

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 3, 2010

1:04 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative Nancy Dahlstrom, Vice Chair  
Representative Carl Gatto  
Representative Bob Herron  
Representative Bob Lynn  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE JOINT RESOLUTION NO. 8

Proposing amendments to the Constitution of the State of Alaska limiting appropriations from certain mineral revenue, relating to the balanced budget account, and relating to an appropriation limit.

- HEARD & HELD

HOUSE BILL NO. 146

"An Act relating to transfer restrictions on trust interests."

- MOVED CSHB 146(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HJR 8

SHORT TITLE: CONST. AM: APPROP. LIMIT/MINERAL REVENUE

SPONSOR(S): REPRESENTATIVE(S) KELLY

01/26/09	(H)	READ THE FIRST TIME - REFERRALS
01/26/09	(H)	STA, JUD, FIN
04/02/09	(H)	STA AT 8:00 AM CAPITOL 106
04/02/09	(H)	Heard & Held
04/02/09	(H)	MINUTE(STA)
04/07/09	(H)	STA AT 8:00 AM CAPITOL 106
04/07/09	(H)	Moved Out of Committee

04/07/09 (H) MINUTE(STA)  
 04/07/09 (H) STA RPT 2DP 3DNP 1NR 1AM  
 04/07/09 (H) DP: JOHNSON, LYNN  
 04/07/09 (H) DNP: SEATON, GRUENBERG, PETERSEN  
 04/07/09 (H) NR: GATTO  
 04/07/09 (H) AM: WILSON  
 02/03/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 146

SHORT TITLE: TRANSFER RESTRICTIONS ON TRUSTS  
 SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/23/09 (H) READ THE FIRST TIME - REFERRALS  
 02/23/09 (H) L&C, JUD  
 01/25/10 (H) L&C AT 3:15 PM BARNES 124  
 01/25/10 (H) Moved Out of Committee  
 01/25/10 (H) MINUTE(L&C)  
 01/27/10 (H) L&C RPT 1DP 6NR  
 01/27/10 (H) DP: CHENAULT  
 01/27/10 (H) NR: LYNN, BUCH, HOLMES, NEUMAN,  
 T.WILSON, OLSON  
 02/03/10 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE MIKE KELLY  
 Alaska State Legislature  
 Juneau, Alaska  
**POSITION STATEMENT:** Sponsor of HJR 8.

DEREK MILLER, Staff  
 Representative Mike Kelly  
 Alaska State Legislature  
 Juneau, Alaska  
**POSITION STATEMENT:** Assisted with the presentation of HJR 8 on behalf of the sponsor, Representative Kelly.

TAMARA COOK, Director  
 Legislative Legal and Research Services  
 Legislative Affairs Agency (LAA)  
 Juneau, Alaska  
**POSITION STATEMENT:** Responded to questions during discussion of HJR 8.

DANA L. OLSON  
 Knik, Alaska  
**POSITION STATEMENT:** Indicated a concern with HJR 8.

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

**POSITION STATEMENT:** Responded to questions during discussion of HJR 8.

JANE W. PIERSON, Staff  
Representative Jay Ramras  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 146 on behalf of the sponsor, Representative Ramras.

DANA L. OLSON  
Knik, Alaska

**POSITION STATEMENT:** Indicated a concern with HB 146.

DOUGLAS J. BLATTMACHR, President and CEO  
Alaska Trust Company  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of HB 146.

DAVID G. SHAFTEL, Attorney at Law  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 146.

MICHAEL A. GERSHEL, Attorney at Law  
Anchorage, Alaska

**POSITION STATEMENT:** Expressed concern with Section 3 of HB 146.

JACOB A. SONNEBORN, Attorney at Law  
Anchorage, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 146.

#### **ACTION NARRATIVE**

[1:04:48 PM](#)

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Ramras, Gruenberg, Holmes, Dahlstrom, Herron, and Gatto were present at the call to order. Representative Lynn arrived as the meeting was in progress.

HJR 8 - CONST. AM: APPROP. LIMIT/MINERAL REVENUE

1:08:01 PM

CHAIR RAMRAS announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 8, Proposing amendments to the Constitution of the State of Alaska limiting appropriations from certain mineral revenue, relating to the balanced budget account, and relating to an appropriation limit.

1:10:34 PM

REPRESENTATIVE MIKE KELLY, Alaska State Legislature, sponsor, explained that [if voters approve HJR 8's proposed changes to Article IX, Section 16, of the Alaska State Constitution, a maximum of] a five-year average - of the amounts from the four preceding years and the estimated amount for the current year - of the revenue from [mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses, and every State tax on minerals, mineral production, or mineral transportation] would be available in any given year for appropriation via a simple majority vote; at the end of each fiscal year, any of that revenue not so appropriated would go into a proposed balanced budget account, and could then be transferred to the general fund (GF) via a simple majority vote in years when that revenue did not amount to the aforementioned five-year average; and any amount in the proposed balanced budget account in excess of the combined amounts so appropriated for the current fiscal year and the preceding fiscal year would be transferred to the constitutional budget reserve fund (CBRF). The proposed balanced budget account would receive funds when the State has what he called "excess revenues," and would provide funds "when we are short, for balancing the budget," he added.

1:13:47 PM

DEREK MILLER, Staff, Representative Mike Kelly, Alaska State Legislature, on behalf of the sponsor, Representative Kelly, added that [if HJR 8 is passed by the legislature and] its proposed changes to the Alaska State Constitution are approved by the voters in 2010, it would apply to appropriations made in fiscal year 2012 (FY 12), and every year thereafter. Referring to a PowerPoint presentation, he noted that under existing Article IX, Section 16, of the Alaska State Constitution, the appropriation limit is \$2.5 billion plus adjustments for changes

in population and inflation; this was estimated to be approximately \$7.9 billion in FY 08, and approximately \$8.3 billion in FY 09. These estimates are far higher than the budgets that actually passed the legislature in those years. He then offered his understanding that establishment of the CBRF [Article IX, Section 17, of the Alaska State Constitution] was another attempt to control State spending, and mentioned that accessing the CBRF requires an affirmative three-fourths vote.

MR. MILLER referred to charts included in his PowerPoint presentation that illustrated inflation-adjusted GF spending from FY 90 through FY 09; inflation-adjusted GF spending from FY 90 through FY 09 compared with actual GF spending; inflation-adjusted GF spending from FY 90 through FY 09 compared with actual GF spending and total GF revenue including non-mineral-related revenue; and inflation-adjusted GF spending from FY 00 through FY 10 compared with actual GF spending, total GF revenue including non-mineral-related revenue, and the amounts that would have been available for appropriation had HJR 8's proposed changes to the Alaska State Constitution been in effect since FY 00. He then, in part in response to questions, reiterated points made by the sponsor during his explanation of the HJR 8, and assured the committee that HJR 8's proposed changes to the Alaska State Constitution would not affect the Alaska permanent fund - either dividends, principal, or earnings - or [monies related to the Amerada Hess litigation], and that the proposed balanced budget account would not be subject to what he referred to as the CBRF "sweep" [outlined in Article IX, Section 17(d), of the Alaska State Constitution].

MR. MILLER then offered his understanding that a chart in his PowerPoint presentation provides an estimate of what the proposed five-year-averaged appropriation limit would have been for FY 10 had HJR 8's proposed changes to the Alaska State Constitution already been in effect. In response to a question, he indicated that funds in the proposed balanced budget account would not be limited with regard to what they could be appropriated for.

REPRESENTATIVE KELLY concurred. In response to another question, he indicated that HJR 8's proposed changes to the Alaska State Constitution would not address any of the perceived problems currently associated with the CBRF's appropriation requirement of an affirmative three-fourths vote, though in some years, the proposed changes might mitigate the need to appropriate from the CBRF.

MR. MILLER, referring to his PowerPoint presentation, remarked that HJR 8's proposed changes to the Alaska State Constitution would encourage a better and simpler budgeting system than exists now, would avoid problems with statutory appropriation constraints, would allow the voters to weigh in on the issue, and would accommodate any future approach that might be taken of funding government with Alaska permanent fund earnings.

The committee took an at-ease from 1:27 p.m. to 1:28 p.m.

REPRESENTATIVE KELLY, in response to comments, reiterated points he'd made earlier in explanation of HJR 8.

[1:32:06 PM](#)

TAMARA COOK, Director, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), in response to questions, explained that the language on page 1, lines 8-9, of HJR 8 that reads, "mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses" can also be found in Article IX, Section 15, of the Alaska State Constitution pertaining to the Alaska permanent fund, and surmised, therefore, that the Alaska Court System and the executive branch already have some experience in construing that language in terms of which sources are dedicated under that constitutional provision. Language on page 1, lines 9-10, of HJR 8 that reads, "every State tax on minerals, mineral production, or mineral transportation" would be new and thus not currently addressed by Article IX, Section 15, of the Alaska State Constitution.

MS. COOK, in terms of potential constitutional problems, relayed that although HJR 8 does satisfy the single subject rule as upheld in Bess v. Ulmer - in terms of being just an amendment as opposed to a revision - and probably satisfies the court's stipulation that a proposed constitutional amendment be relatively simple and easy to comprehend - regardless that HJR 8 is somewhat complex - there is a possibility that it would violate the court's stipulation that a proposed constitutional amendment not seriously alter a basic governmental function of one of the major branches of government, since it would be hard to argue that the power of appropriation is anything other than a very basic power of the legislative branch of government. Therefore, to the extent that HJR 8 would successfully restrict the power of appropriation - and that being its actual goal, she pointed out - the question then becomes whether the court, in any ensuing challenge, would find that HJR 8 too painfully

erodes a fundamental power of the legislative branch of government.

MS. COOK, in response to a question, said she is not in a position to say whether HJR 8 would be overturned by the court; instead, she is merely relaying that HJR 8 is susceptible to challenge based on the notion that the power of the legislature to appropriate money is such a significant power that it ought not to be eroded via a constitutional amendment. She noted, though, that there were several constitutional amendments adopted before Bess which did radically erode the legislative power of appropriation. These include the creation of the Alaska permanent fund - which placed a great deal of money outside of the appropriation process, indefinitely, forever, as to the balance; the creation of the CBRF, which imposes a higher vote level in order to reach the money in most situations; and the existing constitutional appropriation limit, which some purport to be ineffective because it's set too high.

MS. COOK said that although it could, perhaps, be argued that those three examples are more dramatic, in monetary terms, than HJR 8, she is unable to say that that fact, in and of itself, could give a person a great deal of reassurance that HJR 8 would not be looked at very carefully by the court, but, again, she is not predicting that the court would necessarily overturn it. Rather, there is a possibility that the court, as it partially did in Bess, might simply slightly rewrite HJR 8 before it's voted on by the people, though that might not be the case either, and the court might instead just decide not to address the question until after it's approved by the voters.

[1:43:27 PM](#)

DANA L. OLSON indicated a concern that HJR 8's language regarding [mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses, and every State tax on minerals, mineral production, or mineral transportation] might be interpreted in such a way that it would affect whether she could sell the oil and gas that she owns.

CHAIR RAMRAS closed public testimony on HJR 8.

MS. COOK, in response to questions, provided comments regarding the Alaska Permanent Fund Corporation (APFC), the Alaska permanent fund, and the permanent fund dividend (PFD).

REPRESENTATIVE HERRON asked whether any attempt has been made to set the provisions of HJR 8 out in statute rather than in the Alaska State Constitution.

MR. MILLER said not that he's aware of, and indicated that he'd have to research the issue further.

REPRESENTATIVE HOLMES asked whether the calculation outlined in HJR 8 would be using fiscal years or calendar years.

MS. COOK said it would be using calendar years: specifically, the calculation would be using the amounts received during the four full calendar years immediately preceding the current fiscal year - so amounts received during the portion of the past calendar year that is part of the current fiscal year would not be included - and the estimated amount expected to be received during the calendar year that's part of the current fiscal year.

[2:01:23 PM](#)

DAVID TEAL, Legislative Fiscal Analyst, Legislative Finance Division, Alaska State Legislature, in response to comments and questions, explained that using calendar years in HJR 8's proposed calculation is intended to provide the legislature with as much accurate information as possible so that the legislature can determine precisely what amount would be available for appropriation. The purpose of HJR 8 is to smooth out volatility, in that any peak-income years would be averaged out, as would any low-income years; the legislature would not be constrained in any given year by the amount of revenue received in that particular year.

CHAIR RAMRAS offered his understanding that HJR 8 is also intended to cap spending.

MR. MILLER concurred.

MR. TEAL pointed out, however, that HJR 8 would not have that effect, because the legislature could still access the CBRF with an affirmative three-fourths vote. House Joint Resolution 8 would limit spending but would not cap it; under HJR 8, spending would be constrained by revenue - albeit revenue averaged over several years - whereas currently, spending is constrained by both revenue and the available balance. In theory, the proposed balanced budget account would never have very much in it, because funds would be placed in it in peak years, but then taken out of it in lean years, and, over time, the legislature

would simply spend everything that's available to it from that account. He characterized the current spending limit as an arbitrary number unrelated to revenue or what's available, and opined that if the goal is to have a balanced budget, then any such limit must be related to the amount of revenue available to the legislature.

REPRESENTATIVE GRUENBERG, in response to an earlier question, referred to the language on page 2, lines 9-10, of HJR 8 that reads, "Money may not be appropriated from the account", and offered his understanding that such a limitation on the legislature's appropriation power must come from the Alaska State Constitution, not from statute.

MS. COOK concurred.

REPRESENTATIVE GRUENBERG observed that the language on page 2, lines 12-13, of HJR 8 that reads, "Section 7 of the this article does not apply to money deposited into, retained in, or transferred from the balanced budget account" is similar to the language contained in Article IX, Section 17(a), of the Alaska State Constitution that reads, "Section 7 of the this article does not apply to deposits made to the fund under this subsection". However, there is no such similar language in Article IX, Section 15, of the Alaska State Constitution pertaining to the Alaska permanent fund. Article IX, Section 7, of the Alaska State Constitution, he ventured, basically prohibits dedicated funds. He questioned, therefore, whether an amendment to Article IX, Section 15, of the Alaska State Constitution - stipulating that Section 7 does not apply to Section 15 - would be in order.

[2:10:23 PM](#)

MS. COOK explained that such an amendment would not be necessary because Article IX, Section 7, of the Alaska State Constitution contains language stating that it does not apply to Article IX, Section 15. In response to comments, she relayed that as the drafter of HJR 8, she chose not to add an amendment to Article IX, Section 7, of the Alaska State Constitution stipulating that it wouldn't apply to proposed Article IX, Section 16; she instead chose to imbed the exemption from Section 7 directly into proposed Section 16, whereas the person drafting the language currently in Section 15 pertaining to the Alaska permanent fund chose the other approach, that of amending Section 7.

MR. TEAL and MS. COOK then briefly responded to questions unrelated to HJR 8.

CHAIR RAMRAS offered his belief that HJR 8 complies with the Alaska State Constitution.

[2:18:01 PM](#)

REPRESENTATIVE HOLMES relayed that she would like to know more about HJR 8 before she would be comfortable moving it from committee.

REPRESENTATIVE HERRON agreed with Chair Ramras, characterized the proposed balanced budget account as merely a miniature CBRF, and indicated that he would be amenable to moving HJR 8 from committee.

REPRESENTATIVE GRUENBERG characterized HJR 8's proposed change to the Alaska State Constitution as fairly serious.

REPRESENTATIVE HOLMES, in response to a question, reiterated that she would like to know more about HJR 8 before moving it from committee, and so would prefer that the bill be held over.

CHAIR RAMRAS relayed that HJR 8 would be held over.

**HB 146 - TRANSFER RESTRICTIONS ON TRUSTS**

[2:22:36 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 146, "An Act relating to transfer restrictions on trust interests."

REPRESENTATIVE GRUENBERG indicated that he's heard concerns regarding Section 3 of HB 146.

[2:24:30 PM](#)

JANE W. PIERSON, Staff, Representative Jay Ramras, Alaska State Legislature, on behalf of the sponsor, Representative Ramras, explained that HB 146 would - by amending AS 34.40.110(b)(1) - clarify that a creditor must establish by clear and convincing evidence that a transfer of property in trust was made with the intent to defraud him/her; would - by adding a new subparagraph (E) to AS 34.40.110(b)(3) - clarify that a spendthrift provision would apply to a trust if distributions are made under the

exercise of discretion by a trustee who is not the settlor, regardless of whether the exercise of discretion is governed by a standard; would - by adding a new subparagraph (F) to AS 34.40.110(b)(3) - provide that a spendthrift provision in a trust applies even though the trustee may distribute income or principal to the settlor or to pay income taxes; and would - by amending AS 34.40.110(1) - clarify that a beneficiary's interest in a trust, regardless of whether it's vested, is not considered a factor or economic circumstance in the division of property subject to divorce. Additionally, HB 146 makes a conforming change to AS 34.40.110(b)(2) to reflect the addition of new subparagraphs (E) and (F) to AS 34.40.110(b)(3); and amends AS 34.40.110(h) such that a transfer restriction is enforceable even if the settlor has the authority to appoint or remove and replace a trustee, a trust protector, or an advisor.

REPRESENTATIVE GRUENBERG characterized the proposed change to AS 34.40.110(1) - via Section 3 of HB 146 - as a complete change rather than just a clarification, remarked that he and the attorneys who practice divorce law in Alaska have concern with Section 3, and indicated a belief that it would overrule some supreme court cases.

MS. PIERSON surmised that others could better address that last point.

[2:29:11 PM](#)

DANA L. OLSON indicated a belief that HB 146 as currently written would conflict with federal rules, and would create problems for her.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MS. OLSON, in response to questions, recounted further details about her specific situation.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MS. OLSON then indicated a belief that Representative Gruenberg has a conflict of interest, and that unless the legislature takes a deposition, HB 146 wouldn't apply to her.

REPRESENTATIVE GRUENBERG offered his understanding that HB 146 would not affect Ms. Olson's situation because the bill pertains to private trusts.

[2:37:10 PM](#)

DOUGLAS J. BLATTMACHR, President and CEO, Alaska Trust Company, said the Alaska Trust Company supports HB 146, believing it will keep Alaska in the forefront of states providing for trusts. He indicated that both his company and the State have benefited from nonresidents setting up trusts in Alaska.

REPRESENTATIVE GRUENBERG asked whether Section 3 would have the effect of overruling some Alaska Supreme Court decisions.

MR. BLATTMACHR surmised that others could better address that point.

[2:39:31 PM](#)

DAVID G. SHAFTEL, Attorney at Law, after noting that he's a member of an informal group that's recommended changes to Alaska's trust laws to the legislature, and that he was involved in drafting HB 146, indicated that Section 3 is meant to address a potential problem with existing AS 34.40.110(1), which, he posited, was intended to ensure that trust assets of a divorcing beneficiary wouldn't be given to his/her soon-to-be-ex spouse, and that such trust assets can't even be considered as assets for purposes of property division in a divorce.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MR. SHAFTEL explained that "a practitioner" in Colorado has recommended that AS 34.40.110(1) be bolstered, and so that's the intent of adding the language, "a factor or economic circumstance in the division of" to AS 34.40.110(1). He then referred to the Alaska Supreme Court's 2006 decision in Krize v. Krize, 145 P.3d 481, and offered a hypothetical example wherein a beneficiary's trust assets do get considered during a divorce.

REPRESENTATIVE GRUENBERG indicated a belief that adoption of Section 3 would have the effect of overturning more than one court case, that existing law is sufficient to address Mr. Shaftel's concerns, and that the circumstances in Mr. Shaftel's hypothetical example are unlikely to occur.

[2:52:37 PM](#)

MICHAEL A. GERSHEL, Attorney at Law, expressed concern that Section 3's proposed change would have a detrimental effect, and concurred that existing law is sufficient.

2:56:55 PM

JACOB A. SONNEBORN, Attorney at Law, indicated concurrence with Mr. Gershel and Representative Gruenberg that existing law is sufficient.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

CHAIR RAMRAS questioned what would occur if Section 3 were deleted.

MR. SHAFTEL indicated that existing AS 34.40.110(1) would simply remain un-clarified.

CHAIR RAMRAS surmised that without Section 3, HB 146 would have the support of the committee.

CHAIR RAMRAS closed public testimony on HB 146.

3:00:54 PM

REPRESENTATIVE DAHLSTROM made a motion to adopt Amendment 1, to delete Section 3 of HB 146. There being no objection, Amendment 1 was adopted.

3:01:34 PM

REPRESENTATIVE DAHLSTROM moved to report HB 146, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 146(JUD) was reported from the House Judiciary Standing Committee.

3:04:14 PM

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:04 p.m.