries a class A misdemeanor penalty. Other white collar crimes I found also generally carry lower penalties for similarly reprehensible conduct. (See enclosed) Mark

11.01.040. Application of AS 11.81.600 — 11.81.630. AS 11.81.600 — 11.81.630 apply only to this title. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Stated in *Neitzel v. State*, Ct. App. Op. No. 172 (File No. 6243), 655 P.2d 325 (1982).

Article 6. Definitions.

Section

900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

§ 11.81.900

(3) a person acts "reckless" if the person acts with a recklessness or stance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the person's conduct will cause the death of another person or the substantial physical injury of another person; the risk must be of such a nature and degree that it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that conduct or circumstance;

(4) a person acts with "criminal negligence" if the person acts with a recklessness or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or be of such a nature and degree that it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation;

(b) In this title, unless otherwise provided, a provision of law defining an offense requires otherwise,

(1) "affirmative defense"

(A) some evidence must be presented in support of the defense; and

(B) the defendant has the burden of proving the defense by a preponderance of the evidence;

(2) "benefit" means a pecuniary benefit or to a third person or beneficiary;

(3) "building", in addition to a structure, includes a motor-propelled vehicle or structure used for carrying on business, including apartment units, including a separate unit is considered a separate building;

(4) "cannabis" has the same meaning as in AS 11.71.010(11), and (14);

(5) "conduct" means an act or omission in this state;

(6) "controlled substance" has the same meaning as in AS 11.71.900(4);

(7) "correctional facility" means a facility used for the confinement of a person;

(8) "credit card" means a card, other name, issued with a credit cardholder in obtaining payment;

(9) "crime" means an offense which is authorized; a crime is

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(2) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(3) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(4) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(5) "conduct" means an act or omission and its accompanying mental state;

(6) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(7) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(8) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(9) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

(2) the defendant was in fact a public servant different than the one the defendant pretended to be.

(c) This section does not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) Impersonating a public servant is a class B misdemeanor. (§ 6 ch 166 SLA 1978)

Cross references. — For criminal impersonation, see AS 11.46.570.

NOTES TO DECISIONS

For case construing former statute concerning impersonating a peace officer, see *Larson v. State*, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977).

Collateral references. — Criminal responsibility of one aiding and abetting the offense of false personation, 5 ALR 784; 74 ALR 1110; 131 ALR 1322. Intent as affecting offense of false personation, 97 ALR 1510.

Article 6. Abuse of Public Office.

Section

- 850. Official misconduct
- 860. Misuse of confidential information

Collateral references. — 63 Am. Jur. 2d, Public Officers and Employees. §§ 346-359.

67 C.J.S., Officers, §§ 120-126, 255-263. Infamous crime or one involving moral turpitude constituting disqualification to hold public office, 52 ALR2d 1314.

Official oppression, what constitutes offense of, 83 ALR2d 1007.

Personal liability of policeman, sheriff, or similar peace officer or his bond, for injury suffered as a result of failure to enforce law or arrest law breaker, 42 ALR3d 700.

Removal of public officer for misconduct during previous term, 42 ALR3d 691.

Validity and construction of statute authorizing grand jury to submit report concerning public servant's noncriminal misconduct, 63 ALR3d 586.

Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 ALR4th 614.

Sec. 11.56.850. Official misconduct. (a) A public servant commits the crime of official misconduct if, with intent to obtain a benefit or to injure or deprive another person of a benefit, the public servant

(1) performs an act relating to the public servant's office but constituting an unauthorized exercise of the public servant's official functions, knowing that that act is unauthorized; or

Public

way, whether because that person had not assumed office, lacked jurisdiction, or for any other reason.

(c) Bribery is a class B felony. (§ 6 ch 166 SLA 1978)

Sec. 11.56.110. Receiving a bribe. (a) A public servant commits the crime of receiving a bribe if the public servant

(1) solicits a benefit with the intent that the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will be influenced; or

(2) accepts or agrees to accept a benefit upon an agreement or understanding that the public servant's vote, opinion, judgment, action, decision, or exercise of discretion as a public servant will be influenced.

(b) Receiving a bribe is a class B felony. (§ 6 ch 166 SLA 1978)

Sec. 11.56.120. Receiving unlawful gratuities. (a) A public servant commits the crime of receiving unlawful gratuities if, for having engaged in an official act which was required or authorized and for which the public servant was not entitled to any special or additional compensation, the public servant

(1) solicits a benefit, regardless of value; or

(2) accepts or agrees to accept a benefit having a value of \$50 or more.

(b) Receiving unlawful gratuities is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Sec. 11.56.130. Definition. In AS 11.56.100 — 11.56.130, "benefit" has the meaning ascribed to it in AS 11.81.900 but does not include

(1) political campaign contributions reported in accordance with AS 15.13;

(2) concurrence in official action in the cause of legitimate compromise between public servants; or

(3) support, including a vote, solicited by a public servant or offered by any person in an election. (§ 6 ch 166 SLA 1978)

Cross references. — For definition of terms used in this title, see AS 11.81.900.

Article 2. Perjury and Related Offense

Section	Section
200. Perjury	230. Perjury by inconsistent statements
210. Unsworn falsification	235. Retraction as a defense
220. Proof of guilt	240. Definitions

11.56.510 — 11.56.620
6.830)

enses.

lawful gratuities

commit bribery or offer
1397.

instruction of statutes
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y of corporation for
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official with meals,
receipt of such bene-
LR3d 1231.

of bribery ns affected
of state public officer
3d 374.

statute prohibiting
contract to person or
iously convicted of
to bribe state public
1202.

offense under 18
giving, offering, or
public official, as
tter is not corrupted
be, or object of bribe
ALR Fed. 920.

crime of bribery
a benefit upon
servant's vote,
al discretion.
fense that the
in the desired

order to prove the crime of perjury, to establish that the matter concerning which willfully false testimony under oath was given was material to an issue before the court. *Beckley v. State*, Sup. Ct. Op. No. 490 (File No. 887), 443 P.2d 51 (1968); *Nelson v. State*, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

Admissibility of illegally seized evidence. — Under the exception to the exclusionary rule for illegally seized evidence in criminal prosecutions in Evid. R. 412(2), illegally seized evidence may be used in perjury prosecutions, unless the police misconduct amounts to a flagrant or egregious invasion of personal rights. *Wortham v. State*, Sup. Ct. Op. No. 2697 (File No. 5459), 657 P.2d 856 (1983).

Given the absence of flagrant police misconduct in recording the conversation between defendant and the undercover police agent, pursuant to the provisions of Evid. R. 412(2), the transcript of the tape recording was admissible in the perjury prosecution of defendant. *Wortham v. State*, Sup. Ct. Op. No. 2697 (File No. 5459), 657 P.2d 856 (1983).

Quoted in *Boyles v. State*, Ct. App. Op. No. 103 (File No. 5667), 647 P.2d 1113 (1982).

Cited in *Hoover v. State*, Ct. App. Op. No. 73 (File No. 6223), 641 P.2d 1263 (1982).

Sec. 11.56.210. Unsworn falsification. (a) A person commits the crime of unsworn falsification if, with the intent to mislead a public servant in the performance of a duty, the person submits a false written or recorded statement which the person does not believe to be true

- (1) in an application for a benefit; or
- (2) on a form bearing notice, authorized by law, that false statements made in it are punishable.

(b) Unsworn falsification is a class A misdemeanor. (§ 6 ch 166 SLA 1978)

Sec. 11.56.220. Proof of guilt. In a prosecution for perjury or unsworn falsification it is not necessary that proof be made by a particular number of witnesses or by documentary or other type of evidence. (§ 6 ch 166 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The case cited in the notes below was decided under former AS 11.30.010.

Required proof. — To be guilty of perjury, it was necessary under former law to prove that a person under oath willfully and falsely swore. *Nelson v. State*, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

One could not be convicted of perjury on the uncorroborated testimony of one witness under former law. *Nelson v. State*, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

Testimony of perjury had to be corroborated by other evidence, either direct or circumstantial. *Nelson v. State*,

Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

The purpose of such a rule was to prevent ill-founded retaliatory attacks by perjury prosecution upon a witness based on no more than the contrary oath of another. *Nelson v. State*, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

What was corroborative evidence. — In order to be corroborative, evidence had to induce a rational belief that what the witness said was true. *Nelson v. State*, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

Sufficiency of evidence. — See *Nelson v. State*, Sup. Ct. Op. No. 1237 (File No. 2459), 546 P.2d 592 (1976).

What constitutes obstructing or resisting an officer, in the absence of actual force, 44 ALR3d 1018.

Sec. 11.56.705. Harming a police dog in the first degree. (a) A person commits the crime of harming a police dog in the first degree if the person intentionally kills or causes serious physical injury to a police dog, knowing the dog to be a police dog.

(b) Harming a police dog in the first degree is a class C felony. (§ 1 ch 54 SLA 1983)

Sec. 11.56.710. Harming a police dog in the second degree. (a) A person commits the crime of harming a police dog in the second degree if the person intentionally causes physical injury to, without causing physical injury to, torments, kicks, strikes, stones, or tampers with a police dog, knowing the dog to be a police dog.

(b) Harming a police dog in the second degree is a class A misdemeanor. (§ 1 ch 54 SLA 1983)

Sec. 11.56.715. Defense to harming a police dog. It is a defense to a prosecution under AS 11.56.705 or AS 11.56.710 that the conduct of the defendant

- (1) conformed to accepted veterinary practice; or
- (2) was in response to a direct attack on the defendant by a police dog not acting under the control of a peace officer. (§ 1 ch 54 SLA 1983)

Sec. 11.56.720. Refusing to assist a peace officer or judicial officer. (a) A person commits the offense of refusing to assist a peace officer or judicial officer if, upon a request, command, or order by someone the person knows to be a peace officer or judicial officer, that person unreasonably fails to make a good faith effort to physically assist the officer in the exercise of official duties.

(b) A person who, without expecting compensation, assists a person in accordance with this section is not liable for civil damages as a result of an act or omission in rendering that assistance. This subsection does not preclude liability for civil damages as a result of reckless, wilful, wanton, or intentional misconduct.

(c) Refusing to assist a peace officer or judicial officer is a violation. (§ 6 ch 166 SLA 1978)

NOTES TO DECISIONS

For case construing former AS 11.30.200, concerning neglect or refusal to aid an officer, see *Larson v. State*, Sup. Ct. Op. No. 1430 (File No. 2433), 564 P.2d 365 (1977).

or provide property or the advertised property

d; reasonably expected public in the advertisement; or

disclosure in labeling used commercial usage;

product, though otherwise

A misdemeanor. (§ 4 ch

to action by Federal Trade 65 ALR2d 225. class actions based on fraud entation, 53 ALR3d 534. private action under state con- lon act, 62 ALR3d 169. exemptions of state deceptive - and consumer protection d 399.

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person commits the

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nsfers, or otherwise nforcement of that

(2) the person destroys, removes, conceals, encumbers, transfers, or otherwise deals with the person's property with intent to defraud an existing judgment creditor; or

(3) knowing that proceedings have been or are about to be instituted for the appointment of an administrator or that a composition agreement or other arrangement for the benefit of creditors has been made or is about to be made, the person, with intent to defraud any creditor,

(A) destroys, removes, conceals, encumbers, transfers, or otherwise disposes of any part of or interest in the debtor's estate;

(B) obtains a substantial part of or interest in the debtor's estate;

(C) presents to any creditor or to the administrator a writing or record relating to the debtor's estate knowing that it contains a false statement; or

(D) misrepresents or fails to disclose to the administrator the existence, amount, or location of any part of or interest in the debtor's estate or any information which that person is legally required to furnish to the administrator.

(b) As used in this section, "administrator" means an assignee or trustee for the benefit of creditors, a liquidator, a receiver, or any other person entitled to administer property for the benefit of creditors.

(c) Defrauding creditors is a class A misdemeanor unless that secured party, judgment creditor, or creditor incurs a pecuniary loss of \$500 or more as a result to the defendant's conduct, in which case defrauding secured creditors is

(1) a class B felony if the loss is \$25,000 or more;

(2) a class C felony if the loss is \$500 or more but less than \$25,000.

(§ 4 ch 166 SLA 1978)

Collateral references. — Rule denying recovery of property to one who conveyed to defraud creditors as applicable where the claim which motivated the conveyance was never established, 6 ALR4th 862.

Right of creditor to recover damages for conspiracy to defraud him of claim, 11 ALR4th 345.

Article 6. General Provisions.

Section	Section
980. Determination of value; aggregation of amounts	985. Deceiving a machine
	990. Definitions

Sec. 11.46.980. Determination of value; aggregation of amounts. (a) In this chapter, whenever it is necessary to determine the value of property, that value is the market value of the property at the time and place of the crime unless otherwise specified or, if the market value cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.

(2) "false statement" means an offer to sell or provide property or services made with intent not to sell or provide the advertised property or services

(A) at the price or of the quality advertised;

(B) in a quantity sufficient to meet the reasonably expected public demand unless quantity is specifically stated in the advertisement; or

(C) at all;

(3) "mislabeled" means

(A) varying from the standard of truth or disclosure in labeling prescribed by law or, if none, as set by established commercial usage; or

(B) represented as being another person's product, though otherwise labeled accurately as to quality and quantity.

(c) Deceptive business practices is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Collateral references. — False representations in business transaction as within statute relating to "confidence game," 9 ALR 1527; 56 ALR 727.

Validity, construction, and application of statutes or ordinances directed against false or fraudulent statements in advertisements, 89 ALR 1004.

What constitutes false, misleading, or deceptive advertising or promotional prac-

tices subject to action by Federal Trade Commission, 65 ALR2d 225.

Consumer class actions based on fraud or misrepresentation, 53 ALR3d 534.

Right to private action under state consumer protection act, 62 ALR3d 169.

Scope and exemptions of state deceptive trade practice and consumer protection acts, 89 ALR3d 399.

Sec. 11.46.720. Misrepresentation of use of a propelled vehicle. (a) A person commits the crime of misrepresentation of use of a propelled vehicle if, with intent to deceive any person, the person sells, leases, or offers or exposes for sale or lease a propelled vehicle knowing that a usage registering device on the vehicle has been disconnected, adjusted, or replaced so as to misrepresent the distance traveled by the vehicle or the hours of engine use.

(b) As used in this section, "usage registering device" means any odometer, speedometer, recording tachometer, hobbsmeter, or other instrument that registers the distance traveled by the vehicle or the hours of engine use.

(c) Misrepresentation of use of a propelled vehicle is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.730. Defrauding creditors. (a) A person commits the crime of defrauding creditors if

(1) knowing that property is subject to a security interest, the person

(A) with intent to defraud, fails to disclose that security interest to a buyer of that property; or

(B) destroys, removes, conceals, encumbers, transfers, or otherwise deals with that property with intent to hinder enforcement of that security interest;

BILL SHEFFIELD, GOVERNOR

REPLY TO:

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

1031 W 4th AVENUE
SUITE 200
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SUITE 400
FAIRBANKS, ALASKA 99701
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POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 21, 1986

Honorable Peter Goll, Chairman
House C&RA Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: HB 293, establishing a Municipal
Financial Emergency Commission
Our file: 66-3-86-0405

Dear Representative Goll:

By memorandum of March 18, 1986, you raised a series of questions relating to HB 293, a bill which proposes the establishment of a Municipal Financial Emergency Commission to assist municipalities in default on bonded indebtedness. Mr. Bob Berry of your staff requested a response to those inquiries before your Friday, March 21, 1986 committee hearing. In the limited time available, our response to your third and fourth questions are stated in preliminary form.

You first ask whether the powers of the proposed commission are consistent with the "home rule" principles set out in article X of the Alaska Constitution. We considered the issue at length in drafting this measure. As you know, the bill empowers the commission with broad supervisory responsibilities in the extraordinary event of municipal default. While we are aware of no court which has directly addressed the question of the extent to which a state agency may assume control of the financial affairs of a municipality in default, we believe the proposed powers are consistent with article X of the Alaska Constitution. See generally Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978); Jefferson v. State, 527 P.2d 37 (Alaska 1974). A significant factor in support of this conclusion, we believe, is that state fiscal intrusion is conditioned upon the extraordinary instance of municipal default -- an occurrence which, as noted in the proposed legislative findings, may harbor profound repercussions to the state and to other neighboring municipalities.

The state becomes
a receiver of
the municipality
to prevent
ownership.

Issue: Liability
of a receiver

Honorable Peter Goll, Chairman
House C&RA Committee
Alaska State Legislature

March 21, 1986
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663-86-0405

You also ask, "Does the state incur obligation for municipal bonded indebtedness by adopting the active role set out in HB 293?" We believe the clear answer is that the state does not incur any such legal obligation. Whether the state elects to assist a municipality to meet any outstanding debt obligations will derive exclusively from policy considerations, not any legal obligations implicitly assumed through active debt management oversight.

The most difficult inquiry concerns whether proposed section 29.58.440 modifies Rule 62 of the Alaska Rules of Civil Procedure and Administration. As you know, article IV, section 15 of the Alaska Constitution commits to the Alaska Supreme Court rule-making authority for judicial proceedings, subject to legislative change by two-thirds vote of each body of the legislature. Amendment of a court rule by legislative enactment, however, will not be implied, and may be accomplished only where the enactment specifically states an intent to modify a court rule. Leege v. Martin, 379 P.2d 447 (Alaska 1963). Civil Rule 62 states, without reference to any time limitations, the courts' inherent authority to extend injunctive relief. To the extent that proposed section 29.58.440 is perceived as a procedural restriction of the court's authority under Civil Rule 62, we do not believe that the bill states the intent to modify a court rule with the requisite specificity to effectuate an amendment of established judicial procedures. In present form, therefore, a court would consider the legislative directive, but would not likely view itself as bound by the mandatory stay provision. If the committee elects to more specifically address this matter, we would be happy to provide further assistance.

You finally ask whether there is a conflict with federal bankruptcy law. Proposed section 29.58.450 expressly recognizes the authority of a municipality to file a petition in bankruptcy under 11 U.S.C. §§ 901 -- 946. Quite fortunately, Alaska has not as yet confronted the unique legal considerations which arise where a sovereign political subdivision files a petition in bankruptcy. Without addressing the respective procedures under federal bankruptcy law and HB 293, it is our understanding that federal bankruptcy courts have extended substantial deference to "work-out" procedures provided for under state law. Ultimately, of course, any irreconcilable procedural conflicts will be resolved in favor of the federal bankruptcy procedures.

If you require further review of the issues raised in

Honorable Peter Goll, Chairman
House C&RA Committee
Alaska State Legislature

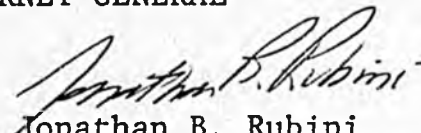
March 21, 1986
Page #3
663-86-0405

your March 18, 1986 memorandum, please contact me at your earliest convenience.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By:


Jonathan B. Rubini
Assistant Attorney General

JBR/pjg

cc: Hon. Mary Nordale, Commissioner
Department of Revenue

Art Peterson, Asst. Attorney General
Legislation and Regulations Section
Department of Law - Juneau

3/21
adopted
unanimously

#1

Amendment to
HB 293

Page 1, lines 23 - 25:

delete subsection 3 and relabel subsection 4 as
subsection 3

Page 5, after line 9: insert

Sec. 29.58.470. BONDS NOT STATE OBLIGATIONS. Bonds
issued by municipalities are not legal or moral
obligations of the state.

OIL PRICE DECLINE

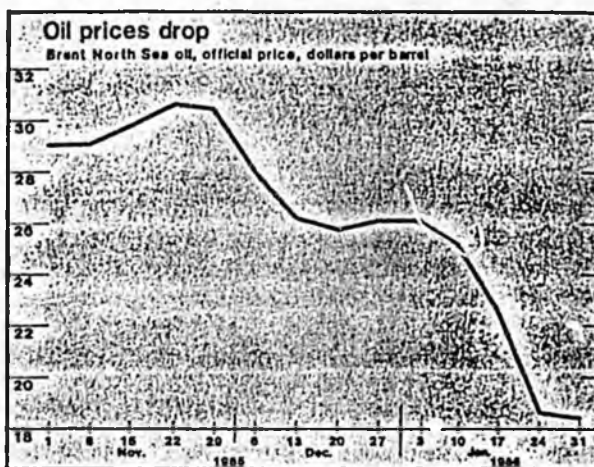
CreditReview

Winners and losers

The unexpected timing and magnitude of the recent oil price plunge to near \$15 a barrel indicates that future prices will settle at levels lower than earlier projected. This scenario has negative implications for certain oil producers' debt ratings and positive implications for oil consumers' ratings. Analyses of individual credits within those broad categories reveals the following:

- Financially strong oil companies, both in the U.S. and abroad, will emerge from the price wars without deep scars.
- Some poorly capitalized oil producers may declare bankruptcy or sell off assets. Oil service companies' five-year struggle will be prolonged. Ratings of 13 oil-related companies are placed on CreditWatch with negative implications (see pages 7-10).
- Transportation companies' fuel costs are being pared. This could have a backlash effect on airlines. Lower oil prices reduce the need to retire older airplanes, generating excess capacity and unstable pricing in future years.
- Electric utilities that burn oil will benefit. However, since natural gas or coal is still more economical, benefits will be limited.
- State and local governments in oil-dominated areas face short-term fiscal pressures and long-term revenue shortfalls as hard-hit oil producers pay less taxes and cut employment. Canvassing the regions, Alaska has the fewest worries, Oklahoma has the most.
- Municipalities face reduced water and sewer revenues as oil-dependent industries reduce utilities' purchases.

- Loan losses at regional banks in Texas, Oklahoma, and Louisiana rise. Money center banks' exposures to oil-producing debtor nations threaten earnings quality and stability.
- Among the oil-producing nations, some major



debtors, especially Mexico, are vulnerable. United Kingdom and Norway will also suffer, but have stronger fundamental positions.

— Oil-consuming nations, both industrial and developing, will be better off as import bills are reduced. This frees up resources, boosts trade, and enhances long-term growth worldwide.

The following sector-by-sector analyses discuss the far-reaching effects that the oil price situation has on a broad array of credits.

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Winners and losers	Cover	Rated non-U.S. governments face adjustments.....	5
Oil industry's near-term outlook	2	Companies outside of North America stable	6
Transportation's costs trimmed	3		
State and local government pressures	3	CreditWatch	
Limited impact for municipal utilities	4	\$7 billion of oil-related debt involving	
Regional banks vulnerable	4	13 companies on CreditWatch	7-10
Debtor nations' costs and benefits	5		

Oil industry's near-term outlook

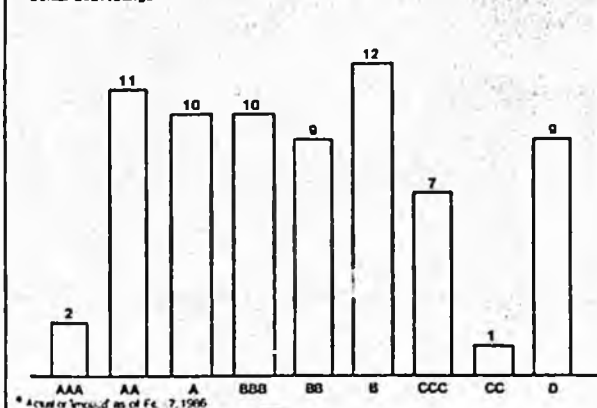
Most directly impacted is the oil industry. Because of the expected sustained period of weak oil prices, S&P is adding 13 companies to CreditWatch with negative implications (see pages 7-10). They are characterized by aggressively leveraged structures, uncertain cash flow prospects, or both.

Near-term outlook is bleak. With continued weak demand, overproduction by the Organization of Petroleum Exporting Countries (OPEC) and the rise of netback pricing, much of the market's discipline is gone. Over the longer term, lower oil prices will translate into diminished supplies, somewhat quicker pickup in demand, and renewed dependence on higher-risk foreign sources. Ultimately, supply overhangs will disappear and prices will rise relatively rapidly.

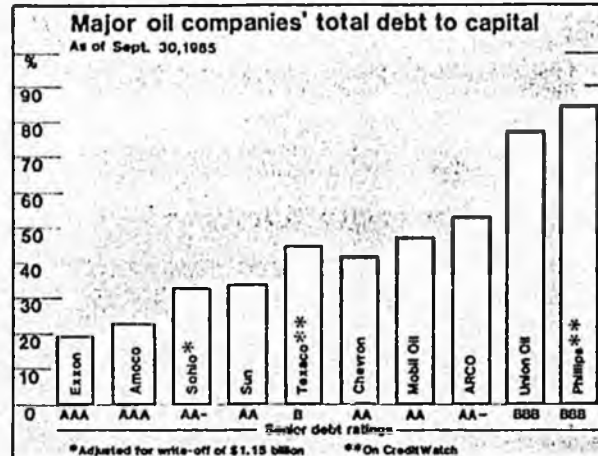
Major oil companies that have conserved financial strength, notably Exxon Corp. and Amoco Corp., should be able to ride out this difficult period. These companies have been successful explorers and enjoy relatively low-cost reserves. In fact, they may be able to capitalize on the travails of sister companies that may seek to raise cash with asset sales. Others, while not enjoying the same financial strength, are notable for their strong levels of cash flow. Reported earnings may drop substantially due to weaker oil prices. But cash flow will be much less affected due, in part, to the capital-intensive nature of the industry and the tax environment in which it operates.

Oil companies' ratings profile

Senior debt ratings*



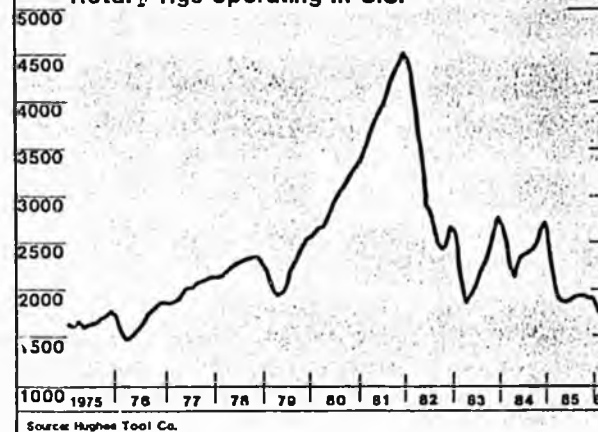
Companies that have undergone major restructuring programs in recent years, either through recapitalizations or major purchases, would appear to be extremely vulnerable to the price drop. However, many of them also have been aggressively reducing their debt with asset sales and other programs that conserve and raise cash. S&P has been analyzing companies' exposure to low prices for well over a year and has been incorporating these evaluations into ratings. Many companies still have some flexibility to respond to the falling prices. Com-



panies with refining and marketing operations may benefit as crude costs drop quicker than product prices, leading to continued strength in margins. However, netback pricing deals will mean that some of this potential benefit will not be realized by the companies. In addition, these companies are not immune to market developments.

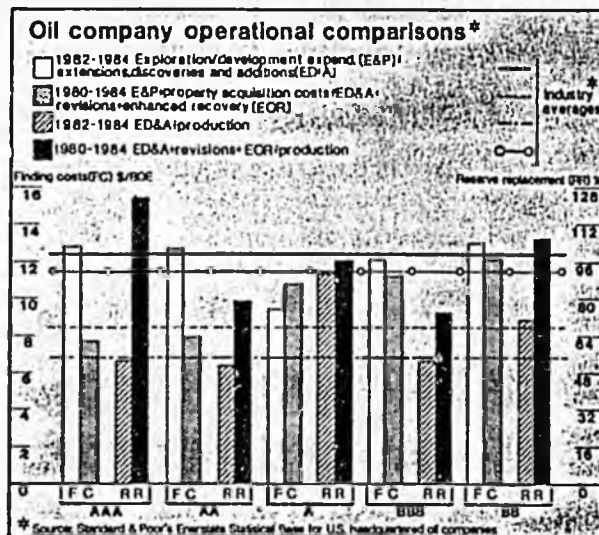
Lower prices will probably be felt first by poorly capitalized oil and gas companies that have been hoping for a turnaround in prices. Clearly, this will not occur, and more bankruptcies, liquidations, and asset sales can be expected. Companies that were relatively unsuccessful explorers will experience the same fate. Ratings for many of these were downgraded over the last few years, but further reductions are probable.

Rotary rigs operating in U.S.



U.S. oil industry ratings actions

Year	First quarter		Second quarter		Third quarter		Fourth quarter		Total	
	Down	Up	Down	Up	Down	Up	Down	Up	Down	Up
1985	4	0	—	—	—	—	—	—	—	—
1985	4	1	6	1	4	0	3	1	17	3
1984	3	2	10	3	1	0	1	2	14	8
1983	7	1	3	0	2	0	6	2	18	3
1982	4	0	0	0	3	0	8	1	15	1



The first prominent casualty of the January price drop was Global Marine Inc., which filed a Chapter 11 bankruptcy petition on Jan. 27. This major offshore drilling contractor aggressively expanded its fleet in the early 1980s in the expectation of a quick turnaround. *Oil service companies* are entering the fifth year of weak activity. While many of them have downsized and taken other steps to cope, they are vulnerable to the sustained cutbacks in oil companies' drilling and exploration expenditures. Although oil service companies' ratings have gone through several rounds of reductions, further action cannot be precluded.

Jacob L. Schlanger
(212) 208-1619

Transportation's costs trimmed

Declining oil prices will immediately improve *airline* operating profits, partially offsetting the recent deterioration caused by fare competition. As a percent of airline operating costs, fuel peaked at 27%-28% in 1981 before starting its retreat to the current 20% area. If oil prices continue to drop, S&P expects a further decline in this percentage. Over the long run, however, cheaper oil could have an adverse effect because it creates the potential for excess capacity. When fuel was \$1.25 a gallon, most airlines considered retiring Boeing 727 aircraft. Now that the commodity is at \$0.75 or lower, there is less pressure to retire such planes. The resulting excess capacity will spawn an unstable price environment as new aircraft deliveries add to, rather than replace, current capacity.

In the *railroad industry*, the effect of fuel price decreases will be less noticeable. Certain types of traffic, bulk commodities in particular, could benefit from lower costs. Carriers that are more competitive with truckers may be less affected because rates are likely to change more quickly. It is unlikely that a drop in prices will have a meaningful affect on locomotive supplies, because for the past several years the industry has had excess capacity due to better utilization.

T.S. Hyland
(212) 208-1572

State and local government pressures

Dramatic declines in spot market prices pose questions pertaining to the creditworthiness of oil-based state and municipal entities, as well as revenue-supported municipal utilities' projects. Credit implications extend not only to immediate fiscal pressures, but also to long-term revenue raising capabilities and some serious economic effects.

State and local governments in such oil-dominated areas as Texas, Louisiana, Oklahoma, New Mexico, and Alaska may experience fiscal and economic pressures. In *Texas*, a \$1 drop in the price of a barrel of oil is estimated to equal \$100 million of the state's annual revenues, or approximately 6.1% of 1985's total revenues. Total personal income could decline by 1%-2%, with about 25,000 jobs at stake. Hardest hit over the long term would be local government units, especially school districts, that derive a significant portion of revenues from ad valorem taxes on large oil reserves and/or from companies and facilities that are in the minerals extraction business. Similarly affected would be localities that depend upon oil service and support companies that provide ad valorem tax payments and support employment and personal income levels.

Many of the same implications hold for *Louisiana* and its local entities. A \$1 decline per barrel of oil causes annual state severance tax revenues to decline by approximately \$23 million, oil royalty revenues to drop by \$5 million, and corporate and in-

dividual income taxes to fall by \$27 million. The mineral resource and severance tax revenues alone represent about 22% of general fund revenues.

In *Alaska*, where state severance taxes amount to 43% of total unrestricted revenues and total petroleum revenues amount to 86% of revenues, the state treasury stands to lose \$150 million per year for each \$1 per-barrel drop. However, the state's revenue forecasts are already based on very low per-barrel wellhead prices of \$13.78 for fiscal 1987 and \$12.46 for fiscal 1988. In *North Slope Borough*, where 58% of revenues are derived from ad valorem taxes levied on oil-related properties, the immediate- and long-term effects appear negligible. The overwhelming majority of these revenues are derived from taxes on real property of mineral extraction companies and not on oil reserve values, per-barrel price, or production volume. A recent borough-sponsored study suggests that even at an average world price of \$15 per barrel, all the borough's processes, services, and activities would continue at scheduled levels.

The effects may be the most severe in *Oklahoma*. Approximately 25% of state revenues are derived from taxes on the oil and gas industry. The state's oil industry is dominated by small independent producers working marginally profitably and productive wells. Severe price declines may force many producers

(continued on next page)

Briefing Materials

Debt Management Plan

February, 1986

State of Alaska
Office of the Governor

February 1986

DEBT MANAGEMENT PLAN

Governor Bill Sheffield

Through careful management, the State of Alaska has maintained the best credit rating we've ever had. That AA rating, in turn, has allowed local governments across Alaska to keep their investment grade ratings as well. This good credit rating translates into lower property taxes for Alaskans.

With dropping world oil prices, however, Alaska's annual debt payments automatically become a larger part of our expenses.

So, I have asked the 14th Alaska Legislature to approve a package of new laws which, viewed as a whole, will give our young state a plan for comprehensive debt management for the first time. None of these proposed improvements in our laws is flashy or exciting, but as a package they are vital to the continued financial health of Alaska. I encourage you to read the enclosed information.

In short, the debt management plan I have placed before the Alaska Legislature will keep the commitments voters have made to our future, particularly in regards to local school construction. The plan also will guarantee we can continue to incur a reasonable amount of debt for school construction and other improvements in the future, while we preserve our good credit rating.

Debt Management Plan

"We've borrowed a considerable amount of money to help build Alaska. We can manage that debt, but it takes planning...lest that debt manage us in the future."

Governor Bill Sheffield

January 14, 1986

DEBT MANAGEMENT PLAN

An Overview

Without firm control of public debt the credit rating of all debt issuers in Alaska could be in jeopardy. Right now the State has an AA rating, the highest it's ever had, and all issuers within the State are rated as investment grade. But as oil prices decline, the share of revenues devoted to debt service will become an increasingly heavier burden. The State of Alaska cannot control the price of oil. What we can and must control is the amount of public debt.

Proper stewardship of public debt in Alaska can be accomplished through enactment of legislation covering four distinct needs. Taken separately, each of the four bills brings reasonableness to a different aspect of public debt. But viewed as a whole, this legislation provides a plan for comprehensive debt management for the first time. It assures that all State-supported debt, which is any debt paid from the State general fund, is subject to the control of the State Bond Committee. It is this total of State supported debt which the rating agencies look to in establishing the State's credit rating.

The first bill, House Bill 293, provides for orderly financial management in the event of a default by a municipality of its debt obligations. This legislation protects both issuers of public debt in Alaska and creditors.

House Bill 519 provides for the lease financing of public buildings through the Alaska State Housing Authority, acting as

the Alaska State Building Authority. The bill gives the State Bond Committee control over issuance of this debt as well as debt of the University of Alaska.

House Bill 520 gives the State Bond Committee control over the total amount and maturity of municipal school debt to be reimbursed by the State. The investment community needs to see some control on this fast-growing part of State supported debt.

The fourth bill, House Bill 521 places a limit on the issuance of general obligation debt by municipalities. Even with this limit some municipalities in Alaska will have some of the highest debt ratios in the United States. This legislation does not limit the ability to issue revenue bonds.

As background, Alaska's combined debt (State, municipal and school district) through the issuance of general obligation bonds was \$2.9 billion as of June 30, 1985. That amounts to about \$5,500 per Alaskan. When the amount of G.O. Bond debt for veterans' housing is included in the total, Alaska's per capita debt load is \$7,000.

That debt is manageable, but it takes planning. The State of Alaska has not had a bond authorization since 1980. Yet, the per capita interest on the State's general obligation bond debt is 20 times the national average. State policy limits debt service to five percent of unrestricted revenues, but that ratio is about 10 percent now and could climb to 16 percent by fiscal year 1989.

Again, this is a result of a combination of factors. World oil markets have seriously eroded the revenue Alaska receives from oil and gas production. At the same time, Alaska voters have authorized new debts, including \$325.0 million in school construction bonds so far in fiscal year 1985 alone. That translates into a possible 30 percent increase in State

reimbursement for local school debt--added costs which show up in the State operating budget.

These and other construction commitments are viewed by the nation's financial markets in different ways. On one hand, Alaska's rating agencies know this is a unique state, with enormous potential for generating public revenues and a young, dynamic workforce; on the other hand, the rating agencies look at all of Alaska's debt together, and while they are concerned about how much we borrow, they are more concerned that Alaska have controls on the growth of debt statewide.

To tackle that issue, Governor Sheffield is asking the Legislature to take the following initiatives:

- ° For school construction, honor all existing debt (as of March 31, 1986) under the current 80 percent reimbursement law, and limit the growth of future State reimbursement to \$10 million per year for school construction in the future.
- ° Set standards for school construction to guarantee more schools can be built with the funds available.
- ° Reimburse 100 percent of principal only for bonds authorized after April 1, 1986. This will encourage local districts to shop for the lowest interest rates.
- ° For local governments, limit debt to seven percent of assessed property values.
- ° Designate the Alaska State Housing Authority, acting as the Alaska State Building Authority, as the issuer of lease revenue bonds to finance public buildings. This

change was recommended by a citizens task force appointed by the Governor to study the issue in 1985.

- Designate the State Bond Committee as overseer of lease revenue bond issues and the total of State reimbursement for school debt (after March 31, 1986).

DEBT MANAGEMENT PLAN

Questions and Answers

QUESTION: Why do we need a debt management package?

ANSWER: The State has achieved a AA rating for its general obligation debt. However, the burden of paying the State's debt becomes heavier as revenues shrink. Now, with oil prices falling, the State must demonstrate to the rating agencies that it has the procedures, checks, and balances necessary to manage its debt obligations, if the State is to retain its high credit rating.

QUESTION: Why does the State have to be concerned about lease-purchase financing, University of Alaska, and municipal school debt? (HE 519, HB 520)

ANSWER: All or a major portion of the payments on this debt come from the State's general fund. These types of debt obligations are referred to as State supported debt. The total of State supported debt and State general obligation debt is the figure that Moody's and Standard and Poor's uses as the measure of the State's debt burden. As of June 30, 1985, this total was \$1,610.3 million, of which less than half, \$752.7 million, was State general obligation debt. Even the State's share of school debt alone, \$753.6 million, exceeded State general obligation debt.

QUESTION: Why should the State seek to limit municipal debt generally? (HB 521)

ANSWER: Because of high levels of State support to municipalities, they may be tempted to issue more debt than they could reasonably expect tax payers to support without the State aid. With State revenues declining, State support for municipalities eventually may suffer budget cuts along with other programs. The State needs to insure that such developments do not create avoidable financial difficulties for municipalities.

QUESTION: Is one reason for the State's concern with municipal debt levels that municipal credit ratings affect the State's ratings? (HB 521)

ANSWER: No. The State's rating is not affected by the rating of any or all municipalities. Even a municipal financial emergency or default would not ordinarily affect the State's rating. However, an emergency or default would be likely to tarnish all Alaska issuers somewhat, much as the New York City default affected all municipal debt issuers and the WPPSS (Whoops) default affected Northwestern U.S. and public power supply issues. This could significantly raise, for some period of time, the interest rates the State and other municipalities have to pay on bonds.

QUESTION: Is the WPPSS (Whoops) syndrome the reason for the introduction of the Municipal Financial Emergency Commission legislation? (HB 293)

ANSWER: It's one reason. However, a more important reason is to establish a mechanism that ensures satisfactory and early resolution of a municipal financial crisis so that provision of public services is impeded. Unlike nuclear power plants, municipalities cannot be mothballed. A mechanism for

satisfactory and early resolution also provides a valuable assurance to bond buyers.

QUESTION: What is the State's debt capacity and how is it determined?

ANSWER: In recent years, the State's debt policy has been that the State had capacity to issue additional general obligation debt if the debt service on the new bonds, combined with the debt service on outstanding bonds, would not exceed 5 percent of the State's unrestricted revenues. 5 percent is a level which few states with a AA credit rating exceed.

QUESTION: What is the current level of debt service relative to unrestricted revenues?

ANSWER: Considering only State general obligation bonds, the level for fiscal year 1987 is 5.7%. However, inclusion of all State supported debt which the rating agencies look at boosts the percentage to 11.5%. Falling State revenues will push the debt service to a level of 16.4% of revenues in fiscal year 1989.

QUESTION: Does this mean the State can't issue any more debt in the near future?

ANSWER: No. In the first place, the State could issue additional debt if it were willing to sacrifice its credit rating and that of State agencies and municipalities, whose ratings generally are tied to the State's. More to the point, additional issuance in modest amounts with a AA rating might be possible if the rating agencies were assured total debt obligations will remain limited. The limits and controls in Governor Sheffield's debt management package are an essential step in providing these assurances.

QUESTION: What happens to the State's reimbursement of municipal school debt that was authorized last fall? (HB 520)

ANSWER: That debt and all municipal school debt authorized before April 1, 1986, will be grandfathered under current law. This means State reimbursement for that debt will be under the current formula of 80% of principal and interest.

QUESTION: Does the Governor's budget contain the funds necessary for the State to reimburse the grandfathered bonds? (HB 520)

ANSWER: The amount required is contained in the Department of Education's fiscal note for HB 520. The estimated amount required for fiscal year 1987 is \$43 million. The Governor plans to support the \$43 million appropriation if the legislation is passed.

QUESTION: How much additional school debt could be reimbursed by the State under HB 520?

ANSWER: HB 520 would permit State reimbursement of \$10 million per year for debt authorized after March 31, 1986. Since the legislation establishes reimbursement at 100% of principal and requires the debt to have a 10 year term and constant principal payments, the \$10 million State reimbursement could support as much as \$100 million initially.

QUESTION: How does 100% of principal compare to 80% of principal and interest? (HB 520)

ANSWER: It depends on how much the interest is in relation to principal, which depends on the interest rates at the time the bonds are sold. At current interest rates, 100% of principal is approximately 89% of the current formula for reimbursement (80% of principal and interest). Thus, the new formula would provide

reimbursement at a level about 11% less than current reimbursement. 100% of principal would represent approximately 71% of total principal and interest.

QUESTION: How will it be decided what municipal school debt receives reimbursement if the \$10 million limit otherwise would be exceeded? (HB 520)

ANSWER: The Department of Education will establish a priority list based on criteria specified by law. Portions of school construction project costs also may be deemed ineligible for reimbursement based on design standards and regional cost differentials determined by the Department of Transportation and Public Facilities. Financing costs will not be eligible for reimbursement. State reimbursement will be reduced further by the interest earned on bond proceeds, except arbitrage which would have to be paid to the federal government under pending congressional legislation. These limitations will spread increasingly scarce State dollars further and enable the State to support more schools under the \$10 million limit.

QUESTION: Why is the limit set at only \$10 million? (HB 520)

ANSWER: There has been an explosion of authorization of municipal school debt. Between October 1, 1985, and March 31, 1986, total municipal school debt receiving voter approval is expected to exceed \$350 million. This would represent an increase of almost 50% in six months over the \$739 million school debt outstanding as of June 30, 1985. It is this explosion which will propel State payments for debt service to over 16% of State revenues by fiscal year 1989.

QUESTION: Can the limit be revised? (HB 520)

ANSWER: Certainly the limit could be amended by law in future legislative sessions. A report to the 1988 session of the legislature by the Department of Education on school construction needs is required in section 17 of HB 520. This would be an appropriate time to consider a revision. As an alternative, the State bond committee may revise the limit at any time in light of State credit conditions, school requirements, or any other reason.

QUESTION: Will the State Bond Committee decide which schools receive funding? (HB 520)

ANSWER: No. This will be determined solely by the Department of Education in establishing the priority list. The State Bond Committee will be concerned only with the credit implications for the State of the total amount of reimbursement to be paid.

QUESTION: What is lease-purchase financing? (HB 519)

ANSWER: Lease-purchase financing consists of debt obligations issued by a private developer or State agency to finance the construction or acquisition of facilities which are leased to the State. The lease payments made by the State are in an amount and duration which is equal to the principal and interest payments on the debt obligation. The debt obligation may take the form of a revenue bond or a certificate of participation in rent (CP or CCP as they are sometimes called). At the conclusion of the lease, title to the facility generally passes to the State.

QUESTION: Why is the Alaska State Housing Authority (ASHA) designated as the issuer of all lease-purchase financing for State facilities? (HB 519)

ANSWER: ASHA has previously issued lease revenue bonds for State facilities and is the current lessor of these facilities to the State. The designation of a single agency which has experience

and technical expertise in this area will improve accountability, efficiency, and control of these types of financing.

QUESTION: Why would ASHA be issuing debt under the name of the Alaska State Building Authority? (HB 519)

ANSWER: This name change, applicable only to the financing of public buildings, will improve the marketability of the debt. The alternate name avoids confusion about the issuer and debt since most state housing authorities issue debt only for the provision of low and moderate income housing. The name change helps recognize the higher credit standing accorded debt which is secured by payments from a state government for leases rather than from private individuals for rent.

QUESTION: What became of the State Office Complex Financing Task Force?

ANSWER: The Task Force, a body of executive branch officials, two legislators, and five members of the public with substantial financing experience, held hearings in the fall of 1985 and produced a report to the Governor which is available from the Treasury Division of the Department of Revenue. HB 519 implements the recommendations contained in that report.

QUESTION: Will ASHA be deciding what public buildings will be built or acquired? (HB 519)

ANSWER: No. Each branch of government and the University of Alaska would decide what facilities would be built or acquired. The facilities would have to meet the requirements and specifications of each branch or the University before the branch or University could be expected to execute the lease. No financing can occur without an executed lease.

QUESTION: Does this mean each branch or the University can enter into lease-purchase financings without legislative approval or approval by law? (HB 519)

ANSWER: Yes. However, the annual lease payments are subject to appropriation by the legislature as a matter of constitutional law. HB 519 requires lease-purchase agreements to state this fact so that it is clear to all parties. Because lease payments are subject to appropriation, lease-purchase financing is not debt from the standpoint of the State Constitution.

QUESTION: Could legislative approval or approval by law be required of lease-purchase financing by statute? (HB 519)

ANSWER: Alaska Supreme Court decisions indicate that this probably would violate the separation of powers doctrine and be unconstitutional. Legal questions of this caliber can easily derail debt financings because bond buyers will not purchase debt with such uncertainties about it. To achieve the same purpose, Governor Sheffield has pledged to seek legislative approval of any executive branch lease-purchase financings. The other branches and University might be expected to do the same.

QUESTION: Why does the State Bond Committee need to approve lease-purchase financings? (HB 519)

ANSWER: Lease-purchase financing is paid from the State general fund and, accordingly, is added into the State's debt burden by the credit rating agencies. Because of this, the State Bond Committee needs to control aspects of such financings which can affect the State's credit standing. This can include such things as the maturities of the debt, need for insurance, or the timing of the sale. The State Bond Committee will not be concerned with project justification or specification. This is the same manner

in which the Committee functions with respect to State general obligation debt.

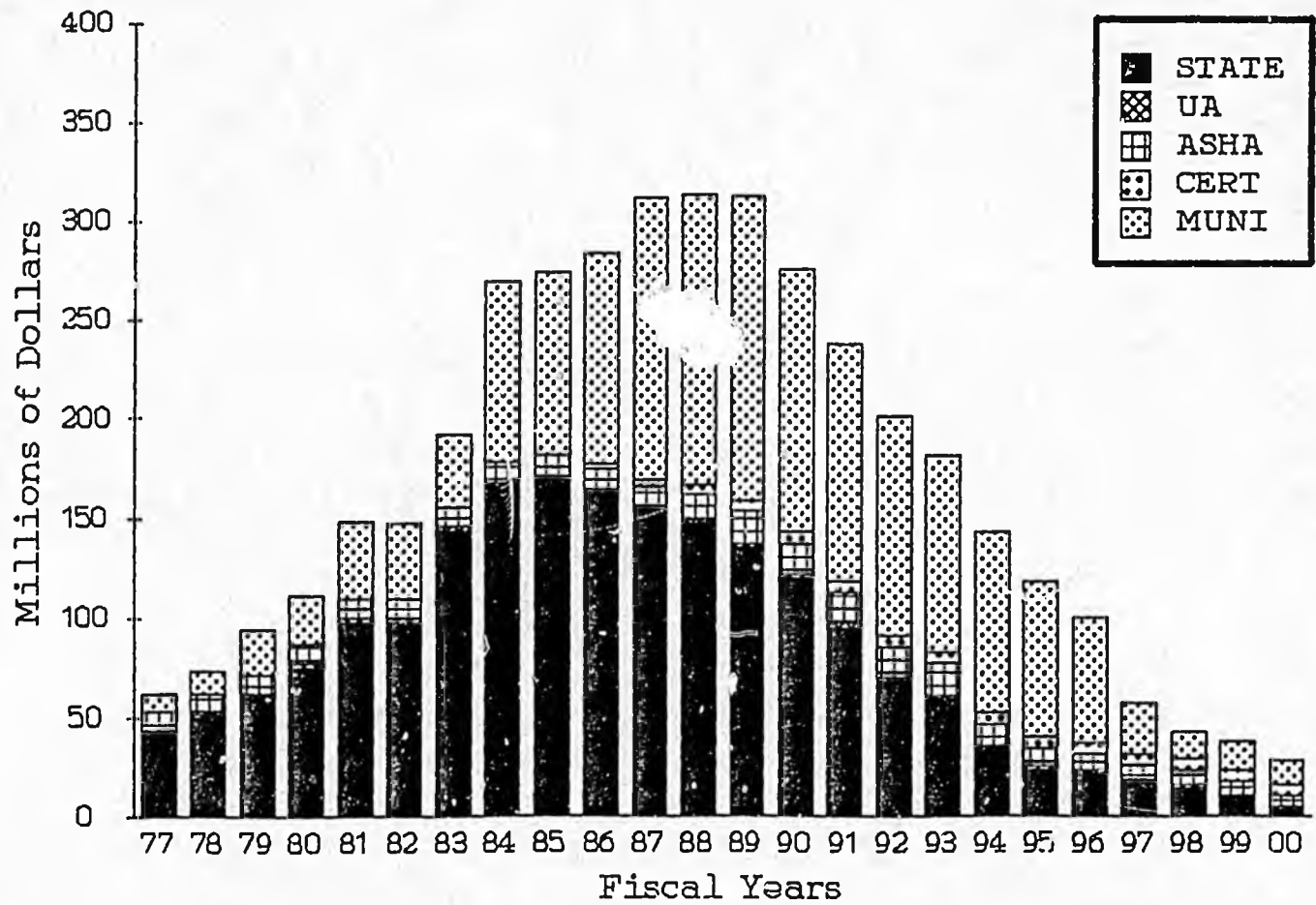
QUESTION: What municipalities would be forestalled from issuing additional debt under HB 521?

ANSWER: The North Slope Borough and the city of Wrangell currently have general obligation debt exceeding 7% of the full value of their property tax base. They would not be able to issue additional debt until their tax base has increased sufficiently or outstanding debt is paid down. The North Slope Borough should be able to issue additional debt again within two years. The city of Nenana would not be limited by the cap due to the exemption in HB 521 for self-supporting debt which is issued as a general obligation bond. Issuance of revenue bonds and refunding bonds are not limited by HB 521.

QUESTION: Why is the limit set at 7%? (HB 521)

ANSWER: National medians for municipal general obligation debt are in the range of 3% to 4% of full value. A higher level is appropriate for Alaska because the economy is still developing, with spurts of rapid growth in particular localities, if not statewide. However, a level significantly above 7% would not be an effective limit or provide the credit markets any comfort that Alaska is managing its debt.

Total Debt Service & Lease Payments (January 28, 1986)



Debt Service vs. Unrestricted Revenue

