

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 4, 2008

1:12 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Lesil McGuire  
Senator Bill Wielechowski  
Senator Gene Therriault

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 286

"An Act relating to impersonating a public servant."

MOVED SCS HB 286(JUD) OUT OF COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 28(FIN)

Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund, and to appropriations to and transfers from the fund; and dedicating a portion of the petroleum production tax to the fund.

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 286

SHORT TITLE: IMPERSONATING A PUBLIC SERVANT

SPONSOR(S): REPRESENTATIVE(S) DAHLSTROM

01/04/08	(H)	PREFILE RELEASED 1/4/08
01/15/08	(H)	READ THE FIRST TIME - REFERRALS
01/15/08	(H)	JUD
02/01/08	(H)	JUD AT 1:00 PM CAPITOL 120
02/01/08	(H)	Moved Out of Committee
02/01/08	(H)	MINUTE(JUD)
02/04/08	(H)	JUD RPT 3DP 1NR 1AM
02/04/08	(H)	DP: SAMUELS, DAHLSTROM, RAMRAS
02/04/08	(H)	NR: COGHILL
02/04/08	(H)	AM: HOLMES
02/11/08	(H)	TRANSMITTED TO (S)

02/11/08 (H) VERSION: HB 286  
02/13/08 (S) READ THE FIRST TIME - REFERRALS  
02/13/08 (S) STA, JUD  
03/13/08 (S) STA AT 9:00 AM BELTZ 211  
03/13/08 (S) Moved HB 286 Out of Committee  
03/13/08 (S) MINUTE(STA)  
03/14/08 (S) STA RPT 1DP 2NR  
03/14/08 (S) DP: MCGUIRE  
03/14/08 (S) NR: STEVENS, FRENCH  
03/28/08 (S) JUD AT 1:30 PM BELTZ 211  
03/28/08 (S) Heard & Held  
03/28/08 (S) MINUTE(JUD)

BILL: HJR 28

SHORT TITLE: CONST. AM:BUDGET RES.FUND/OIL& GAS TAX  
SPONSOR(S): REPRESENTATIVE(S) SAMUELS

01/11/08 (H) PREFILE RELEASED 1/11/08  
01/15/08 (H) READ THE FIRST TIME - REFERRALS  
01/15/08 (H) JUD, FIN  
01/25/08 (H) JUD AT 1:00 PM CAPITOL 120  
01/25/08 (H) -- MEETING CANCELED --  
01/28/08 (H) JUD AT 1:00 PM CAPITOL 120  
01/28/08 (H) Heard & Held  
01/28/08 (H) MINUTE(JUD)  
02/04/08 (H) JUD AT 1:00 PM CAPITOL 120  
02/04/08 (H) Heard & Held  
02/04/08 (H) MINUTE(JUD)  
02/06/08 (H) JUD AT 1:00 PM CAPITOL 120  
02/06/08 (H) Moved CSHJR 28(JUD) Out of Committee  
02/06/08 (H) MINUTE(JUD)  
02/08/08 (H) JUD RPT CS(JUD) NT 2DP 3NR 1AM  
02/08/08 (H) DP: SAMUELS, RAMRAS  
02/08/08 (H) NR: COGHILL, DAHLSTROM, HOLMES  
02/08/08 (H) AM: DOOGAN  
02/12/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/12/08 (H) Heard & Held  
02/12/08 (H) MINUTE(FIN)  
02/21/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/21/08 (H) Scheduled But Not Heard  
02/22/08 (H) FIN AT 1:35 PM HOUSE FINANCE 519  
02/22/08 (H) Heard & Held  
02/22/08 (H) MINUTE(FIN)  
03/04/08 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
03/04/08 (H) Moved CSHJR 28(FIN) Out of Committee  
03/04/08 (H) MINUTE(FIN)  
03/10/08 (H) FIN RPT CS(FIN) NT 4DP 3NR

03/10/08 (H) DP: HAWKER, CRAWFORD, THOMAS, MEYER  
03/10/08 (H) NR: GARA, STOLTZE, JOULE  
03/19/08 (H) TRANSMITTED TO (S)  
03/19/08 (H) VERSION: CSHJR 28(FIN)  
03/21/08 (S) READ THE FIRST TIME - REFERRALS  
03/21/08 (S) JUD, FIN  
04/04/08 (S) JUD AT 1:30 PM BELTZ 211

#### **WITNESS REGISTER**

##### REPRESENTATIVE SAMUELS

Alaska State Capitol  
Juneau, AK

**POSITION STATEMENT:** Co-Sponsor of HJR 28

##### REPRESENTATIVE DOOGAN

Alaska State Capitol  
Juneau, AK

**POSITION STATEMENT:** Co-Sponsor of HJR 28.

JASON BRUNEY, Executive Director  
Resource Development Council (RDC)  
Anchorage, AK

**POSITION STATEMENT:** stated support for HJR 28.

ARLISS STURGELEWSKI  
Anchorage, AK

**POSITION STATEMENT:** Stated support for HJR 28.

WAYNE STEVENS, President and CEO  
Alaska State Chamber of Commerce (ASCC)  
Juneau, AK

**POSITION STATEMENT:** Stated support for HJR 28.

DAVID TEAL, Legislative Fiscal Analyst  
Division of Legislative Finance  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided information related to HJR 28.

BRIAN ANDREWS, Deputy Commissioner  
Department of Revenue (DOR)  
Juneau, AK

**POSITION STATEMENT:** Raised two concerns related to HJR 28.

#### **ACTION NARRATIVE**

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at [1:43:00 PM](#). Present at the call to order were Senators French, Wielechowski, and McGuire. Senators Therriault and Huggins arrived shortly thereafter.

**HB 286-IMPERSONATING A PUBLIC SERVANT**

[1:43:14 PM](#)

CHAIR FRENCH announced the consideration of HB 286. He withdrew amendment 25-LS1169\A.1 that was pending from the previous hearing, and asked for a motion to adopt Version \C committee substitute (CS).

[1:43:43 PM](#)

SENATOR MCGUIRE moved to adopt Senate CS for HB 286, 25-LS1169\C, Luckhaupt, as the working document.

CHAIR FRENCH explained that the CS incorporates the withdrawn amendment more smoothly. He continued to say that the crime of impersonated a public servant in the first degree is what happens when someone violates the underlying statute by "pretending to be peace officer and purports to exercise the authority of a peace officer in relation to another person." Previous discussion focused on whether the underlying statute should be fixed, but his view is that it's been on the books for some time and the bill sponsor intended to focus on making it a felony to impersonate a police officer given the huge authority those individuals have.

SENATOR MCGUIRE suggested, on line 11, saying "pretends to be a public servant and purports to exercise the authority of a public servant." She then asked if the drafter saw a problem with the phrase "does any act."

CHAIR FRENCH replied he hasn't indicated that the underlying statute needs to be fixed. In response to a question he relayed that this is the last committee of referral.

SENATOR WIELECHOWSKI reviewed the difference between Sec. 11.56.827(a) that says, "pretending to be peace officer and purports to exercise the authority of a peace officer in relation to another person." and AS 11.56.830(a), that says "pretends to be a public servant...".

CHAIR FRENCH said that all police officers are public servants so a peace officer could violate the B misdemeanor by doing any act in that capacity - perhaps by carrying a badge, but not by

exercising the authority. If you're not a police officer, you probably shouldn't carry a police badge in your wallet, he said.

SENATOR McGUIRE observed that with respect to the misdemeanor, the broader definition of public servant incorporates legislators. In the previous committee she gave the example of a staff member trying to impress a girlfriend by using a legislator's stationary. Under the "any act" language, it's suddenly a crime, she said.

CHAIR FRENCH responded that it's been that way for 20 years and he's not aware that any charges have been filed for that offense. He has the same unease, but he's come to believe that for a B misdemeanor, only the most egregious violations will be charged.

SENATOR McGUIRE suggested replicating the C felony language for the lesser offense to make it clear that the person has to purport to exercise authority [of a public servant in relation to another person], as opposed to "any act."

SENATOR WIELECHOWSKI found that reasonable and asked if the sponsor disagrees.

CHAIR FRENCH said he believes that the sponsor cares about the C felony, not the B misdemeanor.

SENATOR WIELECHOWSKI said he agrees with Senator McGuire on that point.

[1:48:02 PM](#)

CHAIR FRENCH asked Senator McGuire to restate the proposed language for a conceptual amendment.

SENATOR McGUIRE said the conceptual amendment is to make Section 2 the misdemeanor offense that applies to the broader public servant category consistent with the peace officer felony language by deleting the phrase "any act" on line 11, and inserting the phrase, "purports to exercise the authority of a public servant in relation to another person."

CHAIR FRENCH said Section 2 would then read as follows:

- (a) A person commits the crime of impersonating a public servant in the second degree if the person pretends to be a public servant and purports to

**exercise the authority of a public servant in relation to another person.**

CHAIR FRENCH found no objection, and announced that Amendment 1 is adopted. Finding no further committee discussion, he asked for a motion.

SENATOR McGUIRE motioned to report the CS for HB 286, 25-LS1169\C, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection SCS HB 286(JUD) is moved from the Senate Judiciary Committee.

**CSHJR 28(FIN)-CONST. AM:BUDGET RES.FUND/OIL& GAS TAX**

[1:49:25 PM](#)

CHAIR FRENCH announced the consideration of HJR 28. [Before the committee was CSHJR 28(FIN).]

REPRESENTATIVE SAMUELS, Co-Sponsor of HJR 28, explained that HJR 28 establishes an endowment-type fund out of the Constitutional Budget Reserve (CBR) with a 5 percent payout to automatically flow into the general fund. Then the legislature each year would have the prerogative to spend the payout as it saw fit. Initially the bill did not incorporate the CBR; the original draft had a separate constitutionally created fund that for five years would receive all the progressive feature of ACES [the petroleum tax]. He decided on that for three reasons: because he wanted the public to understand that endowments aren't evil, because it would be an opportunity to save money, and because it would provide a separate cash-flow mechanism into state coffers that wasn't associated with the price of a commodity.

[1:52:11 PM](#)

The House Finance Committee broadened the scope and instead of a new fund decided on using the constitutional budget reserve (CBR). Doing that would make the endowment a more effective cash-flow mechanism by applying the concept of front-loading. He described his 401k with Pen Air and said that every dollar you put in during the first years makes a real difference. After it gets built up where money can be spent from the fund, the money you put in is less relevant because the money that's already in the fund is working for you. The thinking is that "while we've got money, you want to put as much money [as possible] into this endowment so that it actually becomes a real-life cash flow," he said.

REPRESENTATIVE SAMUELS relayed that at the end of the session the CBR is expected to be \$6-7 billion. He added that for purposes of an easy-math example, suppose the CBR has \$10 billion. At a 5 percent payout rate the cash-flow mechanism going into the general fund would be about \$500 million a year. Philosophically the CBR was created so that as the price of oil rises and falls, massive state government budget cuts aren't inevitable. The trade-off with HJR 28 is that government would not have the ability to access that \$10 billion in order to balance the budget. If production or the price of oil drops the painful but healthy debate on spending caps and revenue sources will happen sooner than it would had the \$10 billion been left open to government spending. The reason for doing this is that as the budget continues to increase and production continues to decrease, the longer you wait to have the debate on state fiscal planning, the more draconian the answers will be.

[1:56:59 PM](#)

REPRESENTATIVE SAMUELS emphasized that if the \$10 billion is already gone, the problem is worse: there would be no cushion, there would be no \$500 million cash flow, the budget would be higher, and production would have dropped. "I think the discussion is inevitable, and it is healthier for the community to have it sooner rather than later," he said. Decisions are better made when it's not a crisis situation.

[1:58:52 PM](#)

REPRESENTATIVE SAMUELS said almost all members have questioned what to do if there's a short term interruption in the revenue stream from Prudhoe Bay, and there are a couple of answers to that. At one point the House Finance Committee discussed a 5-year phase-in of the 3/4 vote money and the endowment money to provide some sort of cash-flow mechanism to accommodate a short-term needs. But when the Senate put \$1 billion into the statutory budget reserve in the supplemental bill, he decided that is a better mechanism for short-term cash needs. That way the legislature the following year could debate whether to put more money into the endowment or into the statutory budget reserve.

REPRESENTATIVE SAMUELS said that in the current version, the sweep provision goes away so that gets rid of the sweep and reverse sweep that has become the normal course of business. That wasn't the intent; the intent was to have a 3/4 vote to access the money for emergencies. Under HJR 28, everything would go immediately into the general fund and every year each

legislature would choose whether to put the money in the endowment, in the statutory budget reserve, spend it, or leave it in the general fund. What you do get to do is take current revenue and endow it so that the money is not gone when the next generation of Alaskans and the next generation of the legislature comes along. Needs don't disappear and everybody gets a little bit throughout time. Nobody gets to spend all of this non-renewable resource, everybody gets a piece. The concern about the need for short-term cash can be alleviated by saving some money in a short-term-cash-need statutory budget reserve type fund, he said. You can save as much money as you want in the short-term fund - tapped in by majority - but his problem with that is that if it's available it will be spent and then it won't be available. "It will be an emergency as defined by the legislature." In general that's what the bill is about practically and philosophically, he said.

2:02:31 PM

REPRESENTATIVE SAMUELS said Mr. Teal would walk through an interactive model to point out various scenarios with general fund growth and production decline. He met with the Department of Revenue (DOR) and they had two ideas for amendments. One addresses a bond rating issue related to locking up a large amount of cash. The other amendment is a work in progress. It deals with keeping the ability for DOR to use a line of credit without ending up with a fund that's totally invested for short-term credit-line needs.

2:04:04 PM

REPRESENTATIVE DOOGAN, Co-Sponsor of HJR 28, asked the committee to think about two things as it considers this legislation. First, is that although \$500 million doesn't look like much money right now, it looks pretty good weighed against the \$300 million the state would get if the personal income tax were reinstated under roughly the same terms as when it was abolished back in 1980. He next drew attention to three salient facts about the state's financial picture: first is the rate of oil production, second is the value of a barrel of oil, and the third is the growth in the operating budget. He believes that over the last five years the growth in the operating budget annualizes to about 10 percent a year. If it's compounded, the growth is 67 percent, making it clear that continued large growth in the operating budget will make it the largest single factor. There's been discussion about this as a spending limit, he said, and insofar as it works that way he agrees, but yo-yo budgeting never really looked very good to him looking at it

from the outside and it probably didn't look any better looking from the inside. Think about those two things, he said.

[2:06:52 PM](#)

REPRESENTATIVE SAMUELS added using figures from the statewide sales tax debate that went on in 2002 and 2003, the estimated \$500 million cash flow stream would be akin to a five percent statewide sales tax.

[2:07:35 PM](#)

CHAIR FRENCH noted that it's been a long time since the legislature last put money in the corpus of the permanent fund, and he believes the reason that it's not being considered now is because the money is then out of reach.

REPRESENTATIVE DOOGAN responded that the difficulty with the permanent fund is that to use the earnings you have to solve all the political problems associated with the permanent fund simultaneously. You have to do something about the dividend and you have to convince the voters that the tradeoff is worth it. Several years ago the idea of capping the dividend didn't go anywhere because the groundwork hadn't been done. So if you want to talk about that, you're talking about a several year process to work out the terms to present the idea clearly and often enough so that people whose job is not to pay attention to these things understand what you're trying to do.

[2:10:10 PM](#)

REPRESENTATIVE SAMUELS said he believes that from one-third to one-half of the money in the permanent fund comes from deposits that weren't constitutionally mandated. If the legislature hadn't put that money away it would have been spent, the permanent fund would be smaller, and there would be less resource to draw on going forward toward that inevitable fiscal planning debate. In the long term the earnings of the permanent fund, cutting budgets, and some broad-based tax will all play a role in the debate. But with a \$40 billion permanent fund the decisions are easier and the road is less rocky, he said.

[2:11:23 PM](#)

SENATOR THERRIAULT joined the meeting.

CHAIR FRENCH questioned why the legislature this year isn't a good counter argument to his position. It's spending a lot but it's saving a lot, too. "At some level isn't that a check on a legislature run wild?"

REPRESENTATIVE SAMUELS responded that five years ago the legislature spent \$2.5 billion from the general fund and this year it will spend \$4.1 to \$4.4 billion. The legislature is doing a good job of saving money, but part of that is because there is so much money right now. When Mr. Teal does some modeling, you'll see some interesting numbers on what could continue, he said.

[2:13:30 PM](#)

SENATOR MCGUIRE drew an analogy between the permanent fund and having two \$20,000 certificates of deposit (CD) versus one \$40,000 CD. She believes it would be more efficient and provide a better payout to pool the assets, but something else comes into play with the permanent fund. In her first year in the legislature she learned that there is a philosophical difference of opinion on what to do with money that's perceived to be "government money" and money that's perceived to be "citizen money." The money we're talking about in this legislation is perceived as government money while the money in the permanent fund is perceived as citizen money. Other people don't believe there's a lot of difference and the money that's generated from oil wealth is invested into roads and schools to benefit everyone. But because of that difference in perception, you never get around the practical, political, and philosophical problem of trying to combine those two savings accounts, she said.

[2:15:40 PM](#)

SENATOR MCGUIRE said that the advantages of doing something like this is that it removes the guesswork about whether or not a future legislature will be fiscally prudent, and it provides the advantage of having an endowment.

CHAIR FRENCH asked the sponsor his view on creating a statutory budget reserve to do the same thing.

REPRESENTATIVE SAMUELS replied he believes that if it were in statute it would still be easier to go after the corpus than to have the debate. The 3/4 vote was meant to make it difficult to access money from the CBR but it became a way of doing business. It was easier to get the vote than to have the debate. Doing this in statute isn't the way to go because the legislature will always hedge to the middle and take the easier path. Under HJR 28 you get your five percent payout and the \$10 billion will last for the long term.

[2:19:33 PM](#)

REPRESENTATIVE DOOGAN added that it's difficult to figure out the idea of a democratic government having savings. The model is set up so that the legislature can decide how much to spend and then set the tax rates for that year. Then the next year it starts over from zero. The difference is that this state is a resource owner in addition to being a sovereign so it has other revenue that comes in. Resource revenues vary, so sometimes there are surpluses and sometimes there are deficits so you have to think about what it really means to save money in a realistic sense of the word. The more he thinks about it the more he's come to conclude that it isn't really saving unless there's some sort of barrier to overcome in order to spend the money. The 3/4 vote for accessing money in the CBR seems like a barrier, but he's told that the legislature has always found a way around it so you can question whether that is long-term savings. But the more difficult it is to access the surplus revenue, the more likely it is that the money really is saved. In times of high revenue you want to save money as best you can otherwise it'll be used and that will be the end of the discussion. The point is, he said, is that it's an odd sort of circumstances for a democratic government to have excess revenue.

[2:21:55 PM](#)

SENATOR HUGGINS joined the meeting.

SENATOR McGUIRE commented on discussions she's had about being a resource-based economy with a highly volatile income stream that isn't set up in the traditional democratic way. That's what makes this sort of constitutional provision so necessary; it's about eliminating volatility in the best way you can.

She suggested the sponsors consider a fallback position of implementing an endowment approach in the statutory budget reserve. She believes that legislators would come up with all sorts of reasons and excuses to use the money so it wouldn't happen. That's the problem with statutory as opposed to constitutional fixes, they're very amendable.

[2:25:08 PM](#)

SENATOR THERRIAULT pointed out that with respect to the statement about the statutory budget reserve, it doesn't bind a future legislature. Constitutions are things that limit the powers of branches of government. Money that was parked in the statutory budget reserve has a different name and may be earning a different return, but really it's just the general fund. The Science and Technology Fund is a good example of creating an endowment. That was general fund money with a different name and

when the time came it was spent just like general fund money. A small constituency advocated to protect it, but finally succumbed to the demand for dollars that year. He agrees with the comments Representative Doogan made on democratic governments taxing at a level to support services, and that being a resource-based state is a different mechanism. He recalled heated debates with a former senator about changing the oil tax to more than it took to operate the government for that year and whether that would have an adverse affect on the economy. My view, he said, was that the constitution doesn't say to sell the resource for less than market value simply because the money isn't needed that particular year. Because of high commodity prices we have a surplus now, and it's intriguing to look at a creative mechanism to carry some of that forward. "I understand some of the criticisms and concerns, but I'm thankful that you're having the hearing today so that we can look at it, play with modeling a little bit and see how it might work," he said.

CHAIR FRENCH opened public testimony.

2:28:00 PM

JASON BRUNEY, Executive Director, Resource Development Council (RDC), stated support for HJR 28. RDC is a statewide private economic development organization whose mission is to grow the Alaska economy through responsible resource development. It has a diverse membership including all the basic Alaska industries as well as construction companies, labor organizations, regional Native corporations, local communities and many industry-support firms. For over a decade RDC's number one legislative priority has been the development of a comprehensive, responsible, and long-range fiscal plan. Alaska residents are fortunate to get an annual permanent fund dividend and not pay federal income taxes, yet he knows for a fact that companies that invest in the state are worried that their taxes will be increased in order to pay for state services. HJR 28 provides an avenue to pay for those services without burdening industry. The increased revenue generated from the recent higher tax on the oil industry should be saved for a rainy day. Just about one third the oil flows through the Trans Alaska Pipeline System (TAPS) today compared to the late '80s, but prices are high so now is the time to make a concerted effort to save the excess. HJR 28 does that and the sponsors are to be commended. However, RDC does not support institutionalizing progressivity in the constitution. RDC is on record supporting reconsideration of the gigantic tax increases of the last several years, but as that is unlikely it supports the state doing everything in its power to save the excess

money. Coupled with the hopeful passage of HB 125, this constitutional amendment will go a long way in helping the state to achieve a responsible fiscal plan. RDC has long supported a percent of market value use of the permanent fund and as this has yet to happen, it is very supportive of creating this new endowment and the subsequent five percent annual usage for state services.

[2:31:33 PM](#)

ARLISS STURGELEWSKI, representing herself, stated support for HJR 28. She congratulated legislators for doing a good job this session on the issue of predictability and said the issue of sustainability needs more work. Passing the bill calling for the ten-year financial outlook was good, but the percent of market value on the permanent fund is missing. Passing HJR 28 will allow the fund to be invested more with market conditions. "I congratulate you for what you've done, I hope you'll pass this legislation and realize that you have worked toward that issue that we've all been yammering for, which is a fiscal plan," she said.

[2:35:27 PM](#)

WAYNE STEVENS, President and CEO, Alaska State Chamber of Commerce (ASCC) stated support for HJR 28. He said that ASCC has long urged the legislature to adopt a comprehensive fiscal policy and recognizes that the first problem is to have a common definition of fiscal policy. While ASCC recognizes that no legislature can bind another, the policy should reflect long term sustainability. HJR 28 is an excellent start in that process, he said.

[2:36:30 PM](#)

DAVID TEAL, Legislative Fiscal Analyst, Legislative Finance Division, showed a model of several different oil price scenarios. The spring forecast uses the revenue model developed for the November session. It takes each price and tells the revenue that's generated. It shows that the surcharge revenue kicks in somewhere around \$60 and increases rapidly beyond that price. He said that we used to talk about \$100 plus under the gross tax and as oil production fell, we fell from producing \$120 million for each dollar change in price down to last year it approached \$60 million for each dollar change. With the tax change, that's closer to \$100 million per dollar change until the progressivity surcharge kicks in. Right now, at a price of \$100, you're talking about each dollar change in the price of oil generating about \$200 million in additional revenue. You have a substantial gain plus you get money from royalties and

the base tax, but the surcharge is large at current prices and that's what is being deposited into the CBR to start the proposed endowment. That's on top of the current balance, which is on the order of \$6 billion, \$7 billion, or \$8 billion depending on how much is spent in this budget cycle. The fixed deposits were 3.6 plus the 400 plus the billion, but anything that isn't spent will be swept into the CBR. The number the sponsors are using is plus or minus a couple billion dollars and that's what it is.

CHAIR FRENCH said the amount will be settled on June 30.

[2:39:56 PM](#)

MR. TEAL said yes; in '08 and '09 the money that isn't spent somewhere else will go to the CBR.

Turning back to the model, he said you can select the production decline, but that's not a driver in this model because it uses the actual spring production forecast until after 2020 and then you get the decline that you specify. He said there's been a lot of talk about a six percent annual rate of decline, but out ten years we're still at 90 percent of current production, he said. So in ten years a ten percent decline is a long way from a six percent annual rate of decline. He said he discounts that because the interesting part of the model is the early years and not the later years. That's because you either have enough money to make it go, or it's failed by then. What the model does is take price and production and it figures out how much total revenue was and how much was due to a surcharge and then it adjusts it downward by production. Then it adds non oil revenue, which he fixed at approximately current value.

[2:41:46 PM](#)

CHAIR FRENCH asked what the non oil revenue is.

MR. TEAL explained that oil revenue is property tax, corporate petroleum income tax and non oil revenue is everything else. He continued to say that when you look at the CBR, with a current balance of about \$3 billion, basically it could have a balance of \$6 billion to \$7 billion at the end of '08. As the sponsors said, what happens is that it takes the oil surcharge and contributes that. So at any price of oil, it takes the surcharge, subtracts it from the revenue stream and puts it in the CBR instead. It also adds the payout to the revenue stream. The payout starts fairly small because it takes the five-year average and five years ago that was about \$2 billion. But it quickly rises as the five-year average brings in the larger

numbers. So the payout should be somewhere on the order of \$500 million per year as the sponsors discussed, starting in 2013 to 2015. Then it continues to rise assuming that the CBR continues to grow because of the surcharge. That, of course, depends on the oil revenue forecast. You can then look at the surplus deficit calculations. That is simply taking available revenue plus the payout to get total revenue. Then you look at expenditures, which is a key variable. He showed expenditures growing four percent annually and said that growth rate is the big argument along with what oil is going to do. That determines whether the proposal works or not.

[2:44:09 PM](#)

CHAIR FRENCH asked what happens if the general fund grows at ten percent a year.

MR. TEAL said he'd show that next. Returning to the model, he said it shows a surplus and in the early years it's due to high oil prices so you end up with not simply a CBR balance that approaches \$20 billion, but reserves outside the CBR are also substantial, approaching \$20 million by 2020. He restated that that's based on the spring oil forecast.

[2:45:30 PM](#)

Responding to the request, he suggested first looking at the current situation; under the fall oil forecast it shows that the CBR built up a little and you've soon overspent. That's with \$45 oil and we know we need oil at \$60 or more to support the current level of the budget so it should be no surprise, he said, that you're looking at some very large deficits. He showed the same thing under the current oil forecast.

[2:46:41 PM](#)

MR. TEAL showed that under the base assumptions of four percent growth in expenditures and the spring forecast, there was a surplus out until the mid 2020s. But if you increase the expenditure growth to ten percent, you hit deficits by 2013 and are completely out of control with an unsustainable budget. The point is that you just can't do it because you can't spend money you don't have, he said.

He acknowledged that there's a big argument over the growth rate and if it's four percent. That's what the governor hopes to hold it to, and that's one reason he used it. He then showed the percent of general fund surplus after operating is spent on capital and said you might want to compare that to the operating budget growth. He looked at operating budget growth and the

surplus in a given year and highlighted that in recent years the growth has sometimes exceeded 20 percent and in others it's down around 15 percent, but in those years the surplus is also large. I don't think it's a coincidence, he said. He then showed a number of years when there was virtually no growth in the operating budget and that's because there wasn't any money. That, too, was not a coincidence. When there were deficits or no surplus revenue, there was no growth, he said.

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CHAIR FRENCH observed that one of the points that the sponsors are making is that a surplus spur government growth. "The upward pressure is just too great for all of us to withstand. If there's no money, we can resist upward growth because we don't have the ability to print money. But with the surplus floating around the building, there's just too many yeses compared to the no's as far as each individual project comes forward it all makes sense. We like it, we spend money on it." He asked if that's a truism.

MR. TEAL replied that's what history indicates. When you have money, the budget grows and it doesn't when there is no money. He said he doubts that growth will continue at 20 percent because when you look at the cause of those recent 20 percent growth rates, the growth is much less than the numbers would indicate unless you think about where the money was spent. In recent years \$450 million was put into the retirement system - that's annual. That was a big chunk of money but we're now stabilized so you had to accept it as a large chunk of money spent and next year it won't be spent.

CHAIR FRENCH added that you could spend \$450 million each of the next ten years on retiring the PERS/TRS liability, but it doesn't represent growth because it's the same \$450 million.

MR. TEAL said it's the same with the \$200 million or so in the tax credits under the new production tax.

CHAIR FRENCH commented that he likes this argument because it will help him defend what the legislature did when he returns to his district.

MR. TEAL said the 20 percent growth isn't something he expects to continue, but when you look at the history you see that when you have a surplus, the operating budget grows. As Senator McGUIRE said, it's unattainable because once it's in the operating budget it's difficult to get it out.

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SENATOR THERRIAULT observed that it's a good thing that substantial amounts of money will be swept into savings, but it's not necessarily good if it masks the unsustainable growth in governmental spending that's going along with the surplus.

MR. TEAL explained that what he did in computing the growth is to subtract savings from spending. Now you see a FY09 operating budget of \$5.2 billion, but it's talked about as a \$4.2 billion operating budget because \$1 billion is savings. But if you look at the bill and at the operating system, and at the reports, you see a \$5.2 billion budget because a savings appropriation isn't differentiated from a spending appropriation. It's simply an appropriation and that's what is counted. For that reason he manually removed savings from the recent years before taking these numbers. He agreed with Senator Therriault that it doesn't matter what you save, what matters is what you spend because you will spend what you're saving at some point in the future unless oil prices stay where they are.

CHAIR FRENCH said another possibility is to create a permanent fund that can't be touched.

SENATOR McGUIRE commented that there was a similar debate years ago on Garvey Bonds. It's borrowing from the future and over stimulating particular sectors of the economy.

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MR. TEAL showed a bar graph indicating the percent of the surplus spent on capital. When there are zeros, it means there was no surplus to spend. It shows that the current level of spending the surplus on capital projects is high relative to these years but historically this year's capital spending is not out of line with past surpluses. In the '80s 50 percent of the surplus was spent on capital budget. The Senate proposal was 18 percent of the surplus being spent on capital and there was more than that spent in '06 and '07, which were also big surplus years.

He then showed that 10 percent growth is not sustainable. Using the DOR forecast and with 10 percent growth, shows a decline from over \$20 billion to breaking the system in about 2020 and \$100 billion cumulative deficits further out.

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SENATOR WIELECHOWSKI asked what oil production decline he's anticipating.

MR. TEAL replied it's a two percent decline beyond 2020, using the spring forecast; some years it's even and some years it's up. Mr. Andrews might provide an explanation, but the assumptions are that there is a reduction in major fields and that new fields are coming on line. That hasn't happened, he said; these are just projections. He continued to show different projections and said that when you have a surplus, in theory you hang on to it. But the graphs on percent of surplus spent on capital and operating tell you that if the money is held in the general fund it will likely be spent. You can choose to put the money into the endowment, but it doesn't flow in automatically like the surcharge revenue. He said that he would argue that at high oil prices this system isn't going to work unless additional money is contributed to the endowment.

At medium to low oil prices there may be nothing to contribute, but contributing no more than what's required will still result in a large and balance and there will still be a payout that grows to \$1 billion a year. Putting more money in will result in a larger payout, but that's a legislative choice.

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SENATOR WIELECHOWSKI asked if the projections include additional revenue from a gas pipeline.

MR. TEAL said no.

SENATOR WIELECHOWSKI said he anticipates a gas pipeline in 15-20 years and wonders if this is the best policy to take to get the state's fiscal house in order to get through those years until gas comes in.

CHAIR FRENCH asked Mr. Teal to model a 5 percent production decline from this year forward.

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MR. TEAL said the model indicates that the reserve balance is gone in 2020 with a 4 percent expenditure growth and a production decline.

SENATOR WIELECHOWSKI questioned where the money would come from to support schools, roads and other things if in four years the price of oil drops to \$40 and the surplus is out of reach.

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REPRESENTATIVE SAMUELS replied you'd either cut the budget or raise the money somewhere else.

SENATOR WIELECHOWSKI added that someone might try to take it out of the permanent fund.

REPRESENTATIVE SAMUELS said there would be debates on: the permanent funds earnings, a state income tax, a sales tax, large budget cuts, and small budget cuts. It comes down to raising more money versus cutting the budget.

CHAIR FRENCH said some people might argue to turn the permanent fund into an endowment.

REPRESENTATIVE SAMUELS responded that he's voted for that several times.

SENATOR WIELECHOWSKI commented that he'd rather spend the billions of dollars in savings than either a tax increase or taking money from the permanent fund.

REPRESENTATIVE SAMUELS said the problem with that is that as you try and prop things up the budget will continue to increase and production to decline. He reiterated that the debate is inevitable, but the longer you wait, the wider the gap and the more draconian the answers will be. It'd be easy to get to a day when you can't get enough revenue or cut the budget enough without having a real shock to the economy like happened back in the mid '80s. Anytime you remove a lot of money from the economy it's a shock.

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SENATOR WIELECHOWSKI said that if oil drops to \$30 a barrel there will be shock to the economy regardless of anything else. Also, he said, there's nothing to prevent the legislature from doing this even if this doesn't pass.

SENATOR McGUIRE said she, too, doesn't like the generational shift of liability and responsibility as opposed to providing a cushion for the years ahead.

REPRESENTATIVE DOOGAN commented that the gas pipeline will never pay like Prudhoe Bay, so the idea that everything will be okay once gas flows isn't correct. In particular it won't work like that if the operating budget continues to increase. Mr. Teal made a very salient point that was glossed over, and that is

that the non oil revenue is \$700 million. If you add the expected gas revenue to that \$700 million, you can't even afford the budget today let alone one that's been run up another 4 percent a year. When he looks at the numbers he doesn't see the challenge as bridging until gas flows because that doesn't get you where you want to go. It's more a matter of figuring out what to do with the remains of an incredibly valuable resource to make sure there is benefit for people today and for those who are in fourth grade now. This is an important discussion and he supports this approach because you can have the best hopes for the gas pipeline, but the odds that gas will be worth as much as oil are low. We have to be realistic about what we can do once the gas pipeline is running, if we can get it built, he said.

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BRIAN ANDREWS, Deputy Commissioner, Department of Revenue (DOR), referred to the sponsor's comments about saving to a retirement account when you're young, and relayed that Albert Einstein once described compounded earnings as the most powerful force in the universe. Turning to the bill, he said that DOR has two concerns with HJR 28. The first relates to locking up the corpus of what HJR 28 is trying to do. This blocks access for payment of debt service for the state's bonds. Currently the annual debt service on the state's general obligation bonds, the certificates of participation, and the state's sponsored leases amounts to about \$70 million per year. Those can obviously be handled in the budget, but if there's an event in the future and those dollars were locked up, the rating agencies would take a dim view of that. The state just got a rating increase and, at the very least, he'd like to maintain that.

MR. ANDREWS said the second concern relates to the liquidity factor that the constitutional budget reserve fund provides to the general fund. He directed attention to several graphs showing the various cash flow requirements from the CBR since FY94. Although there wasn't a need to draw on the CBR the last three years, there was need in prior years. He explained that from an earnings/loss standpoint when structuring an endowment you want to keep 5 to 10 percent allocated to short-term investments or cash equivalents. He would suggest that rather than lending that money to the U.S. treasury, the endowment should have the capability to lend that money to the state treasury. That would help with cash flow needs and wouldn't impact the overall earnings of the endowment. On \$6 billion a 5 percent allocation to cash equivalents would be \$300 million and 10 percent would be \$600 million. That would cover the general fund cash needs in most years, he said.

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CHAIR FRENCH asked what the CBR has been earning in the last few years.

MR. ANDREWS explained that the CBR has two components. The major component is in very liquid short-term investment profile with earnings that are 4 to 5 percent or a money market equivalent. The sub account within the CBR is invested in domestic stocks and longer term domestic fixed-income securities. In FY07 those earnings were 14 to 15 percent. He agreed with Chair French that that money is captured within the CBR and doesn't migrate.

SENATOR WIELECHOWSKI asked how they decide what goes into the sub account.

MR. ANDREWS explained that for the most part the viewpoint is that the CBR is there for liquidity and safety of principal, which is why it's invested for the short term.

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SENATOR McGUIRE asked how much is in the sub account versus the more liquid component.

MR. ANDREWS replied there's currently about \$300 billion in the constitutional budget reserve fund; \$600 million is in the sub account and the remainder is in the liquid portion.

CHAIR FRENCH asked what law prevents putting the 4 to 5 percent money into the 15 percent money.

MR. ANDREWS replied it's at the call of the commissioner of revenue. He added that there is intent language in the supplemental bill to place the majority of the contribution into the sub account.

CHAIR FRENCH asked for a simple description of how much is in the permanent fund, the earnings reserve, the CBR, the education fund, the capital account to build the pipeline, and the various other pots of money that are being held by the state government.

MR. ANDREWS agreed to provide that rather extensive list.

CHAIR FRENCH held HJR 28 in committee.

There being no further business to come before the committee, Chair French adjourned the meeting at [3:21:00 PM](#).

