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Municipal General Grant Land Entitlements
January 1990

INTRODUCTION

Decades of neglect by the federal government, resource exploitation by corporations and individuals outside Alaska and a lack of control of their destiny instilled in the fifty-five drafters of the Alaska Constitution a unique vision of what would become America's 49th state. The observations and experiences of the residents of the territory who were self-reliant and independent would manifest themselves throughout the constitution. Nowhere are these concepts more evident than in Article X of the constitution where the relationship between state government and local government are unselfishly defined.

> SECTION 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.
>
> SECTION 3. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

The delegates having been deprived of the right of self determination, thoughtfully remembered territorial governance and conferred autonomy and broad powers on municipalities of Alaska through the constitution. By offering incentives to encourage municipal incorporations, the State of Alaska furthers the goal of maximum local self-government contained in Article X.

Since 1962, one of these incentives has been receipt of state general grant land within the boundaries of the local government thereby providing a means of creating or expanding a tax base, a means to generate revenue through land sales and leases, a land base for community expansion and a land base for other public purposes.

In addition to these general grant land entitlements, municipalities can acquire otherwise unavailable state land under the public and charitable use statute (AS 38.05.810). Land acquired under this statute must be used for a public purpose that is available to the public at large. However, if the

municipality receiving the land has an outstanding municipal land grant entitlement, the acreage of the conveyance is subtracted from this balance.

Tide and submerged lands are the last category of state land made available to cities who were incorporated on or before the date of statehood. Under rigid guidelines established in the Alaska Land Act, cities could acquire tidelands adjacent their boundaries. This provision was codified AS 38.05.320.

BACKGROUND: MUNICIPAL LAND GRANTS

Legislative History

Alaska's first municipal land entitlement was created in 1962 when a new section was added to the Alaska Land Act. This section stated:

> Any city of the first class may apply in the manner prescribed by the director, within five years from the effective date of this Act, for a conveyance to the city of all surplus state lands located within the present boundaries of the city. "Surplus state lands" means all land owned by the state which is not presently used or for which there is no anticipated use by the state for governmental purposes.

This act, codified AS 38.05.347, although containing scant procedural guidance, resulted in the conveyance of thousands of acres of state land to a small number of municipalities throughout the state. This law was repealed June 21, 1976.

In 1963 the state legislature enacted the "Mandatory Borough Act". This act was unrelated to the Alaska Land Act but, like AS 38.05.347, created opportunities for municipalities to acquire state land for their local use. The intent of this act (ch 52, SLA 1963) was "to provide maximum local self-government" and caused the creation of numerous boroughs statewide. These boroughs encompassed the populated areas of the state. Although boroughs could not opt out of organizing, some local options existed in the law, such as final location of the municipal boundaries. The act, additionally, provided incentives in the form of cash grants and grants of state land.

Unlike the 1962 act, the "Mandatory Borough Act"(codified AS 07.10.150) provided a formula for the amount of the state land grant entitlement.

This act provided:

> (that) "an organized borough may select 10 per cent of the vacant, unappropriated, unreserved state lands located within its boundaries within five years after the date of

availability of state lands in the borough."

The act also provided certain necessary procedural guidance for the selection, survey and conveyance of these entitlement lands.

Several changes to the law were eventually enacted. In 1970 Chapter 213, SLA 1970 removed the five year selection deadline, and extended general grant land entitlements to first and second class cities by adding AS 07.05.040. In 1972 AS 07.10 was renumbered to AS 29.18.

Fifteen years of disputes between municipalities and the state over interpretation of the law culminated in the first major amendment to AS 29.18 in 1978. Some of the more important disputes illustrate the range of problems faced by the program.

-Land selections by municipalities had no time frames for adjudication and conveyance. Municipalities felt that the state deliberately dragged its feet on selections that it wanted to retain and that after approving selections that the conveyances were unnecessarily delayed.

-Southeast boroughs believed that getting concurrence of the land trust boards for conveyance of university, mental health and school trust lands was an unduly cumbersome process.

-The North Slope Borough had selected resource management and industrial lands at Prudoe Bay which were rejected in the state's interests.

-When municipalities selected agricultural lands they received only the agricultural interest. These lands often were more valuable for subdivisions and other uses than as agricultural land and municipalities wanted more than just the agricultural interest.

-Municipal land selections occurred on an ad hoc basis, often before the state could evaluate resources and perform its mandated land planning functions.

-Contention by the North Slope Borough that they have an absolute right to select 10 percent of the state land within their boundaries, irrespective the land classification.

Features of the new law were:

1) Unified home rule municipalities and all boroughs were granted acreage specific entitlements;

2) "vacant, unappropriated, unreserved" (VUU) land was now statutorily defined based on a two part test: 1) the grant type

under which the state acquired the land from the federal government and 2) the state's land classification system;

3) General grant land entitlements were limited to general grant land that the state acquired under sections 6(a) and 6(b) of the Statehood Act;

4) Entitlements were fixed as of July 1, 1978, based on the state's VUU land base on that date;

5) Entitlements were extended to municipalities incorporated after July 1, 1978, and a method of computing these entitlements was established;

6) Entitlements became vested property rights and could be fulfilled at any time before two years after the state's right to select federal land under 6(a) or 6(b) of the Statehood Act expired;

7) Selections must be approved or disapproved within nine months of selection and further patent issuance must occur within three months of survey plat approval;

8) Municipalities with an entitlement of less than one and one-half acre per capita could select vacant school, university or mental health trust lands;

9) Deficiency payments were established for municipalities whose entitlment land bases were unsuitable for residential, commercial or industrial purposes;

10) Authority for land exchanges between municipalities and the state when in the public interest was established;

11) Municipalities in litigation with the state over general grant land entitlements had to elect to benefit under the new law or receive the fruits of the litigation, but not both; and;

12) A comprehensive and detailed definitions section was added.

For the first time, a detailed and clear law existed, specifying important policies and procedures, under which general grant land entitlements would be administered.

In 1979, AS 29.18 was amended so that entitlements could no longer be fulfilled by selections filed up to two years after the state's selection rights with the federal government expired, but now must be made prior to October 1, 1980.

In 1981, to ensure that all entitlements were fulfilled, amendments gave municipalities 90 days to re-select new land upon rejection of a previous selection. This was necessary because in law a selection deadline had been established.

Municipal General Grant Land Entitlements
January 1990

In 1985 university trust land was removed from the group of lands available to a municipality with a per capita entitlement of less than one and one-half acres. This resulted from successful litigation by the University Board of Regents against the state over management of its land trust corpus.

In 1985 AS 29.18.201 - 29.18.205 were repealed effective January 1, 1986. These sections were the major provisions of the general grant land entitlement law. They were, however, replaced with the same provisions that were renumbered AS 29.65.010 - 29.65.140.

In 1987 the most recent amendments to the law occurred. The major provisions of the new law are:

1) Expands general grant entitlements to capture all state VUU land within the municipal boundaries between September 16, 1970 and January 1, 1988;

2) Bases entitlements of cities and boroughs incorporated after July 1, 1978, on the maximum amount of VUU land within their boundaries between incorporation and two years thereafter;

3) Establishes upper limit of entitlements to newly incorporated municipalities not to exceed 20 acres per capita based on the population of the municipality on the date of incorporation;

4) Extends selection deadline of boroughs and unified home rule municipalities listed in AS 29.65.010 to October 1, 1990.

5) Invalidates all selections of school or mental health trust lands occurring after October 4, 1985 the date of the mental health land trust litigation decision;

6) Prohibits a municipality from trading entitlement land for federal subsurface rights or any interest in the Arctic National Wildlife Refuge;

7) Categorizes material and public recreation classified land as VUU;

8) Categorizes resource management classified land as VUU if the classification occurred on or after September 1, 1983;

9) Specifies that the new entitlement for the Northwest Arctic Borough is a partial entitlement. Additional entitlement for the Northwest Arctic Borough and municipalities incorporating after the Northwest Arctic Borough depends upon the governor's recommendation to the legislature, after completion of the Northwest Area Plan, for additional entitlement consistent with

his general grant land entitlement policy.

10) Reinstates the 89,850 acre entitlement to the North Slope Borough lost through litigation in 1978.

A brief discussion of Alaska's statehood land grant entitlement will help focus the parallel municipal general grant land entitlements. The Alaska Statehood Act granted land entitlements to the state under sections 6(a) and 6(b) totaling 103,350,000 acres to be selected from the federal public domain. In 1962, when the state enacted the first municipal entitlement law, less than eight million acres of the statehood entitlement had been received from the federal government. There were less than 40 municipalities in the state at that time. Up until the 1978 law, a municipality was entitled to select 10% of the VUU land within the municipality without a date final for fulfilling that entitlement. This appears to have been intended as an ongoing process so that as the state received more of its entitlement, the municipality could continue to select 10% of that which was VUU.

The 1978 law, for the first time established date certain time lines. The pool of land from which to compute the 10% of VUU entitlement was limited to land within the municipal boundaries between the first date of eligibility for each municipality (September 16, 1970, or date of incorporation which ever came later) and July 1, 1978. The deadline for selection was, however, set two years after expiration of the state's selection rights from the federal public domain. The state's selection deadline was 25 years from statehood (1984). The Alaska National Interest Lands Conservation Act (ANILCA) extended this by ten years to 1994.

In 1978 the state had received about 35 million acres of its entitlement. The 1978 city certifications resulted in an allocation of 7,727 acres to 19 qualifying cities and 861,608 acres to 11 unified home rule municipalities and boroughs. A total of 869,335 acres of state land were granted to municipalities under the 1978 law.

Entitlement acreages for unified home rule municipalities and boroughs contained in AS 29.18.201, as amended in 1978, did not always represent fulfillable entitlements. When the state legislature was considering provisions to be incorporated into the AS 29.18 amendments, they established acreage entitlements for each of the unified home rule municipalities and boroughs based on a complicated scheme that considered population, areal extent and availability of state land within the municipal boundaries. The Municipality of Anchorage and the Kodiak Island Borough had considerably less state VUU land within their boundaries than was needed to meet the statutory entitlement.

The Municipality of Anchorage received $4,000,000 as deficiency payment under AS 29.18.208 for 4,000 acres of entitlement land and in 1985 entered into an agreement with the state to zero out

a yet unfulfillable entitlement with 4,628 designated acres of state land within the municipal boundaries. Prior to the agreement, 20,671 acres of land had been approved or patented to the municipality. Under the settlement Anchorage can also receive up to 1,000 acres of National Forest Community Grant land at Girdwood if land is ever conveyed to the state.

The Kodiak Island Borough likewise entered into an agreement with the state to zero out its entitlement with 48,700 designated acres of state land within their boundaries. As part of the agreement the borough would return to the state 3,069 acres of the 13,960 acres of land that had been patented or approved for patent prior to the agreement. The borough would also receive up to 17,800 acres of land under selection by ANCSA corporations if the land was ever available to the state.

The amount of additional state land granted to cities by the 1987 amendments is 11,892.3 acres. The state had about 80 million acres of its entitlement in 1987. The major affect of the new law, however, is re-establishing a 1978, 89,850 acre entitlement to the North Slope Borough and increasing the 13,000 acre entitlement certified under the old statute to the new Northwest Arctic Borough to 133,920 acres. In round figures about 236,000 acres of state VUU land will be conveyed to two boroughs and nine cities under the 1987 law.

VUU Land Definitions History

Between 1963 and 1978, municipal entitlement selections were limited to "vacant, unappropriated, unreserved land". It appears, by extension of application, that state administrators conceptually adopted the similar guidelines used by federal administrators when statehood land selections were being adjudicated. Neither statutory nor policy definitions existed for VUU land and as a result municipalities and the state disagreed about whether specific parcels of land were VUU.

In 1978, the amended law adopted specific definitions for VUU land.
Following were the limitations placed on this definition:

1) Land must be Statehood Act section 6(a) or 6(b) land that has been patented or tentatively approved to the state and excludes the mineral estate;

2) Land cannot have been set aside by statute for one or more particular uses or purposes;

3) Land must be unclassified or if classified is classified agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry.

The definition of VUU land specifically excluded minerals citing section 6(i) of the Statehood Act. Section 6(i) was incorporated into the Alaska Land Act as AS 38.05.125.

Thus, "VUU" was defined clearing the way to settling many of the disputes between the state and municipalities. All of the classifications that are defined VUU are categories which the state was already allowed to dispose of by law. In 1983 the state's land classification regulations were changed so that commercial, industrial, open-to-entry, private recreation, residential and utility classifications were subsumed by a new 'settlement' classification. The effect was that unclassified land, settlement land, grazing land and the agricultural interest in agricultural land were available to municipalities for fulfillment of entitlement.

In 1987 three additional categories were added to the list of VUU classifications: 1) material; 2) public recreation; 3) resource management if classified as such on or after September 1, 1983.

1978 Entitlement Status

On July 1, 1978, there were 139 cities incorporated under state law. Certifications of entitlement under ch 180, SLA 1978, resulted in 19 cities receiving entitlements totalling 7,727 acres.

In 1978 the legislature redesignated university and mental health trust land state general grant land (Chap 182, SLA 1978). Based on what they believed to be representations by DNR that these lands would now be, not only general grant land, but also VUU available for entitlement computation as well as available for fulfillment of entitlement. Three cities in Southeast Alaska certified as "zero entitlement" believed that the department erred in the certifications because redesignated mental health trust land as general land statewide was not included as part of the land base within their corporate boundaries for the certification process. Petersburg filed suit in State Superior Court (1JU-78-1109 civ) and Kupreanof and Wrangell administratively appealed their zero entitlement certifications. The state reached an agreement with Petersburg and granted 10% of the mental health lands within their boundaries to the city. This amounted to 461.27 acres of land. The conveyances were under the authority of AS38.05.315(a) [renumbered AS 38.05.810].

As resolution of the other two appeals, the department extended the terms of the Petersburg settlement. Kupreanof received 180.82 acres of mental health land and Wrangell received 310 acres of mental health land.

Although all land selections for municipalities with entitlements from the 1978 law are in place, somewhat less than half of the

land has been patented to them. The state cannot convey land to a municipality until the federal government has patented the land to the state. However, all 1978 municipal selections have, with few exceptions, been approved or rejected. When the state approves a selection, the municipality assumes management responsibility as if it owned the land. By statute municipalities can create third party interests on approved selections prior to patent with the approval of the director. The director generally confers broad management authority to a municipality on an approved selection unless there is an overriding public interest requiring continued involvement by the state.

1988 Entitlement Certification Results

Between the 1978 round of certifications and the 1987 amendments to AS 29.65, eight cities incorporated under state law. Only Thorne Bay had state general grant land within its boundaries that was VUU and in 1982 their entitlement was established at 612 acres. This was in error and was corrected to the proper figure of 675 acres in the 1988 certification.

Three other cities received land from the state during the period July 1, 1978, to January 1, 1988. Tenakee Springs had entered into an agreement in 1977 with Alaska Lumber and Pulp Company (AL&P) and the Department of Natural Resources. The purpose of the agreement was to "permit the proposed operations [AL&P timber contract with the USFS on Chichagof Island] to proceed in a climate of consensus and cooperation". The state's obligation in the agreement was:

> "The state will convey to the City title to any selected lands conveyed to the State by the Bureau of Land Management, except that the State may retain title to those sites necessary for present or anticipated essential public purposes. The State will convey to the City all tidelands and submerged lands within or subjacent to the Sunny Cove dump, and will expeditiously consider the City's application for conveyance of other tidelands and submerged lands adjacent to any selected lands conveyed to the State by the Bureau of Land Management."

The state's part of the agreement was not carried out and in 1980 Tenakee Springs filed suit against the state in State Superior Court (1JU-80-1666). An out of court settlement resulted in a split of the state lands within the city boundaries, granting the city 2,958 acres and leaving in state ownership 1,027 acres.

Whittier sought and received a legislative grant of state land. Under chap 73, SLA 1984 Whittier received 600 acres of state general grant land within its boundaries.

Pelican sought and received a legislative grant of 8.863 acres of state land under Ch 53, SLA 1985.

The amendments to AS 29.65 in 1987 resulted in certifications of new or enhanced entitlements to nine cities of the 147 cities in existence on January 1, 1988. Kupreanof, Petersburg, Pelican, Tenakee Springs, Whittier and Wrangell each had state general grant land within their boundaries that were VUU. The previous agreements, settlements and legislation, however, resulted in the entitlements being certified at zero acres. The conveyances to Kupreanof, Petersburg and Wrangell were done under the authority of AS 38.05.810 and as provided in AS 29.65____ if a municipality with an entitlement is conveyed land under .810 it may be charged against the entitlement. Wrangell administratively appealed this certification because the amount of land that they received in 1978 was less than 10% of the VUU land that was available for the 1988 certification. The director reconsidered the facts and agreed with the City of Wrangell that their entitlement should be the full 10 percent of the VUU land within the city boundaries.

BACKGROUND: TIDELAND CONVEYANCES TO MUNICIPALITIES

Legislative History

In addition to the general grant land entitlements, qualified cities within Alaska have been conveyed tide and submerged land. To understand the purpose of these conveyances of public trust land it is necessary to review federal mandates for management of tide and submerged land prior to Alaska's admission into the Union.

By act of Congress, on May 17, 1884, Alaska was established as a judicial district with a governor and district court system. The general law of Oregon was applied to the district under this act.

On May 14, 1898, Congress passed an act extending the homestead laws to the District of Alaska and providing for right of way for railroads within the district. The act declared that "all such rights to [tide lands and beds of any navigable waters] shall continue to be held by the United States in trust for the people of any state or states which may hereafter be erected out of said District [Alaska]."

The Organic Act, approved by Congress August 24, 1912, created the Territory of Alaska and granted the new territory legislative powers through an elected legislative assembly. The Organic Act further extended the Constitution of the United States and all laws not locally inapplicable, to the Territory of Alaska.

Thus territorial tidelands constituted a federal trust early in Alaska's history and as such could not be disposed of through

lease or sale. Additionally, permanent improvements were not authorized to be constructed upon tide and submerged land.

The importance of improved tidelands to the vitality of the territory's economy and the health of its people is readily apparent. It was a territory whose economy, mobility and recreation were intimately tied to the sea. Log transfer facilities, seafood processors, municipal docks, private boat ways and even residences were partially or wholly constructed on tidelands with no method for individuals or businesses to acquire proper authorization for use. The need for these activities was readily recognized by the federal managers. However, the mechanism for authorizing such use was non-existent.

In full recognition of these shortcomings, Congress enacted a law on September 7, 1957 (P.L. 85-303), that conveyed tidelands adjacent surveyed townsites to the territory. The conveyance was for tidelands and all improvements and natural resources between the line of mean high tide and the pierhead line. The pierhead line was defined as a "line parallel to the existing line of mean low tide at such distance offshore from the line of mean low tide that encompasses to the landward all stationary, manmade structures in existence as of February 1, 1957". Under this law acceptance by the Secretary of Interior of new townsite surveys effected conveyances of attendant tidelands to the territory.

The act authorized the territory to manage and dispose of any tract of tidelands acquired under the act for municipal, business, residential or other beneficial purposes. A tidelands occupant or the occupant's successor in interest had a preference right to acquire an improved tract if a disposal occurred. These improved tracts could be conveyed to the incorporated town or school district. However, if this occurred, the town or school district must accord any occupant a preference right in any disposals contemplated in the future.

The Army Corps of Engineers was given the authority to establish pierhead lines for all surveyed townsites to enable conveyances to the territory. This process was initiated soon after passage of the act. Alaska's statehood interrupted this process with the conveyance of all tide and submerged land under section 6(m) of the statehood act to the new state.

The Alaska Legislature incorporated specific language in the Alaska Land Act to recognize and implement the provisions of the September 7, 1957, federal law. The provisions were soon codified AS 38.05.320(b).

The Alaska Land Act (ch 169,SLA 1959) section 5(c) enabled the conveyances of tidelands to municipal corporations. Qualifications in the act were:

1) The corporation must have been incorporated on or before January 3, 1959;

2) Tidelands subject to conveyance lay between the mean high tide line and the pierhead line, the harbor line or in their absence, a line subject to the approval of the director;

3) The corporation had to prepare a plat of the area conveyed showing all structures and improvements thereon and each tract that was occupied or developed with the owner or claimant noted; and,

4) The corporation had to recognize preference rights for occupied and developed tracts.

The tidelands conveyances to municipal corporations were mandatory and gave the department few discretionary powers over the process.

An amendment to AS 38.05.320(b) occurred in 1964 (ch 81, SLA 1964) when "municipal corporation" was changed to "(h)ome rule cities and cities of the first class." These cities had to have been incorporated on or before April 1, 1964, in order to qualify.

Another amendment to AS 38.05, although unrelated to AS 38.05.320(b), did provide for another type of tidelands conveyance to municipalities. Chapter 108, SLA 1974 (codified AS 38.05.323) allowed home rule and general law municipalities to apply for tidelands between mean high tide and mean low tide adjacent public recreation area facilities if the facility was developed under the terms of P.L. 507 (70 Stat. 130) and it was conveyed from the state to the municipality.

Under AS 38.05.320(b) 25,224.3 acres of tidelands were conveyed to 28 cities from Barrow to Saxman. Apparently no tidelands have been conveyed under AS 38.05.323.

GENERAL GRANT LAND ENTITLEMENT DISCUSSION

There are three categories of general grant land entitlements under AS 29.65:

1) A specified statutory entitlement (AS 29.65.010) for unified home rule municipalities and organized boroughs;

2) 10% of the maximum total acreage of vacant, unappropriated, unreserved (VUU) land within the boundaries between September 16, 1970 and January 1, 1988 for cities incorporated as of July 1, 1978 (AS 29.65.020); and

3) 10% of the maximum total acreage of VUU land within the boundaries between date of incorporation and two years after that

date for cities incorporated after July 1, 1978 (AS 29.65.030).

The governor's general grant land entitlement policy required by Section 11, Chapter, 34 SLA 1987 only affects the Northwest Arctic Borough and other municipalities incorporated after formation of the Northwest Arctic Borough (incorporated June 2, 1986). Thus, only general grant land entitlements pursuant to AS 29.65.030 for municipalities incorporated on or after June 2, 1986 will be affected by this policy document.

Section 2 ch 34 SLA 1987 significantly amended AS 29.65.030 by adding a new upper entitlement limit based on municipal population on the date of incorporation. [redacted] imposed to help dissuade formation of municipalities for the sole purpose of obtaining large general grant land entitlements from the state. Since all densely populated areas of the state are presently incorporated, newly incorporated areas will generally be rural in character. State land within these areas is [redacted] not well suited for development or other municipal purposes. Creating large entitlements to be fulfilled from the state's rural land base may not be in the state's interests.

The per capita limit was established at 20 acres based on the highest per capita entitlement to any municipality statewide created by the 1978 amendments to the municipal entitlement law. The Matanuska-Susitna Borough has an entitlement of 355,210 acres which is about 20 acres per capita based on the population of the borough in 1978.

From inception, the municipal entitlement law has undergone a gradual philosophical broadening of purpose. Where the early versions of the law were focused on making land available that was suitable for development for residential, commercial or industrial use, the most recent version of the law shifts to include public purpose land. This shift occurs through inclusion of public recreation classified land in the categories of land available to municipalities.

PURPOSES FOR GENERAL GRANT LAND ENTITLEMENTS

The central theme of municipal entitlements today is to provide land to municipal corporations for the purposes of:

1) Siting public facilities/aiding community expansion;

2) Providing a means of revenue production through sales or lease which also expands the municipal tax base; and;

3) Providing local public recreation opportunities.

The provisions of Alaska Native Claims Settlement Act (ANCSA) defeated state's title to selected and tentatively approved land within the vicinity of ANCSA village corporations. This results in extremely limited or totally absent state land bases in or near ANCSA cities (population centers) for a new borough to realize the first two purposes. The provisions of ANCSA 14(c)(3) do however, compensate for this shortcoming by requiring that an ANCSA village corporation convey up to 1,280 acres of land to the municipal corporation. This provision includes title to the remaining surface estate of the improved land and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs.

The results of AS 29.65 and ANCSA must be viewed together. If the land available under these two laws is insufficient to fulfill municipal land entitlement purposes, and other state land unavailable under AS 29.65 will meet the needs, then the municipality may make a written request, including justification, to the Department of Natural Resources for the specific additional land which increases their entitlement.

SUMMARY

The State of Alaska in furtherance of the goal of maximum local government committed in 1978 7,727 acres of state land to 19 cities and another 861,608 acres to 11 unified home rule municipalities and boroughs. With few exceptions land selections have been approved and the municipalities actively manage this land base of nearly 870,000 acres.

New incorporations after 1978 resulted in another 14,000 acres of entitlement to one city and one borough.

The 1987 amendments to AS 29.65 created new entitlements for two cities totalling over 1,200 acres, reestablished an 89,850 acre entitlement for a borough and expanded entitlements for seven cities and one borough for over 130,000 new acres.

Over 1,000,000 acres of state land have been committed under AS 29.65 to 41 municipalities statewide for local use. The state has patented nearly 430,000 acres of uplands to 48 municipalities since statehood and 25,000 acres of tidelands to 28 cities.

As the current trend toward more borough incorporations continues, general grant land entitlements promise to play a role in the viability of the new municipalities in a difficult economic environment.

MUNICIPAL ENTITLEMENT CERTIFICATION SUMMARY

City	1978 Entitlement	Other Entitlement	1988 Entitlement	New Acres Under Ch34, SLA 1987
Anderson	0.0	0.0	1,182.0	1,182.0
Bethel	40.0	0.0	0.0	
Cordova	235.0	0.0	0.0	
Delta Junction	400.0	0.0	481.8	81.8
Dillingham	1.0	0.0	0.0	
Fairbanks	15.0	0.0	0.0	
Homer	16.0	0.0	0.0	
Hoonah	15.0	0.0	0.0	
Houston	405.0	0.0	0.0	
Kenai	307.0	0.0	0.0	
Ketchikan	0.5	0.0	4.0	3.5
Kodiak	32.0	0.0	0.0	
Kupreanof	0.0	180.8	0.0	
North Pole	0.5	0.0	0.0	
Ouzinkie	240.0	0.0	0.0	
Pelican	0.0	8.9	0.0	
Petersburg	0.0	461.3	0.0	
Port Alexander	0.0	0.0	53.0	53.0
Port Lions	35.0	0.0	0.0	
Seward	562.0	0.0	565.0	3.0
Skagway	500.0	0.0	7,977.0	7,477.0
Soldotna	14.0	0.0	0.0	
Tenakee Springs	0.0	2,958.0	0.0	
Thorne Bay	0.0	612.0	675.0	63.0
Valdez	4,805.0	0.0	7,593.0	2,788.0
Whittier	0.0	600.0	0.0	
Wrangell	0.0	310.0	551.0	241.0
Yakutat	104.0	0.0	0.0	
TOTALS	**7,727.0**	**5,131.0**	**19,081.8**	**11,892.3**

TABLE 1

CONVEYANCE SUMMARY: UNIFIED HOME RULE MUNICIPALITIES AND BOROUGHS

CONVEYANCES BY AUTHORITY

City or Borough	Incorp	.347	AS 07	AS 29	.810	.320	Legislative	Other
Aleutians East Borough	Oct-87							
Bristol Bay Borough	Oct-62			2,672.7				
City & Borough of Juneau	Jul-70			3,622.8	11.1	852.9		
City & Borough of Sitka	Dec-71	1.8		1,309.3	6,084.6	194.6		0.8
Fairbanks North Star Borough	Jan-64			83,984.9	44.8			
Haines Borough	Jul-86			1,062.8				
Kenai Peninsula Borough	Jan-64			79,208.8	181.8			117.0
Ketchikan Gateway Borough	Sep-63			4,033.3				
Kodiak Island Borough	Sep-63			11,864.0	14.3			
Lake & Peninsula Borough	Apr-88							
Matanuska-Susitna Borough	Jan-64		40.3	201,823.4	408.3			79.3
Municipality of Anchorage	Sep-75	391.1		12,863.7	5,887.1	1,328.8		1,256.4
North Slope Borough	Jul-72							
Northwest Arctic Borough	Jun-86							
	TOTALS	392.9	40.3	402,133.8	12,614.1	2,375.9	0.0	1,453.3

* Sec. 4. AS 38.05.290 is amended by adding a new subsection to read:

(b) Consistent with the best interests of the state, in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under AS 29.18.201 - 29.18.213.

* Sec. 5. AS 29.18.190, 29.18.200, and 29.18.420 are repealed.

* Sec. 6. REPORT. Within 30 days after the convening of each regular session of the Eleventh and Twelfth Legislatures and the first regular session of the Thirteenth Legislature, the director of the division of lands shall report to the legislature on the implementation of AS 29.18.201 - 29.18.213 in sec. 2 of this Act.

* Sec. 7. This Act takes effect July 1, 1978, except that AS 29.18.208, enacted by sec. 2 of this Act, takes effect July 1, 1980.

Approved by the Governor: July 18, 1978
Actual Effective Date: July 1, 1978 (except AS 29.18.208 (sec.2) effective July 1, 1980)

LAWS OF ALASKA

1978

Source: FCCS SCS CSHB 720

Chapter No.: 181

AN ACT

Relating to the disposal of state land; and providing for an effective date.

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

* Section 1. DESIGNATION OF LAND FOR DISPOSAL. (a) The director of the division of lands in the Department of Natural Resources shall, no later than November 1, 1978, designate 30,000 acres of state land for disposal under the homesite entry program established in AS 38.08 and the open-to-entry program established in AS 38.05.077.

(b) Not less than 25 per cent of the former mental health land described in sec. 3(a) of this Act which is located within a municipality entitled to select land under AS 29.18 shall be designated for disposal in fiscal year 1979 under AS 38.04.020 enacted in sec. 5 of this Act. A municipality may select that former mental health land to satisfy its entitlement under AS 29.18 but title to the land may not be transferred to the municipality by the director until the governing body of the municipality certifies that disposal programs will be undertaken by the municipality which will meet the needs of persons residing in the municipality.

* Sec. 2. ASSESSMENT OF SUPPLY AND DEMAND OF LAND. (a) The director of the division of lands in the Department of Natural Resources shall assess the supply and demand for land under the homesite entry program established in AS 38.08 and the open-to-entry program established in AS 38.05.077. The assessment shall be based on applications submitted by persons in the state who are eligible to participate in those disposal programs. The applications shall be made on forms supplied by the division of lands which shall be available to the public at each district office of the division of lands in the state. The applications shall contain provisions so that each person may indicate a preference for the type of disposal program that best suits his

needs. To the extent possible, the director of the division of lands shall determine by region of the state which disposal program or combination of programs specified in this subsection is suited to the differing needs of eligible persons residing in that region.

(b) The closing date for the initial determinations of eligibility is October 1, 1978. The director of the division of lands in the Department of Natural Resources shall determine the eligibility of persons submitting applications and before November 1, 1978, advise them whether they are eligible to participate in disposals under AS 38.08 or AS 38.05.077. Persons determined to be ineligible shall be advised of the reason for their disqualification and the actions they may take to establish eligibility. The director shall compile a master list of all persons found to be eligible to participate in the disposals specified in (a) of this section. The master list shall be revised at regular intervals after the initial determination period so that it accurately reflects the eligibility of applicants.

(c) The director of the division of lands shall present to the legislature the plan for the disposal of land under the programs specified in (a) of this section. The plan shall be submitted not later than the 15th day of the First Session of the Eleventh Legislature. The plan shall set out the location of the land for disposal and the amount of acreage to be included in each program.

* Sec. 3. REDESIGNATION AND DISPOSAL OF MENTAL HEALTH LAND. (a) Land granted to the state under the Mental Health Enabling Act of 1956, 70 Stat. 709, and patented to or approved for patent to the state on July 1, 1978 and land designated as mental health land which was received by the state in exchange for land granted under that federal land grant is redesignated as general grant land and shall be managed and disposed of by the Department of Natural Resources under applicable provisions of law.

(b) The redesignation of mental health land in (a) of this section does not affect the validity of a deed, contract for sale, lease, easement, right-of-way, permit, mineral lease disposal, or a reservation for public use of that land by statute, in effect before July 1, 1978 or land management actions including use classifications under AS 38.05.300, and interagency land management assignments of that land made by the Department of Natural Resources before July 1, 1978.

* Sec. 4. AS 37 is amended by adding a new chapter to read:

CHAPTER 14. MENTAL HEALTH FUND.

Sec. 37.14.010. MENTAL HEALTH FUND ADVISORY BOARD CREATED. (a) There is created in the Department of Revenue the Mental Health Fund Advisory Board composed of the director of the division of mental health, the chairman of the Mental Health Advisory Council, and the commissioner of the Department of Revenue.

(b) The board shall elect a chairman from the membership of the board. Members serve without compensation but are entitled to per diem and travel expenses authorized by law for other boards.

Sec. 37.14.020. POWERS AND DUTIES OF BOARD. The board has the following powers and duties:

(1) to hold regular meetings and special meetings considered necessary;

(2) to have prepared an annual accounting of the total principal and income of the mental health fund established in sec. 30 of this chapter;

(3) to prepare long-range investment plans for the fund established in sec. 30 of this chapter.

Sec. 37.14.030. MENTAL HEALTH FUND ESTABLISHED. (a) There is established as a separate fund the mental health fund.

(b) The principal of the fund consists of sums transferred under sec. 70 of this chapter.

(c) The income of the fund consists of the interest and dividends earned from investments of the fund under sec. 60 of this chapter.

Sec. 37.14.040. DUTIES OF COMMISSIONER OF REVENUE. The commissioner of revenue is the treasurer of the fund and shall

(1) act as official custodian of the cash and securities belonging to the fund and provide adequate safe deposit facilities for them;

(2) receive cash belonging to the fund;

(3) collect the principal on securities acquired for the fund and deposit it in the fund;

(4) collect interest and dividends earned on investments of the fund and credit the income account of the fund;

(5) invest and reinvest the principal of the fund in accordance with sec. 60 of this chapter.

Sec. 37.14.050. FUND UTILIZATION. The principal of the fund shall be retained in the fund for investment as specified in sec. 60 of this chapter. The income of the fund may not be appropriated for a purpose other than the support of the state mental health program.

Sec. 37.14.060. INVESTMENTS. (a) The commissioner of revenue, with the approval of the board, may invest the principal of the fund in the same manner specified in AS 39.35.110 for the investment of surplus pension funds.

(b) The commissioner of revenue may

(1) invest and reinvest the principal of the fund;

(2) sell, exchange, convey, transfer, or otherwise dispose of an investment of the fund by private

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM April 12, 1991

SUBJECT: Municipal land selection of former mental health lands

TO: Representative Jerry Mackie, Chair
House Community & Regional Affairs Committee
ATTN: Dave Gray

FROM: Jack Chenoweth
Legislative Counsel

Section 1(b), ch. 181, SLA 1978 provides:

> (b) Not less than 25 percent of the former mental health land described in sec. 3(a) of this Act which is located within a municipality entitled to select land under AS 29.18 shall be designated for disposal in fiscal year 1979 under AS 38.04.020 enacted in sec. 5 of this Act. A municipality may select that former mental health land to satisfy its entitlement under AS 29.18 but title to the land may not be transferred to the municipality by the director [of the division of lands, Department of Natural Resources] until the governing body of the municipality certifies that disposal programs will be undertaken by the municipality which will meet the needs of persons residing in the municipality.

Section 3(a) referred to is, as you know, the bill section that redesignated former mental health land as general grant land of the state.

You have asked whether this provision continues to have operative effect.

Though drafted as uncodified law, the provision is in fact one of continuing duration--its effect would end only when the last municipality entitled to make a selection under that subsection presented the required certificate of its disposal program. Section 1(b) was not repealed by its own terms and has not been repealed since its enactment by another Act of the legislature.

Section 1(b) therefore continues to have operative effect. It is clearly applicable to municipalities that had selection rights to exercise under former AS 29.18. It is,

however, applicable, in my judgment only to a very limited body of land, that being "former mental health land . . . located within a municipality entitled to select land under AS 29.18 [that was] designated for disposal in fiscal year 1979. . . ." If that land was not so designated, then section 1(b) has nc applicability.

As you can see, the amount of land that this provision would affect is probably insignificant. As a practical matter, then, the provision may no longer be applicable.

JBC:pl
91-253.plm

MUNICIPAL CONVEYANCE SUMMARY CHART
(All State Lands)

Municipality/Borough	Total Entitlement Acreage	Patented Acreage	Approved Acreage	Remaining Entitlement
Municipality of Anchorage	44,893.0	17,480.0	3,196.1	24,221.9
Kenai Peninsula Borough	155,780.0	60,652.8	38,739.7	56,387.5
Fairbanks North Star Borough	112,000.0	66,624.8	23,947.3	21,427.9
Matanuska-Susitna Borough	355,210.0	193,452.0	162,250.7	492.7
Haines Borough	2,800.0	780.9	2,256.0	-0-
Sitka, City and Borough	10,500.0	6,152.0	9,776.5	-0-
Ketchikan Gateway Borough	11,593.0	1,855.8	9,546.4	190.8
Juneau, City and Borough	19,584.0	2,842.9	19,155.0	-0-

MUNICIPAL CONVEYANCES SUMMARY REPORT
MENTAL HEALTH ACREAGE

	BOROUGH/ MUNICIPALITY	SELECTED	APPROVED	PATENTED	TOTAL
COPPER	Haines	.70	530.35	640.14	1,171.19
RIVER	Juneau	111.87	3,846.65	1,495.67	5,454.19
MERIDIAN	Sitka	0	806.78	513.11	1,319.89
	Ketchikan	.20	4,440.06	1,183.44	5,623.67
Subtotal - Meridian Total		112.77	9,623.84	3,832.33	13,568.94

	BOROUGH/ MUNICIPALITY	SELECTED	APPROVED	PATENTED	TOTAL
SEWARD	Mat-Su	1,105.00	1,767.14	5,381.98	8,254.12
MERIDIAN	Houston	0	0	87.29	87.29
	Kenai	9,966.67	1,890.02	3,282.24	15,138.93
	Anchorage	1,367.89	0	752.96	2,120.85
Subtotal - Meridian Total		12,439.56	3,657.16	9,504.47	25,601.19

	BOROUGH/ MUNICIPALITY	SELECTED	APPROVED	PATENTED	TOTAL
FAIRBANKS	Fairbanks	0	7,126.11	9,343.93	16,470.04
MERIDIAN					
Subtotal - Meridian Total		0	7,126.11	9,343.93	16,470.04

	SELECTED	APPROVED	PATENTED	TOTAL
Total	12,552.33	20,407.11	22,680.73	55,640.17

HB

199

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 8, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: _____

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 199

HOUSE BILL NO. 199 INVESTMENT POOLS FOR PUBLIC ENTITIES

"An Act relating to investment pools for public entities; and providing for an effective date."

RECOMMENDATIONS: [X] the same title
be replaced with CS HB 199 [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[X] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[X] zero fiscal note DCRA, Dept. of Rev. [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Mackie	X	Richard Fos Rev		X	
Bettye Davis	X			X	
		Rhett Davis		X	
		J. G. Gonzales		X	

CHAIRMAN'S SIGNATURE

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907) 586-1325, Fax (907) 463-5480

February 1991

Alaska Municipal League
Investment Pool Legislation and Program Justification

The Alaska Municipal League (AML) urges the passage of legislation to authorize the formation of investment pools under Title 29. The AML wishes to form an investment pool to improve the efficiency and effectiveness of municipalities and other local public entities statewide in the investment of their short-term, "idle," public funds. The objectives of the pool's investments, in order of priority, will be 1) security, 2) liquidity, and 3) return. In the absence of an Alaska "joint powers act," the AML is seeking legislation to authorize a public entity or a nonprofit corporation to form and enter into agreements for the purpose of investing funds.

Many AML member municipalities and school districts do not have banks in their communities much less investment options. In certain cases, municipalities lost funds when several banks folded in the 1980's because their funds were not collateralized. As federal and state financial assistance to municipalities have declined, making the most of local funds through interest revenues continues to be important.

The AML membership of over 125 municipalities passed a resolution in November 1989 directing the AML Board of Directors to investigate the feasibility of a municipal investment pool. The AML formed a committee of municipal officials to investigate the need and feasibility of a pool. The committee surveyed municipalities and school districts in June 1990 to gather information on local investment practices and interest in participating in a pool. Over 50 responses were received indicating:

- Idle funds may be sufficient to form a pool
- A significant number of respondents do not have written investment policies
- Few municipalities and school districts employ investment professionals
- Few do not collateralize their investments
- Most respondents invest in a broad variety of investment instruments
- Some respondents indicated that they had investments of over 2 years in terms which may not be prudent for these public funds
- An investment pool would broaden the investment options available to even the most sophisticated, investor municipalities/school districts
- The less sophisticated municipalities/school districts would benefit from safekeeping, yield of a pool, and professional advice.

The committee reviewed investment pools operating in 13 states. These pools are operated within the state treasurer's office or a independent non-profit corporations. The committee is leaning toward using a money market fund limited to very secure types of investments. The return on investments would be improved by increasing volume and term through pooling rather than on increasing risk.

In September 1990, the AML Board authorized the committee to proceed with establishing an investment pool by introducing legislation and distributing a request for proposal for a firm(s) to assist the AML with managing pool and investing the funds on behalf of entities who choose to participate in the pool.

A request for proposal from firms wishing to bid on providing administration, custodial and investment services has been finalized and will be distributed in March. AML is also working with a law firm to develop the necessary legal documents. If the legislation passes this session as planned, it is the intent of the AML to establish the pool and accept funds as of July 1, 1991.

The legislation would have a zero fiscal note and would not affect the State of Alaska. Participation in the pool by eligible public entities would be optional. The AML Board of Directors urges the Legislature to pass the investment pool legislation in the First Session of the 17th Alaska State Legislature to enable the AML to immediately begin to improve the efficiency and effectiveness of participants in the investments of their public funds.

sab2:investwhy

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 199

Revision Date: _____ Department Affected: Community & Regional Affairs

Title: "An Act relating to investment pools for public entities.." BRU: _____

Component: _____

Sponsor: House C&RA Committee

Requestor: _____ COMPONENT SERIAL NO. [ ][ ][ ][ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Remond Henderson

Prepared By: Remond Henderson, Director Phone: 465-4708

Division: Administrative Services Date: 4/2/91

Approved by Commissioner: Edgar Blatchford Ed. Blatch,

Agency: Community & Regional Affairs Date: 4/2/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Flev 10/90

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

April 2, 1991

POSITION PAPER

RE: CS for House Bill 199

SPONSOR: House Community and Regional Affairs Committee

Departmental Position: Support

Program Effects

The bill would provide for certain public entities to form and operate investment pools for public funds which might otherwise lie idle.

Comments

This concept would provide a much needed tool for public entities to use in maximizing available revenues to offset the cost of services provided within their boundaries. In these times of declining state revenues, it is extremely important that we focus on discovering new sources of revenues for local jurisdictions, and methods whereby existing fiscal activities at the local level can be enhanced to maximize their efficiency. Committee Substitute for House Bill 199 directly addresses that concept, and the Department strongly supports its passage.

Edgar Blatchford, Commissioner

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Revenue	Treasury	HB 199	House Community & Regional Aff

SHORT TITLE OF BILL
Investment Pools for Public Entities

DEPARTMENT POSITION
See amendments proposed.

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Brian C. Andrews	4/2/91		4-3-91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
None known	
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Municipalities and other public entites.	None known

FISCAL IMPACT: ☐ NONE ☒ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

To allow for the creation of a nonprofit corporation for the purpose of establishing and operating an investment pool of securities for public entities.

ANALYSIS OF BILL/PROGRAM EFFECTS

Through a cooperative effort, public entities would establish a privatized money market mutual fund which may provide for increased investment returns and lower investment risk.

AMENDMENTS PROPOSED

Please see attached.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

01-009 (Rev. 12/83)

STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

HB 199

Amendments proposed:

Section 37.25.050 (b) of CS SB 182 and HB 199 should be modified to include within the definition of "public entity" the State of Alaska as well as a subdivision of the State, including a municipality, school district, regional educational attendance area or service area within the unorganized borough; or an organization composed of public entities. The expanded definitions would allow the General Investment Fund of the State to be a participant in the investment pool.

The Department of Revenue believes that the formation of an investment pool for money market securities within the Division of Treasury would offer the following benefits.

1. Use of Treasury's expertise in investment and cash management matters.

2. Treasury's existing arrangements for custodial services can accommodate a participant investment pool.

3. Treasury has already established cash concentration procedures within banks located in Alaska which could be used by public entities to transfer funds to the investment pool.

4. Use of Treasury's existing ACH electronic funds transfer capabilities which accommodates movement of deposits and withdrawals to and from the bank accounts of the participants.

5. Inclusion of the General Investment Fund as a participant would assure the investment pool's objectives of enhanced yields, liquidity and preservation and safety of capital.

6. Probable overall lower cost benefits to all participants.

Treasury would anticipate the following annual costs if it was charged with the responsibility of establishing and managing an investment pool of an assumed size of $500 million.

Personal:	1 FTP cash management position	$ 50,000
	1/2 FTP Investment officer	40,000
	1 FTP Accountant	50,000
Contractual:	Custodial fees @ 5 bps[1]	250,000
	External audit	25,000

[1]"bps", or "basis points", is the standard of measurements of less than one per cent. One bps equals one percent of one percent.

Equipment/Communications, computer supplies software and equipment enhancements	75,000
TOTAL	$490,000

$490,000 represents a cost of 0.00098 (9.8 bps) of the $500 million pool total. For example, an 8.0 per cent gross investment return will net to 7.9 per cent after Treasury's total expenses. The only variable cost is custodial fees which would increase slightly by additional asset amounts to the investment pool. Because of scales of economy, the impact of Treasury's expenses on gross earnings would be reduced further by investment pools greater than $500 million.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 199

Revision Date: April 2, 1991
Title: Investment pools for public entities

Sponsor: Senate Community & Regional Affairs
Requestor:

Department Affected: Revenue
BRU: Treasury
Component:

Component Serial No.

	1	2	1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: See attached.

Prepared by: Brian C. Andrews
Division: Treasury
Approved by Commissioner:
Agency: Revenue

Phone: 465-2350
Date: April 2, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).
Rev 10/90

MARCH 1989

INVESTMENT EXCHANGE

FIDELITY INVESTMENTS NEWS AND ANALYSIS FOR PUBLIC FINANCE PROFESSIONALS

Local Government Investment Pools

By Girard Miller and David Maynard

Editor's Note: The recent widely publicized collapse of the State of West Virginia's LGIP and ensuing questions raised by readers has prompted the following article.

Local governments are a major source of capital to the money markets. Public cash managers earn attractive market rates of return by investing their short-term funds. When interest rates are relatively high, as they are now, a community's cash management and investment program is an important contributor to local revenues.

Most local governments invest a segment of their short-term funds directly in government securities, bank CDs and other money market instruments. Local officials also have learned to take advantage of the liquidity and services offered by their state's local government investment pool (LGIP). LGIPs are now operating in 26 states and usually offer the benefits of daily liquidity, money market rates of return and portfolio diversification. Generally, pools operate like SEC-registered money market mutual funds. They combine the cash of local governments to invest in a diversified portfolio of money market securities with earnings paid to participants in proportion to their total investment. Not all pools are alike, however.

LGIPs are now operating in 26 states and usually offer the benefits of daily liquidity, money market rates of return and portfolio diversification.

Types of LGIPs

When measured in terms of asset size and participation, the largest local government investment pools are those overseen by state treasurers or other state administrative boards. Presently, 22 states sponsor and operate an investment pool for the benefit of their local governments. In some state pools, local funds are commingled with the state's liquid assets. In others a completely separate fund for localities is maintained.

Generally, LGIP investment and recordkeeping functions are performed by state officials, although several states have contracted with private firms for investment and administrative services. In some states, an advisory board of local government officials provides consultation and input regarding LGIP policies and practices.

In addition to the state-sponsored pools, local governments in a few states have jointly organized and operate LGIPs pursuant to "joint powers" or "intergovernmental cooperation" agreements. Typically, these non-state-sponsored intergovernmental pools are operated by a private money manage-

Continued on next page

Treasury Finalizes Arbitrage Regulations

The U.S. Treasury Department will soon release preliminary arbitrage regulations governing the calculation of arbitrage rebates. Some highlights:

- Rebates will be based on a "future value," calculated every five years.
- No calculation is required if qualified investments earn less than the issuer's bond yield.
- A $1,000 computational credit against the rebate will be allowed to help issuers defray expenses.
- Mutual funds are acceptable investments and are used as an example in the regulations.

The next issue of INVESTMENT EXCHANGE will discuss the new arbitrage rebate regulations in detail.

mutual funds (Rule 2a-7) are unlikely to suffer market price shocks: this is done by maintaining the pool's average maturity below 120 days and by holding individual securities with maturities of less than one year.

Diversification and Credit Research Pays Off

A major advantage of most state-sponsored LGIPs is their size. Economies of scale are generally realized through better prices on individual securities and defrayal of administrative expenses such as third-party custodial fees. Also, many LGIPs are able to purchase diversified portfolios of higher-yielding money market securities such as commercial paper. Frequently, individual municipalities are unable to perform thorough credit analysis or to diversify their investment portfolios adequately on their own. However, LGIPs can be managed to accomplish these functions on behalf of their participants.

When investing in an LGIP, local officials should first study the investment policies and practices of the pool, and obtain information regarding the portfolio's average maturity.

The Problem With Bond Proceeds

Some LGIP officials are anxiously awaiting U.S. Treasury Department regulations concerning arbitrage investments of bond proceeds. Presently, some statewide LGIPs have instructed local governments to avoid using their pool for investments of bond proceeds subject to federal arbitrage restriction. Pools which maintain longer average dollar weighted portfolio maturities (in excess of 90 days) and are not valued to market regularly may not meet the Treasury's so called "market price rule" and therefore could be inappropriate as a vehicle for the investment of bond proceeds. The Treasury's second set of arbitrage regulations, to be issued later this year, will probably address the issue of allocating investment income received from such pools.

The Money Market Mutual Fund Alternative

In states that lack an LGIP, money market mutual funds can be considered as a viable alternative for local government liquidity investments, provided mutual funds are an authorized investment under state statute. Some institutional money market funds provide subaccounting and arbitrage recordkeeping services specifically designed for governments, which are not provided by most LGIPs.

GFOA Guidance

The Government Finance Officers Association's Standing Committee on Cash Management has previously endorsed local government use of LGIPs and is now studying the various issues associated with proper administration and use of LGIPs. Guidelines for LGIPs will be issued by the National Association of State Treasurers (NAST) later this year. *Investment Exchange* will provide further information on this topic as it becomes available. ■

Increasing Interest in Deferred-Compensation Plans

Deferred-compensation plans allow employees to save portions of their incomes untaxed until retirement. Upon retirement, the employee will likely be in a lower personal income-tax bracket, and will be taxed less.

Congress authorized Section 457, public-sector deferred compensation plans in the Revenue Act of 1978, enabling government workers to save for retirement and emergencies. Under Section 457 of the Internal Revenue Code, a public-sector employee may defer up to $7,500 of income annually.

Typically, deferred-compensation plans allow the employee to choose to have contributions placed in one of several investment options, and to periodically transfer the assets between investment vehicles.

The choices range from straight savings options, which are the most conservative investments, to mutual funds, which are riskier but have the potential for higher yields.

Many deferred-compensation investments are in fixed-rate annuities or in guaranteed investment contracts

Deferred-compensation plans are meant to supplement, rather than replace, other retirement plans. At retirement, a plan member has the option of withdrawing deferred funds in a single lump sum, in monthly installments or on a schedule based on life expectancy.

The Tax Reform Act of 1986 heightened interest in deferred-compensation plans by placing considerable restrictions on the tax deferral for employee contributions to individual retirement accounts. ■

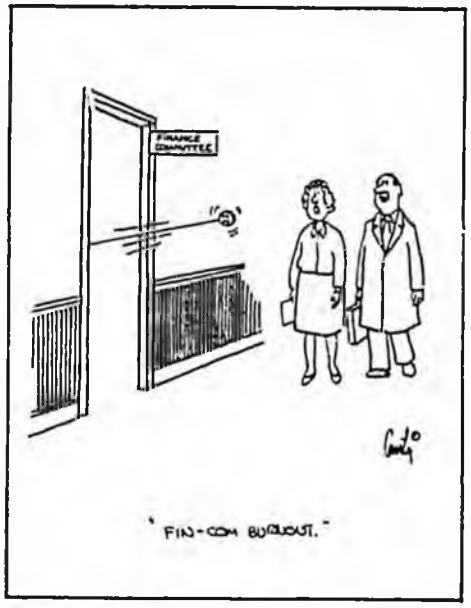

Illustration by William Canty.

CORRECTION

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MARCH 1989

INVESTMENT EXCHANGE

FIDELITY INVESTMENTS NEWS AND ANALYSIS FOR PUBLIC FINANCE PROFESSIONALS

Local Government Investment Pools

By Girard Miller and David Maynard

Editor's Note: The recent widely publicized collapse of the State of West Virginia's LGIP and ensuing questions raised by readers has prompted the following article.

Local governments are a major source of capital to the money markets. Public cash managers earn attractive market rates of return by investing their short-term funds. When interest rates are relatively high, as they are now, a community's cash management and investment program is an important contributor to local revenues.

Most local governments invest a segment of their short-term funds directly in government securities, bank CDs and other money market instruments. Local officials also have learned to take advantage of the liquidity and services offered by their state's local government investment pool (LGIP). LGIPs are now operating in 26 states and usually offer the benefits of daily liquidity, money market rates of return and portfolio diversification. Generally, pools operate like SEC-registered money market mutual funds. They combine the cash of local governments to invest in a diversified portfolio of money market securities with earnings paid to participants in proportion to their total investment. Not all pools are alike, however.

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Types of LGIPs

When measured in terms of asset size and participation, the largest local government investment pools are those overseen by state treasurers or other state administrative boards. Presently, 22 states sponsor and operate an investment pool for the benefit of their local governments. In some state pools, local funds are commingled with the state's liquid assets. In others a completely separate fund for localities is maintained.

Generally, LGIP investment and recordkeeping functions are performed by state officials, although several states have contracted with private firms for investment and administrative services. In some states, an advisory board of local government officials provides consultation and input regarding LGIP policies and practices.

In addition to the state-sponsored pools, local governments in a few states have jointly organized and operate LGIPs pursuant to "joint powers" or "intergovernmental cooperation" agreements. Typically, these non-state-sponsored intergovernmental pools are operated by a private money manage-

Continued on next page

Treasury Finalizes Arbitrage Regulations

The U.S. Treasury Department will soon release preliminary arbitrage regulations governing the calculation of arbitrage rebates. Some highlights:

- Rebates will be based on a "future value," calculated every five years.
- No calculation is required if qualified investments earn less than the issuer's bond yield.
- A $1,000 computational credit against the rebate will be allowed to help issuers defray expenses.
- Mutual funds are acceptable investments and are used as an example in the regulations.

The next issue of INVESTMENT EXCHANGE will discuss the new arbitrage rebate regulations in detail.

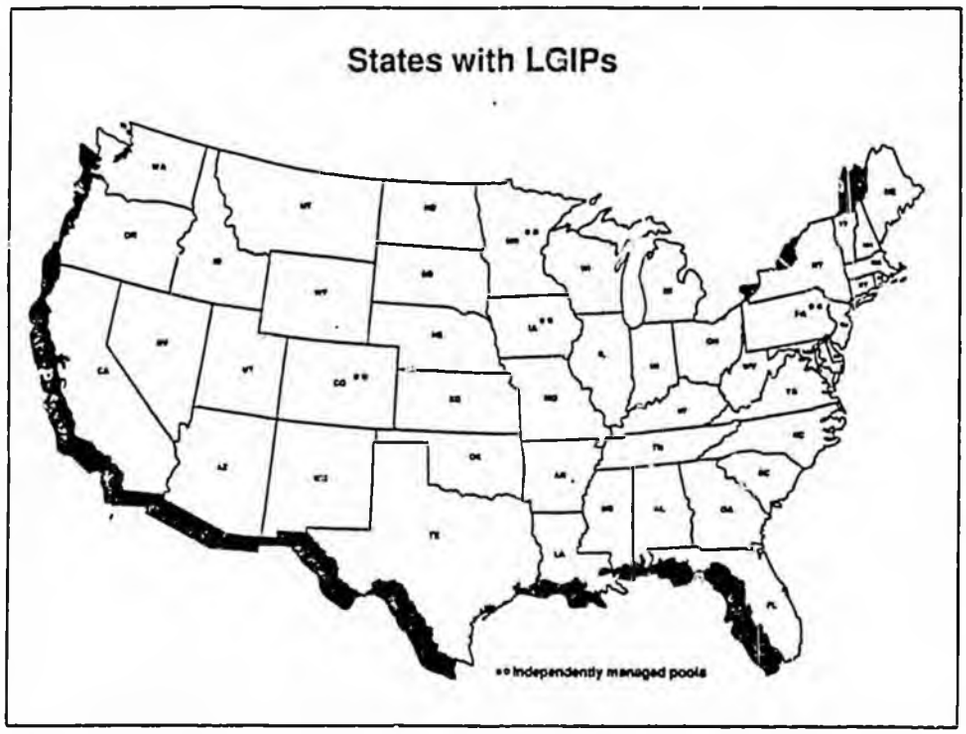
ment firm which often is instrumental in organizing and promoting the LGIP. Unlike SEC-registered money market mutual funds, these so-called "joint powers" pools are governed by separate trust agreements and a board of trustees which consists of participating local officials.

A final variant of the LGIP is the county investment pool, usually operated by a county treasurer. In California and Washington, for example, county treasurers are responsible for certain local school funds, which are commingled by some counties for investment purposes.

Keys to Success

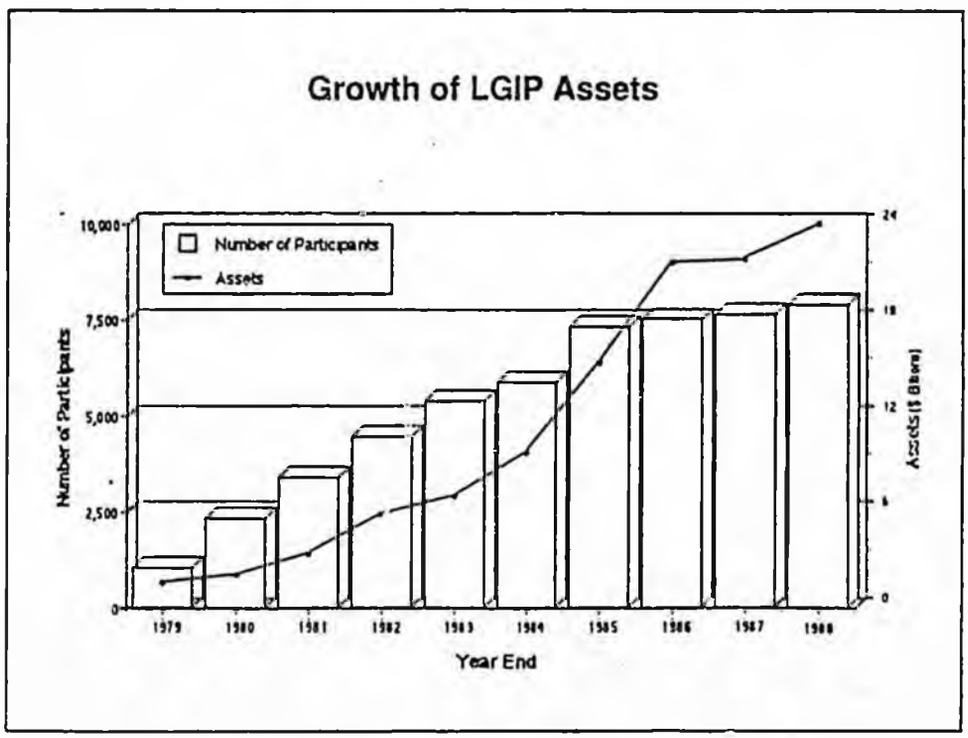
Just as an individual public investor must constantly seek safety and liquidity before yield, so too must the LGIP portfolio manager focus first on safety and liquidity. Local units that invest in an LGIP typically expect to be able to withdraw funds on a same-day basis with no penalty or price loss. Any losses in the LGIP portfolio that adversely affect investors could jar investor confidence and cause a "run" on the pool. Thus, an LGIP portfolio generally should be structured to include a broadly diversified mix of high-quality, liquid short-term securities which can easily be converted to cash without price loss.

In the 15 years since the inception of the first state-sponsored LGIP, there has been only one documented case of investment losses by a LGIP. This relatively recent case involved portfolio management that, among other practices, failed to observe the short-term liquidity needs of the pool, investing instead in long-term securities. Although longer-term investments may have higher interest rates and produce capital gains during periods of declining interest rates, an LGIP which holds long-term securities in a rising-rate market may face the problem of price losses. If the market price losses are realized, the LGIP's total return will suffer and concerned local investors may redeem their funds, forcing the portfolio manager to liquidate even more securities at potentially depressed prices. Further compounding this trend, yields on competing money market securities may attract more funds out of pools whose investment portfolios may be "locked up" in long-term but lower-yielding paper.



Know Your LGIP

When investing in an LGIP, local officials should first study the investment policies and practices of the pool, and obtain information regarding the portfolio's average maturity. As a general rule, LGIPs which follow SEC portfolio guidelines for money market



mutual funds (Rule 2a-7) are unlikely to suffer market price shocks; this is done by maintaining the pool's average maturity below 120 days and by holding individual securities with maturities of less than one year.

Diversification and Credit Research Pays Off

A major advantage of most state-sponsored LGIPs is their size. Economies of scale are generally realized through better prices on individual securities and defrayal of administrative expenses such as third-party custodial fees. Also, many LGIPs are able to purchase diversified portfolios of higher-yielding money market securities such as commercial paper. Frequently, individual municipalities are unable to perform thorough credit analysis or to diversify their investment portfolios adequately on their own. However, LGIPs can be managed to accomplish these functions on behalf of their participants.

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The Problem With Bond Proceeds

Some LGIP officials are anxiously awaiting U.S. Treasury Department regulations concerning arbitrage investments of bond proceeds. Presently, some statewide LGIPs have instructed local governments to avoid using their pool for investments of bond proceeds subject to federal arbitrage restriction. Pools which maintain longer average dollar weighted portfolio maturities (in excess of 90 days) and are not valued to market regularly may not meet the Treasury's so called "market price rule" and therefore could be inappropriate as a vehicle for the investment of bond proceeds. The Treasury's second set of arbitrage regulations, to be issued later this year, will probably address the issue of allocating investment income received from such pools.

The Money Market Mutual Fund Alternative

In states that lack an LGIP, money market mutual funds can be considered as a viable alternative for local government liquidity investments, provided mutual funds are an authorized investment under state statute. Some institutional money market funds provide subaccounting and arbitrage recordkeeping services specifically designed for governments, which are not provided by most LGIPs.

GFOA Guidance

The Government Finance Officers Association's Standing Committee on Cash Management has previously endorsed local government use of LGIPs and is now studying the various issues associated with proper administration and use of LGIPs. Guidelines for LGIPs will be issued by the National Association of State Treasurers (NAST) later this year. *Investment Exchange* will provide further information on this topic as it becomes available. ■

Increasing Interest in Deferred-Compensation Plans

Deferred-compensation plans allow employees to save portions of their incomes untaxed until retirement. Upon retirement, the employee will likely be in a lower personal income-tax bracket, and will be taxed less.

Congress authorized Section 457, public-sector deferred compensation plans in the Revenue Act of 1978, enabling government workers to save for retirement and emergencies. Under Section 457 of the Internal Revenue Code, a public-sector employee may defer up to $7,500 of income annually.

Typically, deferred-compensation plans allow the employee to choose to have contributions placed in one of several investment options, and to periodically transfer the assets between investment vehicles.

The choices range from straight savings options, which are the most conservative investments, to mutual funds, which are riskier but have the potential for higher yields.

Many deferred-compensation investments are in fixed-rate annuities or in guaranteed investment contracts

Deferred-compensation plans are meant to supplement, rather than replace, other retirement plans. At retirement, a plan member has the option of withdrawing deferred funds in a single lump sum, in monthly installments or on a schedule based on life expectancy.

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Illustration by William Canty.

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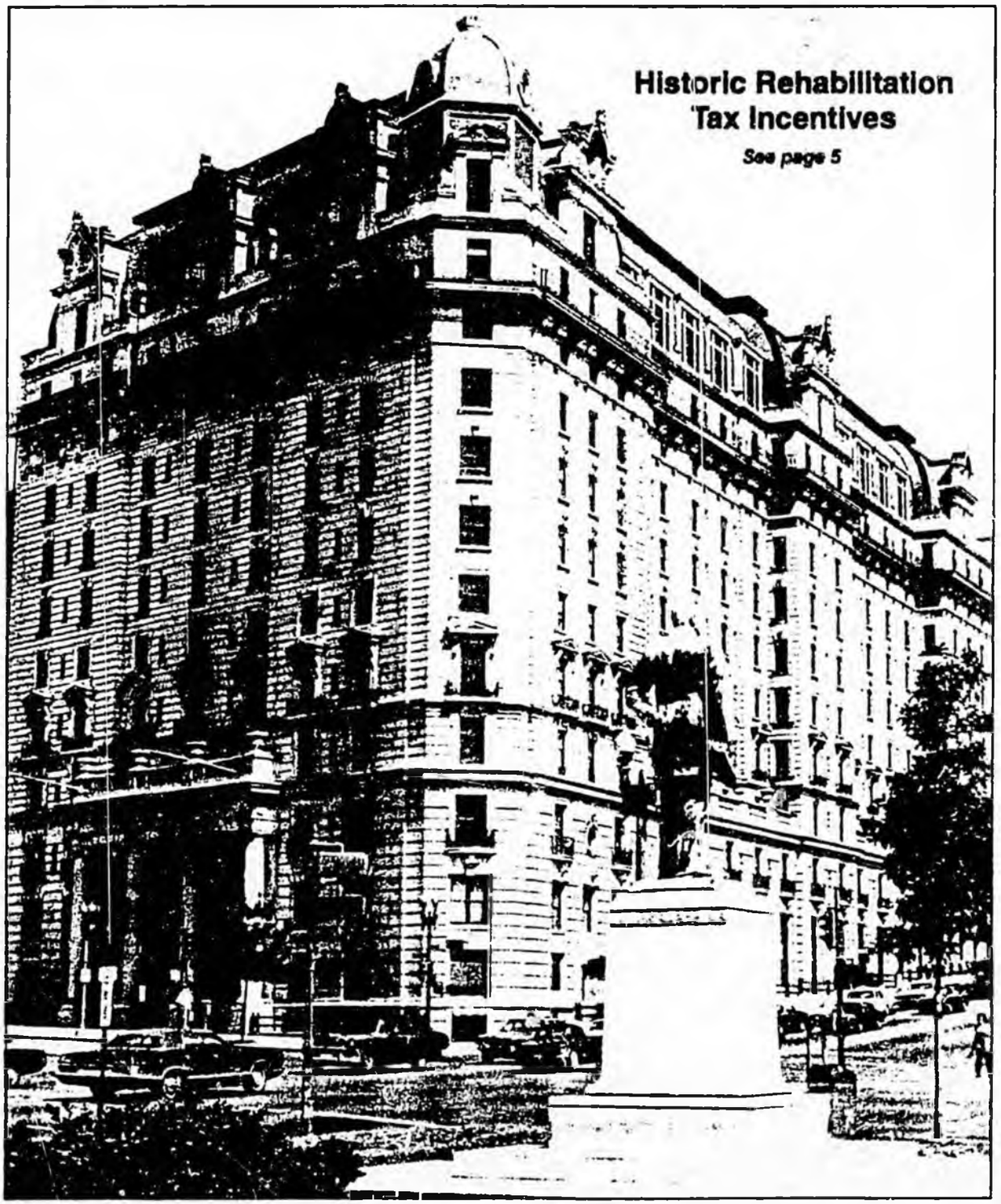


Historic Rehabilitation Tax Incentives

See page 5

At the Crossroads: Private Sector Perspectives on Public Sector Investing

Local government investment officers are faced with the challenge of achieving high yields without sacrificing safety and liquidity. While pressures on public finance officials to enhance earnings from investments will not go away, there are several options for the prudent investment of public funds at market yields.

By David E. Maynard and Priscilla M. Wheatley

"A federal bankruptcy judge approved a settlement that would give 34 municipalities and school districts nationwide about $29 million of the $40.8 million they claimed was lost when Lion Capital Group sought protection under federal bankruptcy law [in 1984]. . . . The settlement means claimants will receive about 73 cents on the dollar. . . . [A]n attorney for the school districts said the benefits of the settlement 'are extraordinary.' At a hearing in bankruptcy court, he called the settlement 'almost a total victory for the school districts and municipalities.' "[1]

Seventy-three cents on the dollar, a victory?

Despite the exposure, publicity and education since the demise of Drysdale Securities in 1982, and the lessons to be learned from Lion and other failed dealers, public sector investors lost again in 1985. Lion Capital was one of three small government securities dealers to go under as a result of multiple pledging of collateral; the other two were E.S.M. Government Securities Inc. and Bevill, Bressler & Shulman Inc. E.S.M.'s trustee anticipates that settlements could pay municipalities in the vicinity of 75 cents on the dollar.

Could it happen again? Why have some public finance officials altered their traditionally conservative investment practices? Has "safety, liquidity and yield" become "yield, liquidity and safety" in the minds of many public finance officials? Are realistic options currently available that will help the public sector maximize its return while ensuring the safety of invested funds? This article examines the sources of some of the pressures on public finance officials, explores several options for prudent investment of public funds at market yields and suggests some initiatives to be taken over the long term to strengthen the public finance profession.

Investing Public Funds—A Fiduciary Responsibility. For most of the 20th century, investment of public funds has been appropriately considered a fiduciary function: that is, the conservation of principal is the primary responsibility, even if income is to be earned from investments. Because of this, most state legislatures have controlled the investment of public funds by enacting restrictive statutes which narrowly define allowable investments. In fact, many of those statutes bear striking similarity to statutes that govern the investment of trust funds, and some incorporate the "prudent person rule."

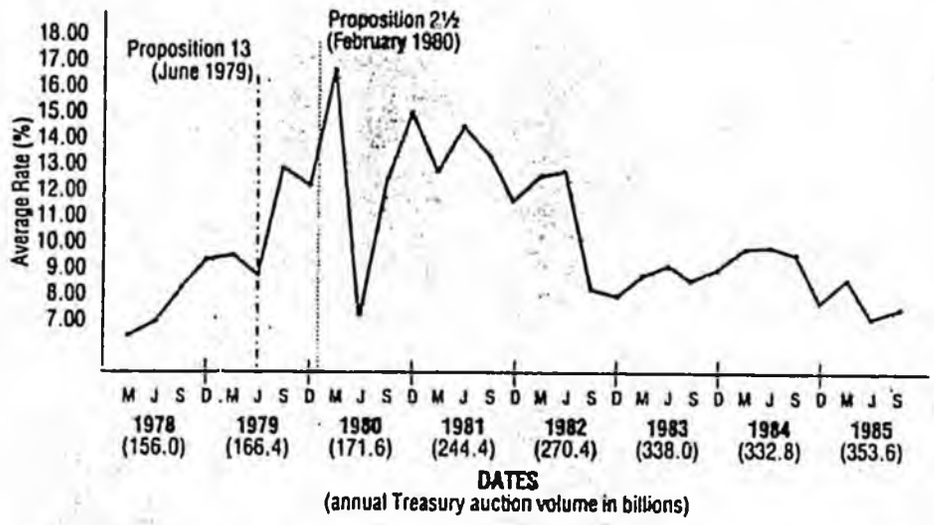
Until the escalation of inflation and interest rates during the 1970s and early 1980s, there was little pressure on most public officials to invest revenues. Rates of return were generally so low that there was little benefit to be gained. The rapid rise in interest rates that began in the late 70s was concurrent with taxpayer revolts that led to passage of tax-cutting measures such as Propositions 13 in California and 2½ in Massachusetts (see Figure 1). The need to find sources of additional income led most local finance officers to step up short-term investing. Some treasurers were so successful that investment earnings became the second or third largest source of revenues for their communities.

In the heyday of double-digit rates, local treasurers were often reporting annualized rates of return in excess of 15 percent, and many were justly proud of hitting the top of the yield curve, purchasing one- to six-month certificates of deposit with annualized yields of 18 percent to 20 percent. Even recently elected treasurers without specific investment training were able to report exceptional earnings. The attractiveness of above-market yields became even more apparent on the downside, when rates on short-term money market instruments slid back into single digits from their historic highs. Some public sector investors had become so accustomed to double-digit returns that, in their quest to maintain high rates of return, they invested funds in short-term instruments such as repurchase agreements and certificates of deposit (CDs) at 25 to 200 basis points higher than was available in their local markets. Some substantial investments were made without considering the risk factors that might have at least partially explained the higher yields.

Everyone agrees that safety of principal is still the fundamental goal of public

sector investment. However, while chasing yields in response to pressures to continue generating income, some public sector investors appear to have temporarily lost sight of the different types of investment risk. A U.S. Treasury security is a risk-free investment, but only from a credit standpoint. If it is purchased through a broker/dealer or bank, either as a direct investment or part of a repurchase agreement, the dealer is subject to credit risk, and the value of the security will fluctuate with changing interest rates. An in-state bank CD may be legal, insured and collateralized, but that doesn't preclude the fact that the solvency of the issuing institution is critical—no local treasurer wants to stand in line waiting for the FDIC to settle a claim.

Figure 1
90-DAY TREASURY BILLS AND VOLUME OF ISSUE
Quarterly: March, June, September, and December of each year



Some Practical Options. One thing is certain: pressure on local government finance officers to enhance earnings from investments will not go away. Expectations of both the electorate and local officials were raised by several years of double-digit interest rates and the success of many finance officers in managing their investments. In many cases interest earnings have become a major component of local government revenues. As austerity in state and local government continues, the focus will be on continuing to produce significant investment earnings, notwithstanding a general decline in rates. Given this scenario, how can local units achieve high yields without sacrificing safety and liquidity?

Repurchase agreements. Because some public sector investors have experienced major losses of principal, the use of repurchase agreements (repos) has received a great deal of publicity. The repo market is huge—$160 billion in average daily activity—and generally quite efficient, but safe use of repos hinges on proper perfection of the underlying collateral (see "A Few Thoughts About Repos" on page 18). Three cardinal rules for their use have been suggested over and over:

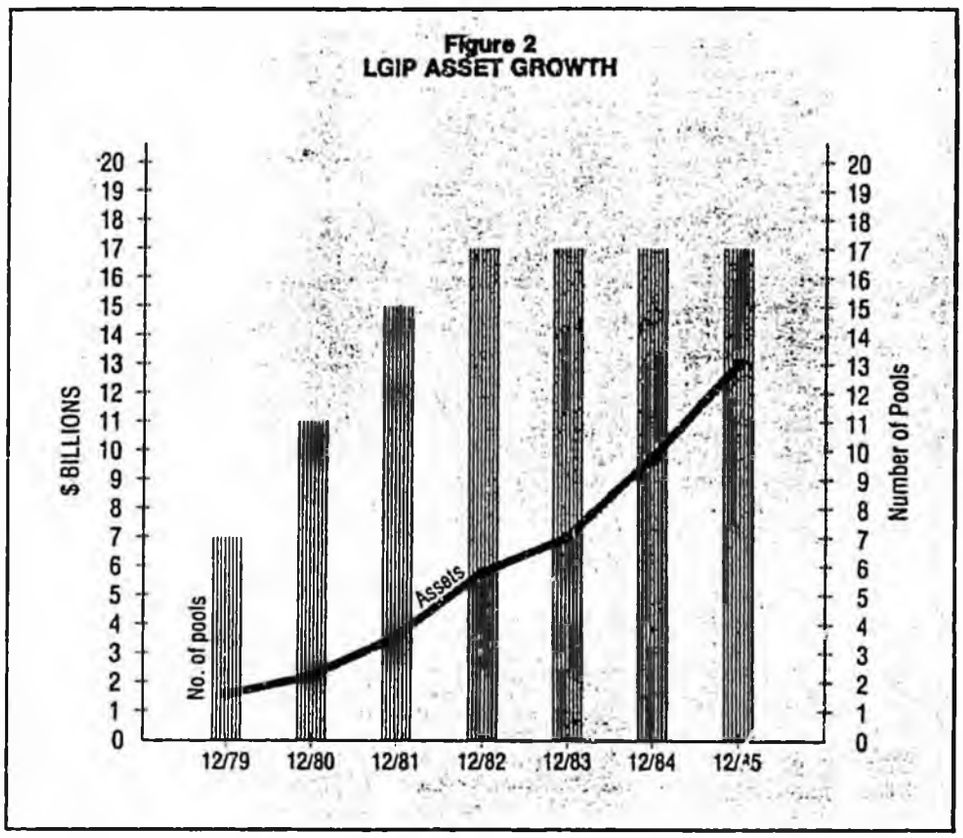
- know your counterparty,
- take physical possession or independent book entry of the collateral, and
- establish and monitor a margin to protect the market value of the collateral from interest rate movements.

The call for proper perfection by the Governmental Accounting Standards Board, the Federal Reserve and other regulators is long overdue, but it has created a stumbling block for the public sector. Most municipalities still execute "trust me" repurchase agreements; that is, they do not take delivery of the repo collateral through an independent third party, but rather rely on a safekeeping receipt from the dealer or its agent, which is usually *not* sufficient to establish legal control over the securities. In some states, investments in repos without taking delivery of collateral may be illegal. Collateral should be delivered to an independent custodian under the unit's (not the dealer's) control, and there should be written agreements between the unit and the custodian. A unit might also choose to use a custodian which the two repo parties agree upon, but again, there should be separate written agreements between each of the parties to protect the *unit's* interest. Local units that have collateral delivery mechanisms have found that the costs tend to reduce net yields below those available from other equally liquid and safe investments. In any case, lack of perfected delivery results in an ownership problem in the truest sense, and is not unlike buying a house without having the deed properly recorded.

If an efficient, low-cost mechanism for delivery is not available to a local unit, repos should not be considered an appropriate investment, especially when other liquid investments are available at competitive or higher yields.

Direct investments. Some units have successfully used direct purchases of U.S. Treasury and government agency obligations in lieu of repurchase agreements. When coupled with federally insured time deposits at banks, this type of investment program is perhaps the safest in terms of credit risk, but may be burdensome to manage in order to maintain sufficient daily liquidity. Unless the unit is able to structure maturities to match its cash flow requirements, the portfolio must be actively managed and traded.

As with any investment program, there are other trade-offs that must be considered. First, active management of the portfolio usually means a substantial investment of time in order to ensure that maturities match cash flows, and effective use of swaps and hedges may require a significant level of expertise. Second, unless securities are purchased directly from the Federal Reserve and held to maturity, commissions and custodial costs will tend to reduce net yields below those of other appropriate alternatives. Finally,



in order to benefit from economies of scale, the portfolio must be sizable, thus limiting the effectiveness of this option to larger public units.

Local government investment pools. In the investment area, one of the best examples of interlocal cooperation and capacity sharing is the local government investment pool (LGIP). LGIPs increase the efficiency and earnings of local government investment programs by providing a safe, professionally managed, diversified portfolio. LGIPs are, in effect, a financial intermediary—a "middle man" between local governments and the securities purchased by the pool on behalf of its participants. LGIPs are tailored to meet the needs of and specialize solely in serving local governments.

When a local government invests in an LGIP it purchases "shares" or "units" of the pool. Monies from each participating entity are combined for purposes of investment, but principal and earnings are accounted for separately; therefore, each participant's funds maintain their own identity. Pools are the public sector version of money market mutual funds, which give individual investors convenient access to high-yielding money market instruments.

LGIPs are usually created by states for the benefit of their local units. In most, but not all cases, the pool is managed by the state treasurer, and it may include some state money. The programs vary from state to state, but most allow deposits and withdrawals at any time, usually in any amount, and pay interest on a daily basis, net of pool expenses. Participation in LGIPs is voluntary, and once an account is established, transactions may be executed as often as desired. Yields are usually comparable to rates on large-denomination money market instruments of $1 million and more and, thus, are normally in excess of what most units can earn on their own.

By providing daily liquidity and permitting participants to select virtually any denomination for their investment, LGIPs alleviate many of the limitations of direct investment in money market securities. Most money market instruments are available only in select denominations with fixed maturities. Although larger government units do some buying and selling in the secondary markets and pay commissions, most local units purchase short-term securities from the original issuer and hold them to maturity. The costs of premature liquidation can be prohibitive. For example, a six-month CD for less than $1 million issued by a nonmoney center bank usually pays a below-market rate and is not readily marketable to another investor. The issuing bank may refuse to redeem the certificate, or it may assess penalties in addition to those required by federal regulations.

A significant feature of LGIPs that is often overlooked is that they require "delivery versus payment" for all securities purchases, including repurchase agreements. In other words, the pool's custodian will not release funds to the seller until delivery is made. Thus, the pool's investments are "perfected" because the custodian has possession of and control over the securities on behalf of the pool. This should provide comfort not only to current participants, but also to those units that may be considering the use of an LGIP in lieu of repos.

State treasurers in the following states sponsor an LGIP which is currently operating or is being established under recently passed enabling legislation (year of creation in parentheses):

California (1977)
Connecticut (1973)
Florida (1977)
Georgia (1981)
Illinois (1974)
Maryland (1981)
Massachusetts (1977)
Montana (1973)
New Jersey (1978)
North Carolina (1981)
Ohio (1985)
Oregon (1974)
Tennessee (1979)
Utah (1974)
Virginia (1981)
West Virginia (1978)
Wisconsin (1977)

Private sector firms have established, or are trying to start, pools which are independent of state sponsorship in several other states, including Colorado, New York, Pennsylvania and Rhode Island. In addition, school districts in Illinois, Minnesota and Pennsylvania may use pools formed by their respective state school boards with assistance from the National School Board Association. All of these programs were established and operate under so-called "joint powers statutes."

A recent review of operating pools indicates that acceptance and usage of LGIPs has grown rapidly[2]. Total LGIP assets have risen five-fold, from $2.1 billion at the end of 1981 to $13.0 billion in September 1985. During the same period, participating units have increased from about 2,300 in 11 pools to 6,600 in 17 pools (see Figure 2). Some states have seen the percentage of eligible units increase to more than 50 percent; the

highest participation rate, 75 percent, is in Massachusetts.

LGIPs enable local units to pool their resources to obtain professional investment management, and, over the past decade have proven themselves an efficient and economical alternative because they provide:

- portfolio diversification,
- stringent credit analysis,
- competitive rates of return,
- daily liquidity,
- economies of scale and
- low overhead.

These features and advantages create a persuasive case for using existing LGIPs instead of repos, and for the creation of similar vehicles in those states where such an alternative is not currently available.

Money market mutual funds. A few states, such as Michigan, Minnesota and Tennessee, allow their local units to purchase shares of money market mutual funds (MMFs) whose authorized investments meet the state's legal list for localities. Money market funds are registered with and regulated by the Securities and Exchange Commission, and their operations are outside the direct control of the states. States which allow use of MMFs have recognized the benefits of pooling which were discussed above, and manifest the intent of the Model Investment Legislation for State and Local Governments developed by GFOA's Committee on Cash Management in June 1984. The committee's report included sample investment statute language which places MMFs on the legal list of investments, and sample enabling legislation for establishing LGIPs. (Editor's note: Copies of the Model Investment Legislation are available from the committee staff. Contact Girard Miller at the Chicago office of the GFOA.)

Allowing the use of an existing money market fund is a sound alternative to creating an LGIP, particularly in those states where local government cash flows are not sufficient to support an independent pool. The approach can be refined to ensure that local units reap the maximum benefits from management of pooled funds by private sector organizations.

To the layman, most MMFs appear similar. There are, however, 350 distinct funds[1] which have varying investment disciplines, maturity ranges and service features. Funds run the gamut from those which invest solely in U.S. Treasury obligations to international portfolios with varying levels of credit risk. The diversity in types of funds and their varying service levels is why some states are developing parameters to select and approve the use of existing MMFs. This approach recognizes the desirability of a state role in exerting some control to ensure high-quality management and a selection of features and services that benefit participating local units.

Once enabling legislation is passed to allow use of existing MMFs, the mechanics of setting up a program are relatively straightforward. Investment restrictions, features, services and reporting requirements can be established to limit the universe of eligible funds, and a request for proposals issued, delineating criteria for approval of funds. To provide maximum benefits to local units, a MMF should offer:

1) Same-day (as opposed to next-day) portfolio pricing and interest stream. Public units, like all other institutional investors, expect and require interest earnings on each dollar invested for an exact number of days.

2) No minimum investment period or dollar value of investment. Units should be allowed to invest or redeem any amount on any business day, without penalty. This feature is especially important for smaller local units, which may be less certain of their cash flow requirements.

3) Unlimited wire transfer and check-writing access. While the wire system is used primarily by larger participants for transfers to and from the fund, check-writing can be used by large and small

A FEW THOUGHTS ABOUT REPOS

Is it wise to purchase a car without a title? What about a house without a recorded deed? Probably not—when it comes time to sell that asset, legal proof of ownership is essential.

Buying a repurchase agreement is the equivalent of purchasing any other asset. The purpose of the underlying securities—the so-called collateral—is to assure the buyer that there is something of value to sell off in the event the seller fails to meet his obligations at maturity. "Perfected delivery" establishes the repo buyer's legal control of the securities because the buyer pays for the securities only after they have been delivered to the buyer's agent.

There is no problem with the creditworthiness of the U.S. Treasury and government agency securities pledged by the E.S.M.s and Lion Capitals of the industry. The real problem is one of mechanics—establishing the legal right to sell repo collateral as quickly as possible, if necessary. Four common problems have led to public sector losses:

1. *Failure to take delivery versus payment.* Funds should be released only upon delivery of the securities. A safekeeping receipt from the seller or its agent is not enough to establish legal control. Also, the Federal Reserve has not stated categorically whether safekeeping by the trust department of the transacting bank is perfected delivery.

2. *Lack of credit analysis of repo dealers.* Inability to foresee an impending insolvency is usually due to lack of credit analysis. Securities dealers that are slow to respond or refuse to provide audited financial statements may be trying to hide their deteriorating financial position. Some may not be licensed to do business in the state. Also, small dealers that have grown substantially in a short period of time and have a small capital base, or those with numerous affiliates and substantial intercompany transactions also may be on the brink of insolvency.

Purchasers should insist that their dealers comply with the capital adequacy standards of the New York Federal Reserve Bank.

3. *Lack of written trading agreements.* Written master trading agreements between the unit and its dealers (including banks with which it executes repos) are strongly recommended. These documents delineate the conditions to which all parties have agreed, and their respective obligations and responsibilities. Established dealers or banks should be able to provide drafts of these documents for review and revision by the unit.

4. *Fraud on the part of dealer.* Fraud is almost impossible to detect, even by the most sophisticated and experienced credit analyst. Even so, losses due to fraud shouldn't occur if the first three problems are scrupulously avoided.

Figure 3
GOVERNMENT SECURITIES DEALER FAILURES
PUBLIC FUNDS AT RISK

Dealer Name	Year Failed	Public Units Affected	How Much at Risk	Settlement Reached
Lombard-Wall, Inc.	1982	New York State Dormitory Authority & other gov'tl. units	$52 million	66 cents on the dollar
Lion Capital	1984	34 municipalities & school districts	$40.8 million	73 cents on the dollar
RTD Securities	1984	NY municipalities & school districts	$40+ million	
E.S.M. Government Securities Inc.	1985	12 municipalities	$100+ million	Proposed settlement 23 cents on the dollar
Bevill, Bressler & Shulman Inc.	1985	No municipalities, but with E.S.M. precipitated Ohio and Maryland thrift crises. Municipalities indirectly affected.		
TOTAL PUBLIC FUNDS AT RISK: $232.8+ million				

units alike when they wish to capture additional earnings from float.

4) Complementary participant services and education. This important but generally overlooked area encourages units to use the fund and can ensure quality and continuity of participant services provided by the manager. Among services that can be requested are:

- dedicated participant service personnel;
- toll-free telephone lines;
- prompt daily, monthly and year-to-date confirmation statements of accounts and transactions;
- unlimited transfers between fund accounts of identical registration;
- regular reporting to the state treasurer or other supervisory authority on fund performance, marketing activities and local unit participation;
- educational assistance, special publications and a monthly newsletter for all eligible participants.

Other criteria which can be used to screen funds are availability of special services, such as terminal-based sub-accounting systems, automatic daily sweeps of excess balances in noninterest bearing accounts, and direct deposit of state and federal transfer payments by automated clearing house. An advisory board of local officials, which serves as a liaison between the fund and its users, is an effective tool not only for monitoring the fund's activities, but also for enhancing services and creating new features.

The North Carolina approach. North Carolina provides an example of the trend toward state-controlled use of MMFs. Because of the volume of local government cash flows, North Carolina had the option of requiring the establishment of a new SEC-registered mutual fund, uniquely tailored to meet the needs of North Carolina local units.

In 1981, the state legislature amended the local government investment statute to make "participating shares in money market mutual funds [legal] for local government investment if the investments of the fund are limited to those qualifying for investment by the State, and if said fund is certified by the Local Government Commission." Through use of a competitive bid process, the state made it possible for the private sector to assist local units. Despite the fact that the fund is a legally independent entity regulated by the SEC, the state oversees its operations through the Local Government Commission, which exercises "the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment." This approach acknowledges that the private sector can and will provide services when there is opportunity for reasonable profit. But the state retains the ability to exercise a firm level of review and control to protect the best interests of its local units.

In its three years of operation, North Carolina's fund has grown to more than $300 million with more than one-third of eligible units actively using the fund. Its success is an indication of the acceptance by local units of this approach and the unique alliance between the public and private sectors.

Externalizing the Investment Management Function. LGIPs and MMFs are ways of externalizing part of a local unit's investment function; the purest form of externalization, however, is the individually managed account through an investment management firm.

The external management of public funds by the private sector occurs most frequently with public pensions. These systems have recognized that investment advisors offer economies of scale and generally superior investment returns because they have the resources, staff and expertise that most public units usually are not in a position to duplicate. The concept of using an outside advisor for managing short-term, fixed-income securities, on the other hand, has not been considered necessary or justified. This is because the investment techniques of this discipline are believed to be relatively uncomplicated. Two factors, one dramatic and the other more subtle, have begun to change that perception.

The drama was seen over the past several years when more than $200 million in public funds were at risk as a result of investment in repurchase agreements with collapsing securities dealers (see Figure 3). In the words of one public finance official, "Two hundred million dollars would pay for a lot of management fees."

More subtle, but no less important, is the trend of innovation in the securities markets and the marked increase in investment vehicles and strategies that are used in managing short-term, fixed-income portfolios. The use of zero-coupon securities, options, futures and various hedging strategies was fostered within the private sector to increase yield or safety. Some of these new vehicles and techniques can be used successfully by municipalities to enhance yield without sacrificing safety or liquidity, but others are nothing short of speculative yield-chasing and have no place in a public sector investment

GFOA'S CASH MANAGEMENT COMMITTEE NEEDS YOUR HELP

As an aid to researchers, GFOA's Committee on Cash Management is compiling resource materials on authorized investment vehicles by state. The committee will use the data to determine which vehicles are used universally, as well as how the statutes differ between the states. It would be most appreciated if readers would forward a copy of their state's investment statutes, as well as any interpretive releases which also may be pertinent to: Technical Services Center, Government Finance Officers Association, 180 N. Michigan Ave., Suite 800, Chicago, IL 60601. Fidelity Investments will receive copies of these documents and will assist the committee in its efforts. Copies of the listing will be available to interested readers upon completion.

program with its fiduciary orientation.

Because of the fiduciary nature of public funds investment, state statutes have generally been structured toward narrowing alternatives, rather than recognizing prudent innovation. This statutory structure and the accompanying political environment have not encouraged most local officials to keep up with the rapid changes and increasing sophistication of the financial markets. As a result, new securities and strategies that are appropriate for the public sector go unused or may be misused because of lack of adequate training.

Although most existing state laws would have to be changed to allow the externalization of short-term funds management, localities that now operate under prudent person or home-rule provisions could take advantage of this strategy immediately. Among the benefits to be realized are reduction of staff and overhead expense, full-time professional portfolio management and credit analysis, and greater portfolio diversification. External managers also can provide regular market valuation, more and better management reporting, and economical procedures for delivering, paying for and safekeeping securities, all at a relatively low cost. If finance officers are elected, external management can provide continuity of investment management through transition periods, and free the new official to focus on other aspects of the unit's financial operations. Finally, by virtue of the fact that they are full-time investment professionals, outside advisors are in a position to pursue more esoteric strategies with the unit's concurrence.

Working with an external manager allows a local unit to develop fundamental investment guidelines within the prudent person rule, to which the manager must adhere, with periodic review and revision by the unit. In many localities, some private institutions traditionally have had a vested interest in the fact that the municipalities are restricted in their investment alternatives. A contract which is awarded to a qualified investment manager based on sealed bids, with periodic rebidding of the agreement, could substantially mitigate this situation.

Where Do We Go From Here? In a political and imperfect world one will not find a universally accepted "best" approach for the safe investment of public funds, especially when local finance officers are under political pressure to maximize returns within the constraints of safety and liquidity. Recent experience has shown that the "lowest common denominator" approach of state legal lists for local units, coupled with collateral pledging requirements, has not been sufficient to insure the safety of all public funds. Nor is it expected that the development of investment guidelines or the externalization of the investment function will in the future insure against losses due to fraud or malfeasance.

What longer-term initiatives can be undertaken by local units to safely incorporate innovation and new technology in their investment strategy?

Recodification of state investment laws. GFOA's Committee on Cash Management has created model legislation for this purpose. It speaks to the need to expand the investment options available to local units, and to improve their ability to externalize investment management through the use of LGIPs and MMFs. It also suggests the widespread adoption of collateral pools to reduce costs and increase the safety of collateralized deposits. This three-pronged approach can go a long way toward assisting most local units.

Increased training. The issue is not what to teach to investment officers, but rather how to reach the thousands of finance officers in the United States with an effective program. State college and university systems could house the effort, with a central body such as the GFOA orchestrating the development of curriculum. Interested private sector individuals and organizations that have been active in this area would be encouraged to continue their involvement. Funds to defray the costs could come from a number of sources including the states, the private sector and, of course, the benefiting officials and jurisdictions.

Better salaries. Public finance is a profession. Historically, however, it has had a low profile and many localities, not recognizing its importance, continue to pay salaries that are not substantial enough to attract and keep talented individuals. This false economy will probably persist until the public sector recognizes the finance officer's responsibility within the community and the potential benefits of paying salaries that encourage competence and continuity in these positions.

Minimum competency. Establishing minimum competency standards for any profession is fraught with problems, but in light of recent losses to public treasuries perhaps the time has come to take a closer look at this controversial issue. Some state associations of finance officers have begun to implement certification programs, which complement training programs and encourage a high level of competence on the part of both appointed and elected finance officials. New programs in Texas and North Carolina were described in the December 1985 issue of *Government Finance Review*. In New Jersey, Oregon and Ontario such programs have been in place for a few years. There is, however, little specific training in cash management skills in any of the above programs. Training and certification programs also would serve to provide a level of comfort to both the electorate and public executives.

Conclusion. This article was prompted in part by the recent article by J. Dwight Hadley in the September 1985 *Government Finance Review*, which discussed New York state's response to the repo crisis faced by some of its units. By combining the ideas discussed in that article and this one, several approaches begin to emerge.

It is impossible to totally eliminate the risk in any investment program—fraud, abuse and greed are almost impossible to detect, and always will be around. The

goal of the public sector should be to create an environment which fosters the development of investment professionals who are qualified and capable of minimizing investment risk and probability of loss. Short-term reactive approaches which seek to place even greater limitations on public investment officers may prove to be very damaging to the achievement of this goal. Over the long term, practical solutions must be designed to attract additional talented individuals, provide them with appropriate professional training and encourage them to remain in the profession. The public should be able to assure itself that its funds have been entrusted to investment professionals, whether they are appointed or elected individuals, or outside managers.

Public sector investing is at the crossroads. The vehicles are there—it's up to finance officials to choose the best route.□

NOTES

[1] *Wall Street Journal*, September 6, 1985.
[2] Telephone survey of operating LGIPs by Fidelity Investments, November 1985.
[3] *Donoghue's Money Fund Report*, October 25, 1985.

DAVID E. MAYNARD, *an advisor to the GFOA's standing Committee on Cash Management, is a vice president and group product manager at Fidelity Investments of Boston, a privately held investment management and discount brokerage firm. He oversees the management of LGIP programs for the Commonwealth of Massachusetts and the State of North Carolina, and is responsible for the development of investment products and programs for the public sector on a national basis.* PRISCILLA M. WHEATLEY, *product manager at Fidelity Investments, is responsible for the daily operations of LGIPs managed by Fidelity, and the implementation of new public sector investment products and services. She was employed in the public sector for 10 years before joining Fidelity, and holds an MBA from Clark University and an MA from the University of Connecticut.*

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GFR-2/86

HB

207

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 11, 1991 FURTHER REFERRALS: Resources, Finance

Date of Committee Action: 4-4-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 207

HOUSE BILL NO. 207 VILLAGE SAFE WATER PROGRAM

"An Act relating to the Village Safe Water Program."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[X] zero fiscal note DCRA, DEC [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Bettye Davis	X				
Larry Baker	X				
Mackie	X				
Cheri Davis	X				
J. E. Gonzales	X				
Richard Foster	X				

CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 207

Revision Date: _____ Department Affected: Community & Regional Affairs

Title: "An Act relating to the Village Safe Water Program." BRU: _____

Component: _____

Sponsor: Representative Lincoln

Requestor: _____ COMPONENT SERIAL NO. [ ][ ][ ][ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director Remond Henderson Phone: 465-4708

Division: Administrative Services Date: 4/1/91

Approved by Commissioner: Edgar Blatchford Remond Henderson for

Agency: Community & Regional Affairs Date: 4/1/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 207

Revision Date:
Department Affected: DEC
Title: relating to village safewater
BRU: Facilities, Construction and Operations
Sponsor: Rep. Lincoln
Component: Village Safewater
Requestor: Rep. Lincoln
COMPONENT SERIAL NO. 1 6 3 8

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair
Phone: 465-2600
Division: Commissioner's Office
Date: 4/3/91

Approved by Commissioner:
Agency: Dept. of Environmental Conservation
Date: 4/3/91

Distribution (by preparer):Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ALASKA STATE LEGISLATURE

Representative Georgianna Lincoln

HESS Committee, Co-Chair
Resources Committee, Vice-Chair

Budget Subcommittees
Health and Social Services
Revenue

P. O. Box V
Juneau, Alaska 99811

Phone: (907) 465-3732
FAX: (907) 465-2652

Alatna
Allakaket
Aniak
Anvik
Arctic Village
Beaver
Bettles
Birch Creek
Chalkyitsik
Chuathbaluk
Crooked Creek
Evansville
Fort Yukon
Galena
Grayling
Holy Cross
Hughes
Huslia
Kalskag
Kaltag
Koyukuk
Lake Minchumina
Lime Village
Lower Kalskag
Manley Hot Springs
Marshall
McGrath
Minto
Mountain Village
Nikolai
Nulato
Pilot Station
Pitkas Point
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Sleetmute
St. Mary's
Stevens Village
Stony River
Takotna
Tanana
Telida
Tuluksak
Tyonek
Venetie
Wiseman

M E M O R A N D U M

TO: House Community & Regional Affairs Committee
Representative Jerry Mackie, Chair

FROM: Representative Georgianna Lincoln
House District 24

SUBJECT: House Bill 207

DATE: April 3, 1991

House Bill 207, an act relating to the Village Safe Water Program, was introduced at the request of one of the villages in my district. This village has a population of 491, is located in rural Alaska, and has identified water system improvements as a top priority. However, because this village has incorporated as a First Class City, it does not qualify for funding under the Village Safe Water Program.

House Bill 207 proposes to do only one thing--amend the definition of "village" under AS 46.07.080(2). The bill, if passed by the Legislature, would add first class cities with a population of not more than 600 residents to the eligibility list for funding under the Village Safe Water Program. There is a zero fiscal note attached to this bill; no additional funding would be required to implement its provisions.

According to the 1990 census, six additional villages would become eligible for Village Safe Water Program funding under provisions of House Bill 207. These villages include: Tanana, St. Mary's, Pelican, Yakutat, Hydaburg and Seldovia.

In reviewing the statutes pertaining to the Village Safe Water Program, there is no indication as to why small, rural first class cities were not included for funding purposes. For purposes relating to such basic necessities as water and sewer for these six villages, I am asking your favorable consideration of this bill to add them to the eligibility list for the VSW Program.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

☑ *P.O. BOX B*
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700

☐ *949 E. 36TH AVENUE, SUITE 400*
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

April 3, 1991

POSITION PAPER

RE: House Bill 207

SPONSOR: Representative Lincoln

Program Effects of the Bill

This bill extends eligibility for the village safe water program to first class cities with populations less than 600. Presently only unincorporated communities with a population less than 600 and second class cities are eligible.

Six cities would be affected by this legislation, they are: Hydaburg, Pelican, Saint Mary's, Seldovia, Tanana, and Yakutat.

Comments

The Department supports this bill because it furthers the concept of making similarly situated communities eligible for the same State benefits.

Rismond Hindrson for
Edgar Blatchford, Commissioner

HB

222

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 15, 1991 FURTHER REFERRALS: Finance

Date of Committee Action: 4-17-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 222

HOUSE BILL NO. 222 APPROP: ROAD/SEWER/WATER/RURAL DEV'T FUND

"An Act making appropriations from the Alaska science and technology endowment for water, sewer, and solid waste projects, for statewide road and highway maintenance projects, and to fund the rural development initiative fund; and providing for an effective date."

RECOMMENDATIONS: [X] the same title

be replaced with CSHB222 (CRA) [ ] a new title

[ ] have attached amendments(s)

[X] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Richard Foster	X	Foster			
Bettye Davis	✓				
Gary Wm Baker	—	BAKER			
Phil Davis	✓				
Joe Green	✓				
Jim Mackie	X	Mackie			

Jim Mackie

CHAIRMAN'S SIGNATURE

NEWS RELEASE

REPRESENTATIVE GEORGE JACKO, JR.

P.O. Box V
Juneau, AK 99811

FOR INFORMATION CONTACT:
Rona Sorensen
(907) 465-4942
FAX (907) 465-2997

FOR IMMEDIATE RELEASE

91-12
March 15, 1991

JACKO LEGISLATION APPROPRIATES NEARLY $73 MILLION

Rep. Jacko and nine co-sponsors introduced legislation this morning which would address critical and important needs of the State of Alaska; both rural and urban. House Bill No. 222 appropriates just shy of $73 million from the Alaska Science and Technology Endowment (ASTE) for water, sewer, and solid waste projects; statewide road and highway maintenance projects; and to fund the Rural Development Initiative Fund. Another piece of legislation, which is needed to establish this currently non-existing fund, is in the works.

Specifically, HB 222 appropriates $20 million to the Department of Transportation and Public Facilities for statewide road and highway maintenance projects. The bill appropriates another $10 million to the Department of Community and Regional Affairs for capitalization of the Rural Development Initiative Fund. The vehicle establishing this fund is still in the draft stage. Lastly $42.8 million, the largest appropriation of the bill, goes to the Department of Environmental Conservation for statewide water and sewer projects.

-more-

Rep. Jacko stated, "My disappointment with the Administration's haphazard attempt to address the very basic life and health safety needs of communities spurred me to introduce this section of House Bill 222. Governor Hickel proposed to fund merely $6 million of the total $48 million requested village safe water projects in his deferred maintenance bill (SB 133). Quite frankly, I see this as an 'eye dropper' approach to one of the most serious problems we have in rural areas of the state."

"I realize this legislation will be controversial and critically analyzed", commented Rep. Jacko. "I agree the ASTE has beautiful, high minded projects that academicians can pontificate about. However, I find these projects very difficult to justify in light of the deplorable water and sewer conditions that exist in rural Alaska today. It's unconscionable that the very basics of health and life safety of the people in this state are given such a low priority. Let me give you a couple of examples.

Kokhanok is a small village in the Lake Iliamna region of District 26. As we draw closer to the 21st century, this village of 152 people, I'm sorry to say, continues to go without safe water and sewer facilities. Each Spring, when the Winter ice begins to thaw, the dumped raw sewage from the community 'honey buckets' thaw too. The two run together; and the reoccurring result is contamination of both the well and the lake from which residents draw their drinking water. PEOPLE ARE DRINKING WATER

CONTAMINATED WITH RAW SEWAGE. So is it any surprise that the residents continue to face bouts of hepatitis A and B outbreaks?

Another community in my district, Igiugig, has the same standard sewage facility as Kokhanok; consisting of 'honey buckets' and outhouses. A large percentage of the village residents have either had and developed immunities to Hepatitis B or become carriers of the disease. Just a few weeks ago, high winds and heavy rain contributed to one outhouse's contents flowing down the street. Concerned parents and adults ordered the children stay clear of this area. Shortly thereafter, the ground froze and it snowed. And kids being kids -- were spotted playing in this area, eating the snow."

# # # #

1153 Donna Dr.
Fairbanks, Ak 99712
April 1, 1994

Members of the Community and Regional Affairs Committee
House of Representatives
Pouch V
Juneau, AK 99811

Dear committee members,

I feel House Bill #222 sponsored by members of the "Bush caucus" does not warrant any consideration by your committee. This $73 million dollar raid on money already appropriated to the Alaska Science and Technology Foundation show a blatant disregard of the wisdom of former legislative and executive actions which established the fund. To me it also demonstrates a shortsightedness and lack of understanding on the part of the sponsoring representatives on what the ASTF is designed to do.

As a successful recipient of a grant from the ASTF I may have good reason to be biased. However my project, "Beekeeping in Alaska", has already made an impact on the beekeeping industry in the State. The number of beekeepers in the Delta Junction area, for example, has increased from three or four to an estimated 15. The number of colonies expected to be operated this upcoming season in the same area is estimated at least 51, up from about 10 two years ago.

One of my project's goals is to establish economic models in two rural communities to demonstrate that community effort and cooperation in a small scale beekeeping project can have profitable results. The final analysis is a season or two away but I feel there will be success.

In addition to the economic models I am writing a hands-on Alaskan beekeeping manual, training beekeepers in rural areas, and researching the indoor overwintering of honey bee colonies. The purpose of the program is to benefit rural Alaskans in small communities looking for ecologically sound cottage industries. My efforts would not have come about without the moral support of members of the beekeeping community and the financial support of ASTF.

Money from ASTF has allowed me to leverage funds from other agencies to help expand the beekeeping industry in the State. I received a mini-innovation grant through DCRA to buy community honey extracting equipment for the Delta region. Members on the selection committee for the proposal evidently saw the merits of the small scale project as it was awarded a 97 out of 100 possible points on their rating scale. I have submitted a proposal to USDA Forest Service Rural Development program to assist the beekeepers in the Nenana region in much the same manner as the Delta project. I hope it is obvious to the members of the committee the rural impact of this project and that parallel development of agriculture and beekeeping is a requirement of Mother Nature.

I can almost hear grousings about beekeeping in the arctic regions of the State from our northernmost members. Sure, beekeeping is not suited for every geographic area of the State- neither is oil development. However, the mission of the ASTF is neither to drill for oil in every village or turn us all into beekeepers. It is to transfer technology and utilize research for the benefit of all State residents. A significant contribution to the health and waste disposal problem faced in a good portion of the State is resulting from another ASTF grant- the AlasCan composting and greywater system.

In HB#222 one of the areas slated for funding is community laundry facilities. Are you going to dump thousands more gallons of phosphate laden wash water into the effectively dysfunctional utility systems? ASTF and the US DOE have recognized the potential impact of Clint Elstun's composting toilet and greywater treatment system and seen fit to fund it. I would hope the members of the legislature have the same vision and will resist the urge to raid the ASTF endowment for such a short term and short sighted project.

In closing I would like to point out one often overlooked aspect of ASTF to the committee members. When we hear "Science and Technology", we conjure up mental pictures which range from wild haired scientists sporting white lab coats and chuckling maniacally over bubbling test tubes to the sprawling techno cities of California's Silicon Valley. My personal experience plus meeting with other successful grantees demonstrates that ASTF money is not going to

ivory tower "egg-heads" as many would suspect. Instead it is going to a cross section of Alaskans with an idea and a dream regardless of their educational or professional background (please note- I am in no way inferring the money is going to incompetent people- just that lack of "professional" credential: no reason to deny funding). Fishermen who have a better idea, farmers who want to experiment with a different feed, inventors with a better toilet, prospectors with a gold recovery idea, laborers turned beekeeper and desiring to share the experience, are examples of the "guy next door" recipients of funding. ASTF is not funding dog powered washing machines nor will it fund "secret extension cords" which plug into the Northern Lights. Take a very good look at the proposals funded, every one of them has or will make a difference to Alaska. Someone from your village may have the next "Good Idea!" Thank you for your time and I again urge you to leave ASTF to benefit all Alaskan for a long time to come.

Sincerely yours,
Stephen F. Petersen

Stephen F. Petersen

Alaska State Legislature

Please enter into the record my testimony to the House Community + Regional Affairs committee name committee on HB 222 bill/subject, dated April 10 1991.

I would like to speak for the residents and property owners of the Nome River Valley. Our concern is that funding for winter road maintenance being done currently from mile 0 to mile 14 of the Beam Rd. in Nome may be cut. There are 21 people living at mile 4 of this road, 10 of these are children. There are another 14 people living farther out the road, 4 of these are children. All of these people are permanent residents. Our concern is that ~~we will be~~ if we don't have road maintenance we will be unable to bring our children in to school. I question whether it would be cheaper to maintain our road, or to build us a school. We appreciate the excellent services provided to us and would like to see it continue

Signed: John A. Dixon John A. Dixon
Testifier

Nome River Valley Association
Representing (Optional)

~~Box~~ 1635 Nome, AK.
Address

443-3311
Phone No.

HB

223

3111 C STREET, SUITE 455
ANCHORAGE, ALASKA 99503
(907) 561-7628

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

ALASKA STATE HOUSE

CHAIR
RULES COMMITTEE

JUDICIARY

SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: Rep. Jerry Mackie, Chair, and Members of the Community and Regional Affairs Committee

FROM: Rep. Johnny Ellis

RE: HB 223

DATE: May 6, 1991

****

Thank you for again considering HB 223, regarding project labor agreements. Please consider adopting the blank committee substitute (Cramer 4/10/91) as it incorporates several changes suggested in the last committee hearing. These changes include:

1) The CS removes PLAs from under the authority of the Public Employment Relations Act (PERA), thus negating the $131,800 fiscal note from the Department of Labor.

2) It states that PLAs would not apply to work currently or traditionally performed by governmental employees such as maintenance employees.

3) Adds a sunset date of January 1, 1995.

****

The last committee hearing also demonstrated that there is a great deal of misunderstanding about this bill. I need to re-emphasize the following points:

1) This bill makes it an <u>option</u> for the state and municipalities, there is <u>no</u> requirement. I would hope they would only enter into PLAs if it saved money.

2) Union and non-union contractors have exactly the same opportunities to bid on a PLA projects under this bill. Competitive bidding is not reduced, all contractors will simply know ahead of time the wage scales required to be paid.

I remain committed to this bill because I believe it is a constitutionally defensible means of promoting <u>local hire</u>, and because it is a means of <u>reducing costs</u> of public construction projects. I encourage your favorable consideration.

Municipality of Anchorage

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4425

TOM FINK,
MAYOR

DEPARTMENT OF EMPLOYEE RELATIONS

April 3, 1991

To Whom It May Concern:

The Municipality of Anchorage is opposed to Senate Bill No. 95 that is "An Act relating to agreements between a labor organization and a public employer."

Reasons:

1. This Bill conflicts with the philosophy embodied in Article II, Section II of the Anchorage Home Rule Charter which guarantees "The right - whether as a contractor, as a taxpayer, or both - to competitive bidding for goods and services furnished to the Municipality, subject only to exceptions established by ordinance."

2. According to the Bill, employers and unions through their labor contract would be allowed to prohibit the employer from doing business with other employers on construction or maintenance contracts. This could result in the restraint of trade in that it would provide statutory authority for third party boycotts whereby an employer could be prohibited from doing business with a firm because it was not signatory to a labor agreement or because the employer was engaged in a work stoppage with a labor organization.

3. The Municipality does not believe that it should encourage the types of activities that the Bill would invite because they would be contrary to the best interests of the public.

In conclusion, the Bill appears to have serious flaws pertaining to the principles of free trade and the right to do business within the context of the competitive process.

Sincerely,

James R. Jose
Employee Relations Director

a:sb-95

Alaska State Legislature
House of Representatives

INTERIM
3111 C Street
Anchorage, Alaska 99503
(907) 561-2032

SESSION
P.O. Box V
Juneau, Alaska 99811
(907) 465-2995

Representative Dave Choquette

May 6, 1991

To: Representative Jerry Mackie
Chair, Community and Regional Affairs
Committee

From: Representative Dave Choquette

Re: HB223 and SB95, acts permitting the state or political subdivision of the state to enter into project labor agreements

Thank you for this opportunity to comment on companion bills HB 223, and SB 95, bills which authorize prehire agreements between the state and labor organizations for public construction projects.

Numerous legal and practical difficulties exist with both of these bills. Included among them is whether the bill really will result in local hire that is not subject to constitutional challenge.

HB223 and SB95 are substantively alike on their merits. They authorize prehire agreements between the state and unions in order to structure labor relations on construction projects. These agreements may: address wages, hours, and terms of employment; require contractors awarded a construction bid to accept employee referrals from labor organizations; provide for employee referrals based on experience, seniority, and length of service in a specific geographic area (one qualification that could affect local hire); and allow the union and state to agree to refrain from handling, using selling, transporting, or doing business with a specific contractor or subcontractor (the hot cargo provision).

I think without a doubt that, if passed, both of these bills would be subject to numerous lawsuits. While efforts have been made throughout the committee process to remove the legal ambiguity,

substantial legal issues still remain. First, doubt still exists as to whether the state will be considered a project owner or project employer for the purpose of these prehire agreements. The result of this problem is that it is uncertain whether this bill would fall under federal or state statutory authority. Second, there is concern the legislation would in effect discriminate against non-union contractors and employees. While this is not a right to work state, I still think this could result in a legal challenge under the equal protection clause of the State Constitution and would invoke Enserch liability. Third, the preference for employee hiring based on length of service in a specific geographic area may lead municipalities, boroughs, and other subdivisions of state government to attempt to make local hire binding by creating a contract provision which compels contractors to hire locally. This form of geographic preference may not be unfair under labor law, but it would not protect the state from constitutional challenge under the state's equal protection clause and under the privileges and immunities clause of the U.S. Constitution. Fourth, the hot cargo or boycott provisions of the legislation do not provide for a grievance procedure allowing "black-listed" contractors and subcontractors to appeal their "black listing." This provision is subject to challenge as a taking without due process of law.

It is obvious that legal difficulties abound. For this reason I am reticent to support either or these bills. Additionally, I have grave concerns about the public policy these bills advance. To begin, if the state is considered a project owner and not a project employer, I think the bills would result in substantial interference with contractor-employee labor relations. I am concerned that the hot cargo or boycott provisions would restrain free trade and harm Alaska's economy in the end. I am distressed that in theory the state may enter a prehire agreement with a union that does not represent the majority of the employees. And lastly, I am just not certain the bill would result in the local hire which the bill sponsors and labor organizations profess. I do think it would be subject to legal challenge. This concern relates strictly to the geographic preference relating to the employee referral section of the bill. I also must admit to you that I am concerned the legislation in practice would discriminate against Alaskans who choose not to affiliate themselves with a union or who live in a location distant from a local hiring hall, but who have just as much right to local hire as Alaskans who are union members.

To summarize, there are just too many legal and practical pitfalls with the project labor agreement legislation to gain my support. My main concerns are that local hire will be subject to some form of constitutional challenge, and that the bills will result in too much interference with the private sector.

As the project labor agreements bills now read, this legislation is just not the way to go to promote Alaska's economy and to put Alaskans to work. The answer to local hire is not HB223, but rather a state-wide effort and recognition from all segments of the

private and public sectors regarding the utilization of local goods and services. At this point, with due regard for our Alaska State Constitution, I seriously doubt whether local hire may ever be legislated successfully in this state. God knows, we've tried. Labor organizations are to be commended for their efforts in this area.

Local hire is not a new issue to me. I started the campaign five years ago when I was with Wilder Construction, and the bumper stickers you see around the state that say "Hire Alaskans; It's Good Business," are my creation. Local hire and the purchase of local goods and services are my main reasons for being in the legislature. I will do all I can to meet these ends, but only in way that are legally sound and do not significantly interfere with the private sector.

Thank you for the opportunity to comment on HB223 and SB95.

FREQUENTLY ASKED QUESTIONS REGARDING PROJECT LABOR AGREEMENTS (HB 223)

Several questions have been asked about the project labor agreements. I've prepared the attached information to help answer those questions you may have.

1. **What is a project labor agreement?**

   A PLA is a contract between a labor organization or labor hiring hall and a public agency that may concern wages, working conditions, benefits, and other mutual obligations which has been negotiated in advance of letting the project out for bid. A contractor knows in advance what the labor costs will entail.

2. **Project labor agreements are already used by public agencies. Why enact this legislation?**

   State law is silent on the question of PLAs. They have been negotiated and used in construction projects, but are frequently the target of law suits despite federal law, favorable National Labor Relations Board rulings and federal court decisions upholding negotiated project labor agreements. Enactment of statutes permitting PLAs by state and/or public agencies would settle the question reducing the need for costly litigation.

3. **Does the bill mandate use of a project labor agreement in all public construction projects?**

   No. The legislation as introduced simply provides the state or local government entities with the option of using a project labor agreement.

4. **Will PLAs help control public spending?**

   A public agency <u>may</u> decide to use a PLA in a public construction project as part of an effort to gain greater control over the expenditure of public funds. The PLA is not mandated but provides public agencies another tool to consider using in the effort to control public spending.

5. **Who can be employed through a PLA?**

Anyone who qualifies for the type of labor required on the project can be hired for the job, union or non-union.

6. **Will project labor agreements result in hiring Alaskans rather than outsiders for jobs on Alaskan projects?**

Yes. Use of PLAs can help ensure Alaskans are hired for public construction projects rather than non-residents. While the courts have struck down Alaska hire laws, hiring halls can require in-state residency for those laborers they send out on a job.

LETTERS OF SUPPORT FOR:

HB 223 - Project Labor Agreement Bill

Attached are letters from Alaska contractors who support passage of SB 95, Senator Rodey's companion legislation to HB 223.

You will note they share the same enthusiasm for Project Labor Agreements because of several positive factors, including:

- potential project cost savings
- Alaska residency preference in hiring
- reliable and skilled scurce of workers
- success with prior project labor agreements

As we work to structure a sound, workable bill that will expand options for public agencies to consider when preparing public works projects, remember that Alaska's working men and women and many Alaskan contractors have successfully utilized project labor agreements.

It makes sense that public agencies should at least have the option to successfully employ a project labor agreement on a large scale project.

NEWBERY ALASKA, INC.

1848 POST ROAD • ANCHORAGE, ALASKA 99501 • PHONE: (907) 258-9073 • FAX: 258-9074

March 11, 1991

Senator Pat Rodey
P.O. Box V
Juneau, Alaska 98111

Dear Senator Rodey:

It has been brought to my attention that you have introduced legislation that would permit state agencies to enter into project labor agreements. It is with great pleasure that I extend this letter of support for SB-95. As a long time Alaskan construction contractor, I believe project labor agreements can not only bring about cost savings, but assure local hire of Alaskan's. It is a proven fact that union hiring hall's strictly enforce residence preference when screening for dispatch, and can ensure a reliable and skilled source of labor to meet the needs of a project.

Newbery Alaska, Inc. has performed a number of projects over the years under project agreements including the Anchorage-Fairbanks Intertie, the Red Dog Mine, and the Bradley Lake Hydroelectric Project Transmission Line. The latter project was finished five months early allowing construction power to be backfed to the Power House site, which allowed the Alaska Energy Authority to abandon diesel generating facilities at the site, and providing economic commercial power for the completion of construction at this important facility.

A union project labor agreement can contain special wage rates, overtime provisions and working conditions which will benefit a project of any magnitude and will give all interested contractors level playing field to work from and will ensure that a work force is available to meet construction needs.

Very truly yours,
NEWBERY ALASKA, INC.

R. M. Gearhart
Vice President and General Manager

CITY ELECTRIC, INC.

ELECTRICAL CONTRACTORS

3720 RAINIER AVENUE SOUTH SEATTLE, WASHINGTON 98144 (206) 722-3700 FAX: (206) 722-0119
819 ORCA STREET ANCHORAGE, ALASKA 99501 (907) 272-4531 FAX (907) 276-7213
3540 HOLT ROAD FAIRBANKS, ALASKA 99701 (907) 452-7158 FAX: (907) 451-0141

REPLY TO. Anchorage Office
REFERENCE

March 11, 1991

The Honorable Pat Rodey
P. O. Box V
Juneau, AK 99811

Dear Senator Rodey:

This letter is for support of SB-95, authorizing State agencies to enter into project labor agreements (PLA's) such as private industry now does.

City Electric, Inc. has been an Alaskan business since 1946. We have seen many successful PLS's used over the years. We endorse PLA's since we believe they will control costs and help maintain a reliable future work force for the State of Alaska.

Very truly yours,

CITY ELECTRIC, INC.

P. L. Poythress
President

Jet

Electric, Inc.

Electrical Contractors

2609 A STREET
ANCHORAGE, ALASKA 99503
PHONE (907) 277-1431

March 08, 1991

Senator Pat Rodey
P O Box V
Juneau, AK 99811

Subject: SB-95 - Project Labor Agreement

Dear Senator Rodey:

I have just read the work draft of subject bill and your 2/20/91 memorandum. I am very much in favor of this bill and sincerely hope that you can get it enacted into law.

Keep up the good work.

Very truly yours,

ELECTRIC, INC

G B Gadberry
President

CONTRACTOR Support Letters

SKYLINE Electric Inc.

540 WEST POTTER DRIVE
ANCHORAGE, ALASKA 99502 18

TELEPHONE
(907) 561-1270

ED SCHENDERLINE
PRESIDENT

March 8, 1991

Senator Pat Rodey
P.O. Box V
Juneau, Alaska 99811

Dear Senator Rodey:

It's been brought to my attention that you've introduced SB-95 authorizing State agencies to enter into project labor agreements.

As a longtime contractor in Alaska, I see many benefits to such agreements. First of all, such agreements can ensure a reliable source of labor is available to meet the needs of a project. This is critical to impacting the cost of any project.

I know one thing about construction, and that is the cost to aproject when delays occur due to labor shortages or disruption is extremely high,

A union project labor agreement can contain special wage rates, overtime provisions and working conditions which will benefit a project of any magnitude. Quite candidly, from a project owner's perspective, the key to any project lies in ensuring the project is completed on a timely basis, thus reducing financing costs. This in itself may mean millions to the State of Alaska in savings.

Thanks for your efforts in this area.

Sincerely,

Ed Schenderline

Ed Schenderline

Dear Senator Rodey:

It is with great pleasure that I extend this letter of support for SB-95, authorizing state agencies to enter into project labor agreements.

My company has been doing business in Alaska for over 15 years and has seen the benefits to such agreements on projects in Alaska. When we bid work on such projects, we are assured that a reliable skilled source of workers will be available to man the work. We also have seen cost savings included in such projects in the form of overtime, travel time, and grievance procedures. And on some projects seen no strike provisions negotiated, which is really important to maintaining a stable workforce.

One of the major factors to a project of any size, is the ability of the project to follow a critical path method (CPM) of construction. As with all projects, following a strict CPM can, and will, have an impact on project costs. Construction projects are not bid on an exact science basis, but when you can be assured of a reliable skilled source of labor and maintaining a construction cadence as a part of the project, your bids will reflect these cost savings. The bottom line being that construction delays cost money and on any given project these delays can amount to millions of dollars which can be minimized by a good project labor agreement.

It seems to me that the option of a project labor agreement on State projects makes as good a sense as it does on private funded projects.

This practice has been used in the private sector for years and for the same reasons being used by the public sector. It's about time the State started looking at their projects the same way the private sector does.

Sincerely,

Ralph P Klassen

Radi Electric
6151 A street
Anchorage Alaska.
99518