

HJR

1

HOUSE JUDICIARY COMMITTEE

BILLS IN COMMITTEE

COMPANION LEGISLATION

<u>BILL NO.</u>	<u>SPONSOR</u>	<u>BILL TITLE</u>	<u>HEARING DATES</u>	<u>FURTHER</u>	<u>BILL NO.</u>	<u>STATUS</u>	<u>COMMENTS</u>
HJR 1	Phellego and Marten	Proposing an amendment to the constitution of the state of alaska providing that a legislator who is convicted of a felony forfeits legislative office	1/24 - judiciary 1300 hrs 1st hearing				leave in committee without prejudice 1/24/85

Revision Date: JAN 22 1985REQUESTBill/Resolution No.: HJR 1Title: "Proposing...a legislator... convicted of a felony forfeits...office."Sponsor: Repr. PhillipsRequestor: House JudiciaryDate of Request: 1/16/85FISCAL DETAILAgency Affected: Department of LawProgram Category Affected: Administration of JusticeBRU, Program or Subprogram(s) Affected: ProsecutionEXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<u>OPERATING</u>		-				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<u>TOTAL OPERATING</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

<u>CAPITAL</u>						
----------------	--	--	--	--	--	--

<u>REVENUE</u>						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

<u>GENERAL FUND</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<u>FEDERAL FUNDS</u>						
<u>OTHER</u>						
<u>TOTAL</u>						

POSITIONS:

<u>FULL-TIME</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
<u>PART-TIME</u>						
<u>TEMPORARY</u>						

ANALYSIS: Attach a separate page if necessary

This resolution proposes an amendment to the state's constitution that would provide that a Legislator who is convicted of a felony involving moral turpitude forfeits legislative office. An appeal from a judgment of conviction by the trial court to the Supreme Court would be an expedited appeal. Approval of the Resolution, and the subsequent adoption of the amendment, by the state's electorate, would not have a fiscal impact on the Department of Law.

Prepared By: Richard I. Pegues, DirectorPhone: 465-3672Division: Administrative ServicesDate: 1/21/85Approved by Commissioner: Richard I. Pegues / for Norman C. GorsuchDate: 1/21/85Agency: Department of LawDistribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU ALASKA 99811
(907) 465-4848



BOX 142
EAGLE RIVER, ALASKA
99577
(907) 694-4944

Representative Randy Phillips
HOUSE DISTRICT 15

TO: THE HONORABLE M. MIKE MILLER
CHAIRMAN, HOUSE JUDICIARY COMMITTEE

FROM: REPRESENTATIVE RANDY PHILLIPS *R.P.*

DATE: JANUARY 16, 1985

RE: HOUSE JOINT RESOLUTION 1

This resolution proposes an amendment to our State Constitution that would provide that once a legislator is convicted of a felony, he or she forfeits office. As with all proposed Constitutional amendments, if this resolution passes the Legislature, it will be presented to Alaska's voters at the next general election.

With a statement in our Constitution that a legislator vacates his or her office on the date "that judgment of conviction is affirmed by the Supreme Court, or the period for appeal has expired", there would be no question as to when a legislator must vacate office if convicted of a felony.

Under the resolution, appeals from a lower court conviction are to be handled by the Supreme Court on an expedited basis. Rule 216, Appellate Rules of Procedure, presently provides three instances in which expedited appeals may be granted. It is anticipated that should this resolution be adopted by the voters that the Supreme Court would add a fourth class to this Rule. Rule 216 also provides that any notice of appeal under an expedited appeal must be filed within ten days after the entry of judgment in the lower court. The person appealing the conviction then has ten days to file the memoranda on appeal and there is then a ten-day reply period for the appellant. At this point the court may either require a reply memorandum from the person filing the appeal or may expeditiously dispose of the appeal.

I would urge your support of this resolution in order that the matter may be placed before Alaska's voters.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HJR No. 1
 Title: Proposing amendment to Constitution/legislator convicted felon forfeits office.
 Sponsor: Rep. Randy Phillips
 Requestor: Rep. M. M. Miller
 Date of Request: 1/17/85

FISCAL DETAIL

Agency Affected: Legislative Affairs
 Program Category Affected: General Government
 BRU, Program or Subprogram(s) Affected: Salaries & Allowances

JAN 22 1985

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL	3.2					
300 CONTRACTUAL	4.0					
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	7.2					

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	7.2					
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Moving costs and an annual \$4,000 allowance would be incurred by the addition of a new legislator when the vacancy occurred. A refund or partial payment would not take place for either the legislator that is forfeiting office or the newly appointed legislator.

Prepared By: Pamela A. Calhoun, Manager
 Division: Administrative Services

Phone: 465-3850

Date: 1/22/85

Approved by Dep. Exec. Director: Don Fisher
 Agency: Legislative Affairs Agency

Date: 1/22/85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

JAN 18 1985

Revision Date: _____

REQUEST

Bill/Resolution No.: HJR No. 1
 Title: Requiring a legislator
 convicted of a felony to forfeit office.
 Sponsor: Phillips/Martin
 Requestor: _____
 Date of Request: 1/14/85

FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Division of Elections
 BRU, Program or Subprogram(s) Affected: Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	**0	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

**No additional fiscal impact is anticipated for a house seat. However, a senate seat vacated more than two years and five months prior to the end of the term requires that a special election be held to fill the vacant seat. The cost to hold a special elections is estimated to be \$70,500 per district.

Prepared By: Sherry Valentine, Deputy Director Phone: 465-4611
 Division: Division of Elections Date: 1/18/85

Approved by Commissioner: [Signature] for Lt. Gov. McAlpine Date: 1-18-85
 Agency: Lt. Gov.

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

MEMORANDUM

State of Alaska

to Hon. Terry Miller
Lieutenant Governor

DATE: November 7, 1980

ATTN: Patty Ann Polley, Director
Division of Elections

FILE NO J-66-001-81

TELEPHONE NO: 465-3665

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Restoration of vot-
ing rights to con-
victed felons

By:

Laura L. Davis 
Assistant Attorney General

You have requested that we respond to an inquiry by Akeela House of Anchorage regarding the scope of the disqualification of convicted felons from voting. We discuss the applicable provisions of the 1980 Election Code below. We will send copies of this memo and the attached information to Akeela House.

Attached is our memorandum dated August 14, 1968 on this subject. It provides background on the disqualification of convicted felons from voting in Alaska. The 1980 Election Code revised AS 15.05.030 to provide as follows:

LOSS AND RESTORATION OF VOTING RIGHTS. (a) A person convicted of a crime that constitutes a felony involving moral turpitude under state law may not vote in a state or municipal election from the date of his conviction through the date of the restoration of voting rights under this section. The right to vote withdrawn under this section is automatically restored upon the unconditional discharge of the person.

(b) The commissioner of health and social services shall establish procedures by which a person unconditionally discharged is advised of the restoration of voting rights withdrawn by a conviction. § 4, ch. 100, SLA 1980.

The new Election Code also amends AS 15.60.010 to include the following definitions of terms used in AS 15.05.030:

(8) "felony involving moral turpitude" includes those crimes which are immoral or wrong in themselves such as murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft, and forgery; . . .

(32) "unconditional discharge" means that a person is released from all disability arising under a conviction and sentence, including probation and parole. § 207, ch. 100, SLA 1980.

In our opinion, the new code has not changed the date upon which a voting disability or a felony conviction is imposed, but it has extended the disability to persons receiving suspended sentences. The disqualification attaches at the time of final judgment of conviction. A person is not disqualified from voting pending an appeal of a conviction. However, absent an appeal, a person who receives a suspended sentence, or a suspended imposition of sentence is disqualified until his or her unconditional discharge. Under the former law, such persons would not have been disqualified.

Under the new code, the definition of felony involving moral turpitude has been revised. The statutory definition mentions several specific crimes, and includes all crimes which are "immoral or wrong in themselves." The Criminal Division of the Department of Law in cooperation with the Division of Corrections of the Department of Health & Social Services, has developed a list of crimes contained in the revised Criminal Code which constitute the felonies involving moral turpitude. This list is attached for your guidance.

We hope that this answers your questions.

LLD/pjg

Enc.

cc w/enc.: Mike Dunham, Outreach Counselor
Akeela House - Anchorage

FELONIES INVOLVING MORAL TURPITUDE

Murder in the First Degree
 Murder in the Second Degree
 Manslaughter
 Assault in the First Degree
 Assault in the Second Degree
 Kidnapping
 Sexual Assault in the First Degree
 Sexual Assault in the Second Degree
 Sexual Assault in the Third Degree
 Incest
 Unlawful Exploitation of a Minor
 Robbery in the First Degree
 Robbery in the Second Degree
 Extortion
 Coercion
 Theft in the First Degree
 Theft in the Second Degree
 Burglary in the First Degree
 Burglary in the Second Degree
 Arson in the First Degree
 Arson in the Second Degree
 Criminal Mischief in the First Degree
 Criminal Mischief in the Second Degree
 Forgery in the First Degree
 Forgery in the Second Degree
 Criminal Possession of a Forgery Device
 Offering a False Instrument for Recording
 Scheme to Defraud
 Falsifying Business Records
 Commercial Bribe Receiving
 Commercial Bribery
 Endangering the Welfare of a Minor
 Bribery
 Receiving a Bribe
 Perjury
 Perjury by Inconsistent Statements
 Escape in the First Degree
 Escape in the Second Degree
 Promoting Contraband in the First Degree
 Interference with Official Proceedings
 Receiving a Bribe by a Witness or Juror
 Jury Tampering
 Misconduct by a Juror
 Tampering with Physical Evidence
 Hindering Prosecution in the First Degree
 Terroristic Threatening
 Riot
 Criminal Possession of Explosives
 Unlawful Furnishing of Explosives
 Promoting Prostitution in the First Degree

ALASKA

STATE LEGISLATURE

February 4, 1983

MEMORANDUM

Instances of the phrase "Moral Turpitude" in Alaska Statutes:

AS 04.11.37 ✓
AS 05.15.060 ✓
AS 08.24.110 ✓
AS 08.24.290 ✓
AS 08.42.090 ✓
AS 08.54.110 ✓
AS 08.64.380 ✓
AS 08.88.171 ✓
AS 14.07.145 ✓
AS 14.20.030 ✓
AS 14.20.170 ✓
AS 14.20.175 ✓
AS 15.05.030 ✓

AS 15.07.135 ✓
AS 15.60.010 ✓
AS 18.65.440 ✓
AS 21.09.150 ✓
AS 21.22.020 ✓
AS 22.30.011 ✓
AS 22.30.070 ✓

he Truth-in-
is to assure
r consumer
th respect to
e credit cost
t of finance
e computed
e. Other
circumstanc-
ious credit
sources and
Act further
circumstanc-
volves a lien
ig Act was
ce, holder's
ts. See also
:lon 2; Unh-

and invest-
illed "trial,"
it involves.

(q.v.).

hablydown.
The form
oman law, a

ining sixty
six pounds

as a preau-
who has a

ions or ex-

passed in
adequacra
n. By this
xtended to
tion, act of
ion, as well
damages in
all claims
he present
died in 28

, that part
osed to be
nat part of

, or dunk-
r common

nig/. Un-
is was a
in twenty
or either
matters
ndless the

contents thereof had been approved by three justices, or the majority of the grand jury at assizes or quarter sessions. No petition could be delivered by more than ten persons.

Tun. A measure of wine or oil, containing four hogsheds.

Tungreve /tʌŋgri:v/. A town-reeve or bailiff.

Tunnage. A duty in England anciently due upon all wines imported, over and above the prisage and butlerage.

Turba /tʌrba/. Lat. In the civil law, a multitude; a crowd or mob; a tumultuous assembly of persons. Said to consist of ten or fifteen, at the least.

Turbary /tʌrbəri/. Turbary, or common of turbary, is the right or liberty of digging turf upon another man's ground.

Turf and twig. A piece of turf, or a twig or a bough, were delivered by the feoffee to the feoffee in making livery of seisin. 2 Bl.Comm. 315.

Turn, or tourn /tʌrn/. In English law, the great court-leet of the county, as the old county court, was the court-baron. Of this the sheriff was judge, and the court was incident to his office; wherefore it was called the "sheriff's tourn;" and it had its name originally from the sheriff making a turn of circuit about his shire, and holding this court in each respective hundred.

Turncoat witness. A witness whose testimony was expected to be favorable but who turns around and becomes an adverse witness.

Turned to a right. In English law, this phrase means that a person whose estate is divested by usurpation cannot expel the possessor by mere entry, but must have recourse to an action, either possessory or droual.

Turning State's evidence. See State's evidence.

Turnkey. A person, under the superintendence of a jailer, who has the charge of the keys of the prison, for the purpose of opening and fastening the doors.

Turn-key contract. Term used in building trade to designate those contracts in which builder agrees to complete work of building and installation to point of readiness for occupancy. It ordinarily means that builder will complete work to certain specified point, such as building a complete house ready for occupancy as a dwelling, and that builder agrees to assume all risk. Gantt v. Van der Hoek, 251 S.C. 307, 162 S.E.2d 267, 270.

In oil drilling industry a job wherein driller of oil well undertakes to furnish everything and does all work required to complete well, place it on production, and turn it over ready to turn the key and start oil running into tanks. Retsal Drilling Co. v. Commissioner of Internal Revenue, C.C.A.Tex., 127 F.2d 355, 357. A turn-key contract to drill a well involves the testing of the formation contemplated by the parties and completion of a producing well or its abandonment as a dry hole, all done for an agreed-upon total consideration, putting the risk of rising costs, well trouble, weather, and the like upon the

driller, but it does not, in the absence of a clear expression, require the driller to guarantee a producing well. *Totah Drilling Co. v. Abraham*, 64 N.M. 380, 328 P.2d 1083, 1091.

Turntable doctrine. Also termed "attractive nuisance" doctrine. This doctrine requires the owner of premises not to attract or lure children into unsuspected danger or great bodily harm, by keeping thereon attractive machinery or dangerous instrumentalities in an exposed and unguarded condition, and where injuries have been received by a child so enticed the entry is not regarded as unlawful, and does not necessarily preclude a recovery of damages; the attractiveness of the machine or structure amounting to an implied invitation to enter. It imposes a liability on a property owner for injuries to a child of tender years, resulting from something on his premises that can be operated by such a child and made dangerous by him, and which is attractive to him and calculated to induce him to use it, where he fails to protect the thing so that a child of tender years cannot be hurt by it.

Doctrine is that who maintains or creates upon his premises or upon the premises of another in any public place an instrumentality or condition which may reasonably be expected to attract children of tender years and to constitute a danger to them is under duty to take the precautions that a reasonably prudent person would take under similar circumstance, to prevent injury to such children. *Schock v. Ringling Bros. and Barnum & Bailey Combined Shows*, 5 Wash.2d 599, 105 P.2d 838, 843.

The dangerous and alluring qualities of a railroad turntable gave the "attractive nuisance rule" the name of "Turntable Doctrine." *Louisville & N. R. Co. v. Vaughn*, 292 Ky. 120, 166 S.W.2d 43, 46.

See also Attractive nuisance doctrine.

Turpis /tʌrps/. Lat. In the civil law, base; mean; vile; disgraceful; infamous; unlawful. Applied both to things and persons.

Turpis causa /tʌrps kɔ:zə/. A base cause; a vile or immoral consideration; a consideration which, on account of its immorality, is not allowed by law to be sufficient either to support a contract or found an action; e.g., future illicit intercourse.

Turpis contractus /tʌrps kɔntrɔ:ktʌs/. An immoral or iniquitous contract.

Turpis est pars que non convenit cum suo toto /tʌrps ɛst pɑ:z kwɪy nɔn kɔnvi:mat kəm s(y)ʊwɔw tɔwdɔw/. The part which does not agree with its whole is of mean account [entitled to small or no consideration].

Turpitude /tʌrpi:t(y)ʊwd/. In its ordinary sense, inherent baseness or vileness of principle or action; shameful wickedness; depravity. In its legal sense, everything done contrary to justice, honesty, modesty, or good morals. An action showing gross depravity. *Traders & General Ins. Co. v. Russell*, Tex.Civ. App., 99 S.W.2d 1079, 1084.

Moral turpitude. A term of frequent occurrence in statutes, especially those providing that a witness' conviction of a crime involving moral turpitude may be shown as tending to impeach his credibility. In general, it means neither more nor less than "turpi-

tude," i.e., anything done contrary to justice, honesty, modesty, or good morals. It is also commonly defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

Although a vague term, it implies something immoral in itself, regardless of its being punishable by law. Thus excluding unintentional wrong, or an improper act done without unlawful or improper intent. It is also said to be restricted to the gravest offenses, consisting of felonies, infamous crimes, and those that are *malum in se* and disclose a depraved mind. *Bartos v. United States District Court for District of Nebraska*, C.C.A.Neb., 19 F.2d 722, 724.

Turpitude /t(ɪ)ɹpɪt(ɪ)ʊd(ɪ)w/. Lat. Baseness; infamy; immorality; turpitude.

Tuta est custodia quæ sibi met creditur /t(ɪ)ʊwðə ɛst kɔstɔwd(i)jə kwɪj sɪbɪmɛt krɛdɛdɔr/. That guardianship is secure which is intrusted to itself alone.

Tutela /t(ɪ)uwtɪjlə/. Lat. In the civil law, tutelage; that species of guardianship which continued to the age of puberty; the guardian being called "tutor," and the ward, "pupillus." A power given by the civil law over a free person to defend him when by reason of his age he is unable to defend himself. A child under the power of his father was not subject to tutelage, because not a free person, *caput liberum*.

Tutelæ actio /t(ɪ)uwtɪjli jəksh(i)ow/. Lat. In the civil law, an action of tutelage; an action which lay for a ward or pupil, on the termination of tutelage, against the tutor or guardian, to compel an account.

Tutelage /t(ɪ)ʊwdələj/. Guardianship; state of being under a guardian. See *Tutela*.

Tutela legitima /t(ɪ)uwtɪjlə lɛjɪdɪmə/. Legal tutelage; tutelage created by act of law, as where none had been created by testament.

Tutelam reddere /t(ɪ)uwtɪjləm rɛdɛrɪj/. Lat. In the civil law, to render an account of tutelage. *Tutelam repscere*, to demand an account of tutelage.

Tutela testamentaria /t(ɪ)utiylə tɛstəmentɛr(i)jə/. Testamentary tutelage or guardianship; that kind of tutelage which was created by will.

Tuteur. In French law, a kind of guardian.

Tuteur officieux. A person over fifty years of age may be appointed a tutor of this sort to a child over fifteen years of age, with the consent of the parents of such child, or, in their default, the *conseil de famille*. The duties which such a tutor becomes subject to are analogous to those in English law of a person who puts himself *in loco parentis* to any one.

Tuteur subrogé. The title of a second guardian appointed for an infant under guardianship. His functions are exercised in case the interests of the infant and his principal guardian conflict.

Tutulus erratur ex parte mitiore /t(ɪ)ʊwsh(i)jəs ɛhrɛyðɔr ɛks pɑrdɪj mɪʃɪjɔrɪj/. It is safer to err on the gentler side [or on the side of mercy].

Tutulus semper est errare aculetando, quam in puniendo, ex parte misericordie quam ex parte justitie /t(ɪ)ʊwsh(i)jəs sɛmpɔr ɛst ɛhrɛrɪj ɔkwɪjɔtɛndow, kwɛm in pywnɪjɛndow, ɛks pɑrdɪj mɪzɔrkɔrdɪjɪj kwɛm ɛks pɑrdɪj jɔstɪʃɪjɪj/. It is always safer to err in acquitting than punishing, on the side of mercy than on the side of justice.

Tutor /t(ɪ)ʊwðɔr/. One who teaches, usually a private instructor. *State ex rel. Veeder v. State Board of Education*, 97 Mont. 121, 33 P.2d 516, 522.

In the civil law, this term corresponds nearly to "guardian" (i.e., a person appointed to have the care of the person of a minor and the administration of his estate), except that the guardian of a minor who has passed a certain age is called "curator," and has powers and duties differing somewhat from those of a tutor.

Tutor alienus /t(ɪ)ʊwðɔr ɛylɪjɪjɪnəs/. In English law, the name given to a stranger who enters upon the lands of an infant within the age of fourteen, and takes the profits. He may be called to an account by the infant and be charged as guardian in socage.

Tutor proprius /t(ɪ)ʊwðɔr prɔwprijəs/. The name given in old English law to one who is rightly a guardian in socage, in contradistinction to a *tutor alienus*.

Tutorship. The office and power of a tutor. The power which an individual, *sui juris*, has to take care of the person of one who is unable to take care of himself. There are four sorts of tutorships: Tutorship by nature; tutorship by will; tutorship by the effect of the law; tutorship by the appointment of the judge. Civ. Code La. art. 247.

Tutorship by nature. Upon the death of either parent, the tutorship of minor children belongs of right to the other. Upon divorce or judicial separation from bed and board of parents, the tutorship of each minor child belongs of right to the parent under whose care he or she has been placed or to whose care he or she has been entrusted. All those cases are called tutorship by nature. Civ. Code La. art. 250.

Tutorship by will. The right of appointing a tutor, whether a relation or a stranger, belongs exclusively to the father or mother dying last. This is called "tutorship by will," because generally it is given by testament; but it may likewise be given by any declaration by the surviving father or mother, or the parent who is the curator of the other spouse, executed before a notary and two witnesses. Civ. Code La. art. 257.

Tutrix /t(ɪ)ʊwtrɪks/. A female tutor.

T.V.A. Tennessee Valley Authority.

Two night guest /tʊwnɔjt gɛst/. In Saxon law, a guest on the second night. By the laws of Edward the Confessor it was provided that a man who lodged at an inn, or at the house of another, should be considered, on the first night of his being there, a stranger (*uncouth*); on the second night, a guest; on the third night, a member of the family. This had reference to the responsibility of the host or entertainer for offenses committed by the guest.

Twelfthly. The high government, who were done to such made according to U

Twelfth Amendment. tion (1804) which a presidential election vote for President ballots instead of vot on single ballot as b

Twelve-day writ. A 18 & 19 Vict., c. 67 of exchange and pro of court in 1880.

Twelvemonth /twɛlvɪn number), includes a to be computed ac every month.

Twelve-month bond. ute effective Jan. 2 had a double chara to the Spanish civi statutory judgment other judgment of it being also a cons

Twelve Tables. The law, framed by a c upon the return of been sent abroad tions. The Twelve transcribed from partly of such as v the manners of the and mainly, perhap ancient kings. Tn tion for the whole prudence. They e See 1 Kent, Comm. ly a codification, a the customary law elements in them, man.

Twentieth Amendm Amendment to U changed the begin dential terms fro: Congressional ter thereby eliminat: which had forme even-numbered y Congressmen sat office. The Ame: tial succession ur

Twenty-Fifth Amen tution (1957) wr offices of Preside removal, or resig:

Twenty-First Amen tution (1933) wh (18th) but prohib beverages into a such beverages v

Rule 216. Expedited Appeals.

(a) **Scope.** This rule applies to the following classes of appeals, and supersedes the other appellate rules to the extent that they may be inconsistent with this rule:

- (1) Extradition appeals;
- (2) Juvenile waiver appeals;
- (3) Peremptory challenge appeals.

(b) **Definitions.**

(1) An appeal from an order of the superior court granting or denying an application for a writ of habeas corpus filed under AS 12.70.090 by a person arrested on a governor's warrant under the Uniform Criminal Extradition Act, is an "extradition appeal." An appeal from any other final judgment of the superior court relating to the extradition of a person charged in this state or elsewhere with a crime is also an "extradition appeal," except that any appeal from a final judgment convicting a person of a crime is not an "extradition appeal."

(2) A "juvenile waiver appeal" is an appeal from an order under AS 47.10.060(a) finding that a minor is not amenable to treatment under AS 47.10.

(3) A "peremptory challenge appeal" is an appeal by a criminal defendant from an order denying the defendant's motion for change of judge under Criminal Rule 25(d).

(c) **Jurisdictional Limitation.** This rule does not permit an appeal to be taken in any circumstances in which an appeal would not be permitted by Rule 202.

(d) **Notice of Appeal.**

(1) The notice of appeal in an appeal under this rule shall be filed with the clerk of the court which entered the order or judgment being appealed, within 10 days after the date shown in the clerk's certificate of distribution on the order or judgment.

(2) The notice shall identify the appeal as an appeal under this rule, but the court of appeals will apply this rule to cases within its scope whether they are so identified or not.

(e) **Forwarding Notice of Appeal.** Immediately upon the filing of a notice of appeal in an appeal under this rule, the clerk of the trial courts shall notify the clerk of the appellate courts in the manner provided in Rule 204 (i).

Rule 216. Expedited Appeals.

(a) **Scope.** This rule applies to the following classes of appeals, and supersedes the other appellate rules to the extent that they may be inconsistent with this rule:

- (1) Extradition appeals;
- (2) Juvenile waiver appeals;
- (3) Peremptory challenge appeals.

(b) **Definitions.**

(1) An appeal from an order of the superior court granting or denying an application for a writ of habeas corpus filed under AS 12.70.090 by a person arrested on a governor's warrant under the Uniform Criminal Extradition Act, is an "extradition appeal." An appeal from any other final judgment of the superior court relating to the extradition of a person charged in this state or elsewhere with a crime is also an "extradition appeal," except that any appeal from a final judgment convicting a person of a crime is not an "extradition appeal."

(2) A "juvenile waiver appeal" is an appeal from an order under AS 47.10.060(a) finding that a minor is not amenable to treatment under AS 47.10.

(3) A "peremptory challenge appeal" is an appeal by a criminal defendant from an order denying the defendant's motion for change of judge under Criminal Rule 25(d).

(c) **Jurisdictional Limitation.** This rule does not permit an appeal to be taken in any circumstances in which an appeal would not be permitted by Rule 202.

(d) **Notice of Appeal.**

(1) The notice of appeal in an appeal under this rule shall be filed with the clerk of the court which entered the order or judgment being appealed, within 10 days after the date shown in the clerk's certificate of distribution on the order or judgment.

(2) The notice shall identify the appeal as an appeal under this rule, but the court of appeals will apply this rule to cases within its scope whether they are so identified or not.

(e) **Forwarding Notice of Appeal.** Immediately upon the filing of a notice of appeal in an appeal under this rule, the clerk of the trial courts shall notify the clerk of the appellate courts in the manner provided in Rule 204 (i).

(f) **Record on Appeal.** The appellant shall not designate a record on appeal. The entire superior court file shall serve as the record on appeal, together with a cassette tape recording of any hearing held in superior court if deemed necessary by the court of appeals. Promptly upon the filing of the appellee's memorandum, the clerk of the trial courts shall transmit the original and copies of the record on appeal to the clerk of the appellate courts in the same manner as for other appeals.

(g) **Memoranda on Appeal.**

(1) Within 10 days after filing a notice of appeal in an appeal under this rule, the appellant shall file with the court of appeals the original of a typewritten memorandum in support of the appeal together with proof of service on all other parties.

(2) Within 10 days after service of the appellant's memorandum, the appellee may file with the court of appeals the original of a typewritten memorandum in opposition to the appeal.

(3) No reply memorandum may be filed unless ordered by the court.

(4) The memoranda need not comply with the requirements of Rule 212 unless ordered by the court of appeals.

(5) The clerk of the appellate courts shall forthwith duplicate copies of the memoranda for use of the court.

(h) **Disposition of Appeals.** Appeals under this rule will be disposed of expeditiously by the court of appeals on the record and memoranda. Oral argument may be granted in the court's discretion. (Supreme Court Order 439 effective November 15, 1980; amended by Supreme Court Order 554 effective April 4, 1983; and by Supreme Court Order 575 effective February 1, 1984)

HJR

2

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

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

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary

1/23/85

1:30 pm

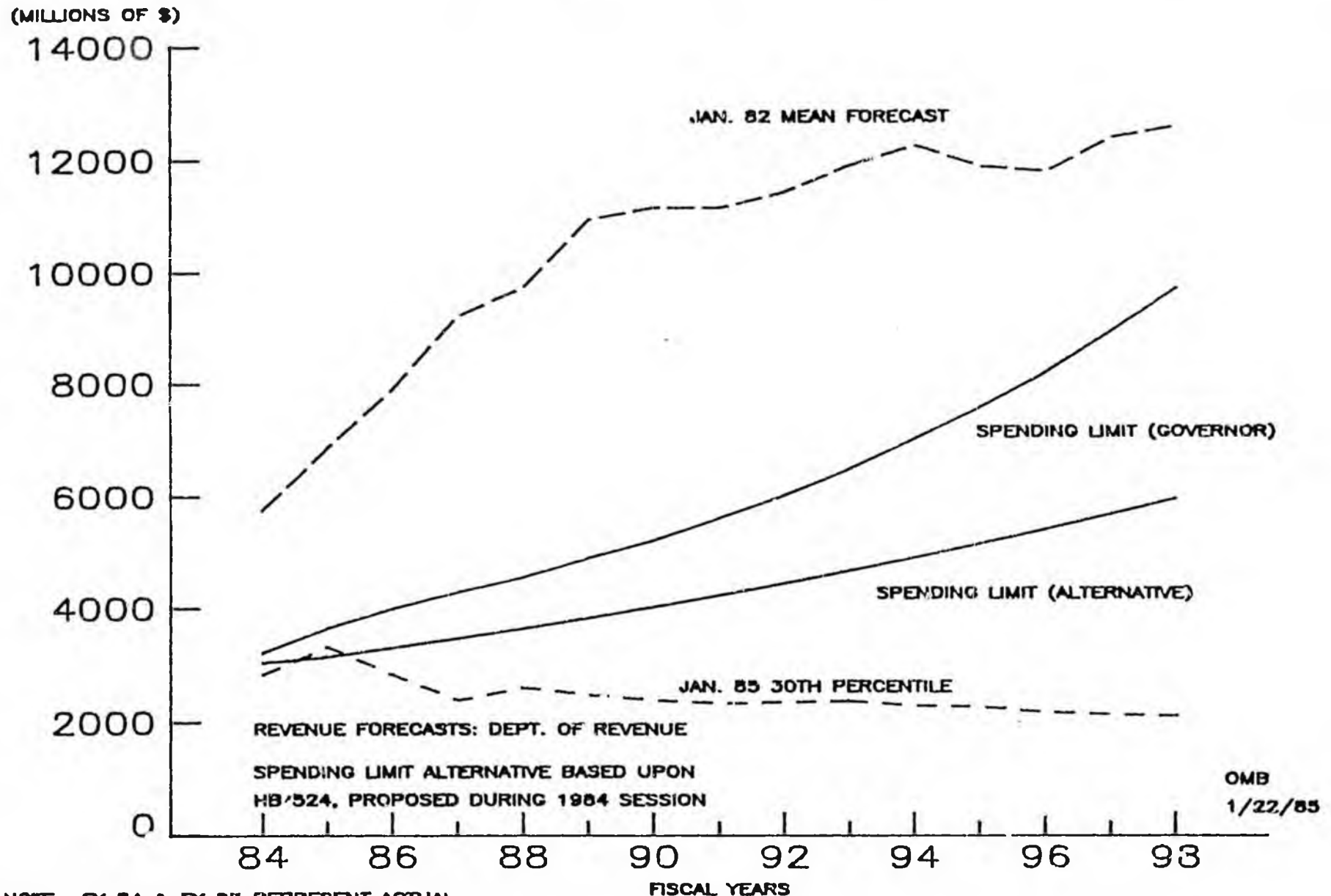
HOUSE JUDICIARY COMMITTEE

BILLS IN COMMITTEE

COMPANION LEGISLATION

<u>BILL NO.</u>	<u>SPONSOR</u>	<u>BILL TITLE</u>	<u>HEARING DATES</u>	<u>FURTHER</u>	<u>BILL NO.</u>	<u>STATUS</u>	<u>COMMENTS</u>
HJR 2	Davis	Proposing amendments to the constitution of the state of Alaska relating to appropriation of the legislature	1/23 - Judiciary 1:30 pm - 1st hearing				

SPENDING LIMIT IMPACT ON REVENUE FORECASTS OF JAN. 82 AND JAN. 85



NOTE: FY 84 & FY 85 REPRESENT ACTUAL APPROPRIATIONS

TPC/41

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

February 7, 1983

Gene Dusek, Director of Budget
Office of Management & Budget
Pouch AM
Juneau, AK 99811

1983 Atty Gen Op #01

Re: Appropriation limit
questions
Our file: 366-374-83

Dear Mr. Dusek:

You have asked for our opinion concerning issues relating to the appropriation limit imposed by Alaska Constitution, article IX, section 16. These issues are as follows:

(1) Are appropriations to reimburse a municipality for payment of the principal and interest on general obligation school construction bonds subject to the appropriation limit? We believe they are not.

(2) If the permanent fund dividend law (AS 43.23) is amended or repealed and another plan for the distribution of permanent fund income is enacted, will appropriations to finance the new distribution program be included in the appropriation limit or will those appropriations be outside the limit? Generally, we believe that other distribution plans could qualify as dividends. However, certain limitations should be observed to make sure that the new plan satisfies the intent of the appropriation limit.

(3) How will the appropriation limit be implemented if

anticipated state revenues are less than the limit for a fiscal year? We assume that the appropriation limit will be applied with common sense to empower the legislature to act without regard to allocations imposed by the appropriation limit when economic conditions deplete the state treasury.

(4) How will multi-year appropriations be counted for purposes of the appropriation limit? We believe a multi-year appropriation will be counted against the appropriation limit for the first year in which it could be expended.

(5) What is the definition of "capital project" as that term is used in the appropriation limit? There is some history which supports a liberal interpretation of the term "capital project."

I. BACKGROUND

The appropriation limit, Alaska Const. art. IX, sec. 16, was drafted during a period of anticipated high revenue yields from oil and gas production. In June 1981, the Alaska Department of Revenue forecast that the state would earn approximately \$4,895,300,000 during FY 82. Revenue Sources, Alaska Department of Revenue (June 1981). That forecast did not include the revenue dedicated to the Alaska permanent fund under AS 37.-13.010. The revenue actually earned by the state during FY 82, less the permanent fund contribution, was \$4,108,400,000. Reve-

Revenue Sources, Alaska Department of Revenue (Jan. 1983). The legislature had exhibited a proclivity for appropriating all available revenue and more. 1/ Former Governor Jay S. Hammond introduced SJR 4 during the first session of the Twelfth Alaska Legislature. However, the legislature failed to enact a version of SJR 4 during the first regular session and on June 25, 1981, Governor Hammond called a special session of the legislature to consider SJR 4. In his address to the legislature, Governor Hammond cited the following circumstances which required the enactment of SJR 4:

(1) the FY 82 operating budget increased 32 percent over the FY 81 operating budget;

(2) the FY 82 capital budget increased 127 percent over the FY 81 capital budget; and,

(3) for FY 82, the legislature appropriated an amount equal to 59 percent of the total spent for capital projects since statehood. 1981 S. Jour., FSS Jour. Supp. No. 1, p. 3.

A second free conference committee (FCC) initially appointed during the regular session met to continue consideration of SJR 4 during the special session. 1981 S. Jour., p. 1744. A

1/ The \$1.8 billion contribution to the Alaska permanent fund (sec. 2, ch. 61, SLA 1981 as amended by sec. 68, ch. 92, SLA 1981 and sec. 16, ch. 101, SLA 1982) is a continuing operating appropriation which literally causes total unobligated appropriations to exceed available state revenues for each fiscal year since enactment.

transcript of the open meetings of the FCC exists and forms a part of the history of the appropriation amendment (the transcript). However, it is evident from review of the transcript that other discussions concerning the intent of the amendment were conducted outside of open committee meetings. While the transcript is helpful, it presents only a partial record of the deliberations of the drafters of the amendment.

The FCC purported to adopt a letter of intent to accompany its report to the house and senate. 1981 S. Jour., FSS, p. 5. However, the letter of intent is not set out in the journal. A search of the bill files of the Department of Law yielded a copy of the missing letter of intent. See Ex. 1.

The campaigns for and against adoption of the appropriation limit began in September of 1982. The Anchorage Daily News criticized the proposed amendment for the following reasons:

(1) the ceiling is too high, revenues will exceed the limit only once before the year 2000; and

(2) the one-third reservation for capital projects and loan appropriations was included because the legislature "failed to make the distinction between a wise public agenda -- on which capital projects and loans surely would appear -- and an effectively timeless state constitution -- in which no such spending demands should be dictated.

Anchorage Daily News, Sept. 3, 1982, at A14, "opinion." The

Gene Dusek, Director of Budget
Office of Management & Budget
366-374-83

February 7, 1983
Page #5

Daily News based its opinion concerning revenue forecasts on a report made public by the legislative finance division of the Legislative Budget and Audit Committee. Anchorage Daily News, Sept. 2, 1982, at 1. On September 17, 1982, the Daily News urged Governor Hammond to oppose the adoption of the appropriation limit. The Anchorage Times basically took no position on the amendment. However, on October 19, 1982, the Times reported the results of a poll sponsored by supporters of the amendment. The poll, conducted the week of September 16-23, 1982, showed that the amendment was recognized and favored by the public as a "spending limit." The pollsters asked if the respondents had heard of the proposed amendment to the state constitution which sets a limit on increases on state appropriations. By a three-to-one margin, respondents said they were not familiar with the amendment when it was described as an "appropriation limit." Anchorage Times, Oct. 19, 1982, at A-4. On October 26, 1982, the Juneau Empire editorialized in favor of adoption of the amendment. Juneau Empire, Oct. 26, 1982, at 4.

During the week of October 24, 1982, the major dailies of the state published articles on the amendment. Governor Hammond received coverage in most of those stories by saying "It [the adoption of the appropriation limit] may be our last chance to control the juggernaut which otherwise will likely crush us into bankruptcy." Anchorage Daily News, Oct. 29, 1982, at B3.

On Sunday, October 31, 1982, the Daily News in its forum section, published an article by Governor Hammond in which he again strongly advocated adoption of the amendment because revenue projections and the growing vulnerability of the permanent fund compelled him to plead for the support of the people. Anchorage Daily News, Oct. 31, 1982, at K3. On the preceding Friday, the Daily News quoted Governor Hammond as follows: "Don't let anyone tell you that passage of Proposition 4 won't limit spending." Under recently revised revenue estimates, passage of the ballot issue would bar the legislature from appropriating between \$80 million and \$380 million in fiscal 1984 alone. Anchorage Daily News, Oct. 29, 1982, at B3.

At the 1982 general election, the voters approved the adoption of SJR 4 by a vote of 110,669 for the amendment and 70,831 opposed to the amendment. State of Alaska Official Returns by Election Precinct General Election Nov. 2, 1982, Div. of Elections, Office of the Governor.

II. EXCEPTIONS FROM THE LIMIT

The appropriation limit contains seven express exceptions. Five of those exceptions are for appropriations which are completely outside the limit and do not require voter approval. They include:

- (1) an appropriation for Alaska permanent fund divi-

dends;

(2) an appropriation of revenue bond proceeds;

(3) an appropriation to pay principal and interest on general obligation bonds;

(4) an appropriation of money received from nonstate sources in trust for a specific purpose, including revenues of a public corporation that issues revenue bonds; and

(5) an appropriation to meet a state of disaster declared by the governor.

You have requested our interpretation of exceptions (1) and (3) set out above.

A. Alaska Permanent Fund Dividend Exception

The appropriation limit provides: "Except for appropriations for Alaska permanent fund dividends ... appropriations from the state treasury made for a fiscal year shall not exceed \$2,500,000,000...." A question obviously arises as to whether "Alaska permanent fund dividends" means only those cash payments provided to individuals under AS 43.23 or if the word "dividend" encompasses other concepts for the distribution of income earned by the Alaska permanent fund.

We believe the answer to your question concerning appropriations for permanent fund dividends depends on whether the exceptions will be construed strictly or liberally. Usually,

provisions in a state constitution are construed liberally using the same rules of construction prescribed for other laws with regard given to the broader object and scope of the constitution as a charter of popular government. Eghert v. Dunseith, 24 N.W.2d 907 (N.D. 1946); 168 A.L.R. 621. Professor Sutherland explains the modern view for construing express exceptions as follows:

The older rule strictly interpreted both exceptions and provisos but today the prevailing view favors determining the effects of such provisions according to the usual criteria of decision applicable to other kinds of provisions as well without the use of any artificial presumptions to the effect that qualifying language should be strictly construed.

SUTHERLAND STATUTORY CONSTRUCTION § 47.11 (4th ed. 1974)(footnotes omitted). The FCC did not express an intent to limit this exception to only appropriations to finance cash payments to individuals under AS 43.23.

The appropriation limit must be interpreted consistently with the permanent fund amendment contained in article IX, section 15. Section 15 provides that the legislature may dispose of the income of the Alaska permanent fund "as provided by law." Each legislature may reexamine existing law and enact different laws providing for the use of income earned by the Alaska permanent fund. If section 16 were interpreted so that the exception to permanent fund dividends applied only to appropriations to finance cash dividends under AS 43.23, the legislature would essentially be denied the flexibility to adjust to changing philoso-

phies concerning the propriety of making cash payments directly to residents which section 15 expressly reserves to it. ^{2/} In interpreting and applying the constitution, it must be remembered that the constitution is not a lifeless or static instrument whose interpretation is confined to conditions and outlooks which prevailed at the time of its adoption. Yakus v. United States, 321 U.S. 414 (1944); Warwick v. State, 548 P.2d 384 (Alaska 1976).

The word "dividend" has no precise legal meaning. Trustees of University v. North Carolina R. Co., 13 WORDS AND PHRASES 107 (Permanent ed.); 22 Am. Rep. 671. Webster defines "dividend" as follows: "an individual share of something distributed among a number of recipients." We are not aware of any legal principle which would preclude the characterization of other distribution programs as "dividends." Rather, the words used

^{2/} The Thirteenth Legislature may reject direct cash distribution in favor of a plan which it determines will promote public purposes more effectively. During the period of consideration and adoption of the appropriation limit, the permanent fund dividend law was undergoing considerable scrutiny and change by both the legislature and the courts. The legislature adopted the proposed appropriation limit amendment on July 15, 1981. At that time the question of the constitutionality of the permanent fund dividend program as it was then structured was on appeal to the United States Supreme Court. On June 14, 1982, the United States Supreme Court issued an opinion which found the method established for determining the amount of dividends under that program void because the method promoted discrimination based on length of residence in the state. On August 13, 1982, amendments to the dividend law took effect. The people were undoubtedly aware that the dividend law in effect on election day in 1982 was not chiseled in marble.

by the drafters of the amendment afford broad latitude to the legislature to enact new distribution programs which will not be impaired by the appropriation limit.

It is well-settled law that a provision of a state's constitution must receive a liberal, practical construction to meet changed conditions and growing needs of the people. County of Alameda v. Sweeney, 312 P.2d 419, 424 (Cal. 1957). Under the permanent fund amendment, the discretion granted to the legislature to enact, amend, or repeal the present dividend program under AS 43.23 to meet the growing needs of the people is unfettered. However, the operation of exceptions from the appropriation limit must be interpreted consistent with the intent of the framers of the organic law and of the people adopting it. State v. Lewis, 559 P.2d 630, 637 (Alaska 1977).

One important consideration should be carefully observed. The Alaska Supreme Court has found that the purpose of the existing dividend program is to force the legislature to consider the reimposition of taxes when the decline of oil revenue encourages resort to permanent fund income to finance state government. Williams v. Zobel, 619 P.2d 448, 454 (Alaska 1981), rev'd 451 U.S. 905 (1982). The people can be expected to vigilantly protect their dividends by forcing the legislature to seek sources other than the permanent fund to finance state government. If a substitute distribution program accomplishes the same

purpose, it will more likely qualify under the exception in section 16 than if it fails to achieve that purpose. If the constituency benefitted by a dividend is narrow, the dividend may not be a dividend in the sense intended by the drafters of section 16 and the people who adopted it. Proposals soon to be considered by the legislature include replacing the existing distribution to all residents with a distribution of part of the permanent fund income to municipalities and as a substitute for the existing longevity bonus and use of a part of the income to finance large capital projects.

A vast majority of the population of the state resides in or is served by municipal governments. It is also a fact that we all seek security for our "golden years." The constituents of these proposals seem broad enough to satisfy the purpose of the current dividend law. The use of permanent fund income to finance large capital projects presents a closer question. The character of each project must be considered to determine if it serves a state public purpose, rather than a local special purpose. Additionally, if the project is viewed as merely an alternate way of financing state government operations, the basic intent of the dividend law might not be served.

We cannot advise with certainty whether the financing of large capital projects with permanent fund income would constitute a dividend of the Alaska permanent fund for purposes of

the appropriation limit. Some may argue that the benefits provided by "public works" projects are too localized to approximate the benefits provided by the existing dividend law. However, in State v. Lewis, 559 P.2d 630 (Alaska 1977), the Alaska Supreme Court decided that "[l]egislation need not operate evenly in all parts of the state to avoid being classified as local or special." Lewis at 643. A definite answer will come only when the courts interpret article IX, section 16 of the Alaska Constitution. However, we believe that if the legislature enacts a distribution program which is consistent with the intent of the permanent fund dividend law, any appropriation to implement that program will be exempt from the appropriation limit.

B. Appropriations Required to Pay the Principal and Interest on General Obligation Bonds

Under AS 43.18.100 -- 43.18.135 the state, subject to available appropriations, reimburses municipalities for the payment of a percentage of principal and interest to retire general obligation bonds issued by the municipality to finance school construction costs. Although they have been amended from time to time, these statutes have been in effect since 1971. You have asked whether appropriations to retire municipal general obligation debt are within the exception stated to the appropriation limit.

The exception reads as follows: "Except for ... appro-

SENATE FINANCE COMMITTEE
JANUARY 21, 1985

GORDON HARRISON

NO, BUT THIS DOESN'T SAY THEY HAVE TO BE OF THE STATE.

SENATOR HALFORD

THE QUESTION WAS ASKED IN THE FIRST CONFERENCE COMMITTEE. I THINK DON GILMAN WAS THE ONE WHO ASKED IT, AND THE SPECIFIC POINT WAS BROUGHT OUT THAT SCHOOL DEBT RETIREMENT WAS NOT A GENERAL OBLIGATION OF THE STATE, DID NOT GO BEFORE THE VOTERS OF THE STATE, AND THE SPENDING LIMIT WAS CRAFTED IN SUCH A WAY THAT THINGS OUTSIDE THE LIMIT WERE THINGS WHICH HAD GONE TO THE VOTERS OF THE STATE EITHER IN EXCESS CAPITAL OR IN GENERAL OBLIGATION BONDS. IT DOESN'T MATTER, BECAUSE I AGREE WITH YOUR FINAL ANALYSIS THAT THE LIMIT DOESN'T APPLY.

GORDON HARRISON

WELL, I'M NOT PREPARED TO DEBATE OR ARGUE THE POINT THAT YOU MAKE. I CAN MERELY REFER TO THE ATTORNEY GENERAL'S OPINION THAT INTERPRETS IT TO EXCLUDE SCHOOL DEBT RETIREMENT.

JAY HOGAN

MR. CHAIRMAN, I THINK ONE OF THE TECHNICAL PROBLEMS WE HAVE WITH THE SPENDING LIMIT IS BEST SEEN ON PAGE 18. THE SPENDING LIMIT WAS CRAFTED AT A TIME WHEN WE WERE IN THE EXUBERANT REVENUE FORECAST MODE. WE WERE AT THE TOP LINE--JANUARY OF 1982. THE LIMIT WAS DESIGNED TO DEAL WITH THAT TYPE OF SITUATION. WE NO LONGER HAVE THAT TYPE OF SITUATION, SO THE LIMIT SUFFERS FROM THAT SITUATION.

GORDON HARRISON

IN FACT, THE SPENDING LIMIT WAS WRITTEN EVEN BEFORE THE JANUARY 82 FORECAST. IT WAS WRITTEN EVEN EARLIER WHEN THOSE PROJECTIONS WERE EVEN MORE OPTIMISTIC. SO THAT'S HOW THE SITUATION HAS GOTTEN WHERE IT IS.

MAY I POINT OUT ONE MORE THING QUICKLY. THAT IS THAT IN THE GOVERNOR'S BUDGET, THE PROPOSALS FOR CAPITAL AND LOAN APPROPRIATIONS ADD TO \$679.4--CALL IT \$680 MILLION. THAT IS ABOUT 24% OF THE \$2.8 BILLION WHICH IS SUBJECT TO THE LIMIT WITHIN THE GOVERNOR'S BUDGET. IT'S 22% OF THE RECOMMENDATION OF \$3.094, AND IT'S 17% OF OUR CALCULATION OF WHAT THE LIMIT IS. I THINK THIS SPEAKS TO THE ISSUE OF WHETHER OR NOT ONE-THIRD OF OUR ANNUAL APPROPRIATION SHOULD GO TO CAPITAL SPENDING. I THINK THAT CLEARLY IT IS IMPRUDENT TO ASSUME THAT A THIRD OF WHATEVER WE SPEND SHOULD GO TO CAPITAL PROGRAMS. IF WE NEED TO CUT ANOTHER \$500 MILLION OUT OF THE BUDGET, AS HAS BEEN SUGGESTED HERE THIS MORNING, IT EVEN MAKES IT MORE IMPRUDENT TO DO SO. WE ARE ASSUMING, AND I THINK IT IS THE ONLY PRUDENT ASSUMPTION, THAT IF WE ARE UNDER OUR APPROPRIATION LIMIT, IN THIS CASE \$4 BILLION, THE REQUIREMENT THAT AT LEAST A THIRD OF THE APPROPRIATION GO TO CAPITAL IS NOT BINDING. ALL OF THESE APPROPRIATION LIMIT ISSUES

WILL PROBABLY BE DISCUSSED IN THE CONTEXT OF THE REFERENDUM IN THE GENERAL ELECTION OF FY 86 WHERE THIS AMENDMENT IS SUBJECT TO REVIEW BY THE VOTERS.

CO-CHAIRMAN FAIKS

I HAVE A TENDENCY TO AGREE WITH YOU THAT THE ONE-THIRD FOR CAPITAL PROJECTS WOULD NOT GO INTO PLAY HERE, BUT WHAT ABOUT THE TWO-THIRDS FOR THE OPERATING BUDGET. WOULD YOU PLEASE GO THROUGH YOUR ANALYSIS OF WHY THE GOVERNOR SHOULDN'T REMAIN WITHIN TWO-THIRDS OF THE TOTAL REVENUES FOR HIS OPERATING BUDGET?

GORDON HARRISON

WELL, I GUESS THE SAME LOGIC WOULD APPLY. I THINK THE LANGUAGE OF THE AMENDMENT SAYS THAT AT LEAST A THIRD WILL BE FOR CAPITAL AND LOAN APPROPRIATIONS AND BY IMPLICATION IF WE ASSUME THAT DOESN'T HOLD, I THINK WE CAN ALSO ASSUME THAT THE TWO-THIRDS FOR OPERATING WOULDN'T EITHER. ARE YOU SUGGESTING THAT TWO-THIRD OF THE GOVERNOR'S BUDGET SHOULD BE FOR OPERATING AND . . .

CO-CHAIRMAN FAIKS

SO YOUR THEORY IS THAT IF WE DON'T NEED . . . IF OUR REVENUE COMING IN DOES NOT MEET WHAT YOUR INDICES SAY SHOULD BE OUR REVENUE, THEN THE SPENDING LIMIT IS NULL AND VOID--THAT NONE OF IT COMES INTO PLAY. THAT'S BASICALLY YOUR POSITION? OKAY.

SENATOR HALFORD

I DON'T KNOW THAT IT DOES ANY GOOD TO BELABOR IT. I DON'T THINK IT APPLIES BECAUSE OF REVENUES. I DO AGREE WITH THEIR INTERPRETATION, BUT WE'RE NEVER GOING TO GET TO THE LEVEL OF THEIR INTERPRETATIONS OR EVEN MY INTERPRETATION, SO IT DOESN'T MATTER.

CO-CHAIRMAN SACKETT

I THINK WE STARTED FROM THE WRONG BEGINNING--TOO HIGH.

SENATOR FERGUSON

MR. CHAIRMAN, I CAN'T PASS UP THIS TIME, RIGHT NOW, TO SUPPORT SJR 2 WHICH I INTRODUCED AT THE START OF THE SESSION WHICH IS A TRUE SPENDING LIMIT, ALTHOUGH I BELIEVE THERE NEEDS TO BE DEBATE ON IT AND SOME CHANGES POSSIBLY MADE. I THINK WE NEED A SPENDING LIMIT TO TAKE THE PLACE OF THE 1981 SPENDING LIMIT.

1984
ALASKA STATE
APPROPRIATIONS
BUDGET

Appropriation Limit

A 1982 amendment to the Alaska Constitution was designed to limit annual increases in appropriations. The amendment limits unrestricted general fund appropriations (exclusive of debt service on general obligation bonds¹) to \$2.5 billion per year, plus adjustments for inflation and changes in population. Capital projects in excess of the ceiling require voter approval. The amendment also reserves at least one-third of the maximum for capital and loan appropriations.

To calculate inflation and population, the amendment requires the use of federal indices prescribed by law. However, no statute defining the indices has been enacted.

The limit on FY 85 appropriations, calculated by the Office of Management and Budget, was \$3,654.0 million. This figure is based on the U.S. Dept. of Commerce price of government goods and services index and the U.S. Bureau of Census estimate of Alaska's population.

After the Governor's vetoes, 1984 session appropriations totalled \$3,866.3 million in Unrestricted General Funds. Of this total, \$264.5 million allocated to general obligation bond and local school debt service was excluded from limit calculations. The remaining appropriation total was \$3,601.9 million. Furthermore, approximately \$301.6 million of this total carried FY 84 effective dates and therefore was not subject to the FY 85 limit.

The limit, which was approved at the 1982 general election for FY 84-87 appropriations, will come before the voters for reconsideration in 1986.

1. According to an Attorney General's opinion of Feb. 7, 1983, the exclusion of debt service on general obligation bonds from the limit calculation extends to retirement of municipal general obligation school bonds under AS 43.18.

LETTER OF INTENT

2nd Free Conference Committee on SJR 4

The basic problem faced by Alaska is runaway growth in spending for state government operations and for capital projects. This growth is generated by revenues from resources which are nonrenewable and finite. Some limitation is therefore essential. The constitutional amendment proposed by the 2nd Free Conference Committee will provide a realistic limitation and yet allow, by popular approval, for expenditures in excess of the limitation for capital projects and for contributions to the permanent fund. Those who favor such expenditures can have no reasonable objection to the voters determining which capital projects and contributions are worthwhile and which are not.

The term "capital project" is used rather than the term "capital improvement" in order to have a broader reach. Capital improvements are pretty much limited to public facilities having a more or less permanent nature. Highways, airports, buildings, and ferries are examples. Capital projects include capital improvements and also other expenditures which require a multi-year investment or otherwise tend to fall into the category of capital costs as opposed to day-to-day expenses. Computers, large-scale resources inventories, and high-cost special equipment and instruments for libraries, schools, and museums are some examples.

In addition to limiting the excess appropriations to capital projects and contributions to the permanent fund, the proposed amendment requires bills for capital projects to be confined to capital projects of the same type. This is somewhat more narrow than the single-subject rule. It will require projects in a bill to be parts of an overall system. This will inhibit the packaging of diverse projects into one bill. As a further restraint on logrolling, the bills for excess appropriations are subject to the item veto, including the appropriation of general obligation bond proceeds which are in excess of the limit. Bond proceeds which are not in excess of the limit are not subject to an item veto.

There are three exclusions from the limitation. Debt service is necessarily excluded. An additional exclusion is provided for appropriations for permanent fund dividends. Non-state money, that is, money received from the United States or others to be used for specific purposes, is also excluded. This exclusion includes revenue bond proceeds, the revenues generated by the international airports, and other public enterprises which operate on revenue bonds. The first exclusion is required by the federal constitution's prohibition against impairing contracts. The other exclusions are provided because the use of the money for those purposes is not a part of the problem.

The proposed amendment requires the governor to cause any unexpended and unappropriated balance to be invested

so as to yield competitive rates to the treasury. The words "as prescribed by law" were not included so that the clause will be self-executing. However, the governor performs all executive functions in the manner prescribed by law, and the statutes on loan programs and investments will control here so long as they are consistent with the constitution's requirements.

Additionally, so as to eliminate any reasonable grounds for opposition by those who wish to relocate the capital, the resolution includes a transitional measure to exclude relocation costs, if they are approved at the 1982 general election, from the requirement of additional voter approval under the amendment. Another transitional measure provides for the amendment to take effect beginning with the budget for fiscal year 1980.

Finally, still another transitional measure places the amendment on the ballot again at the 1986 general election to allow it to be repealed by the electorate should it prove to be unworkable. If it is unworkable, the people will repeal it. If it works, they will not.

Sen. Bill Ray

Rep. Richard W. Halford

Sen. Donald E. Gilman

Rep. Robert H. Bettisworth

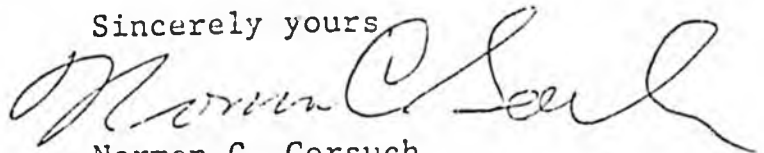
Sen. Frank R. Ferguson

Rep. Hugh Malone

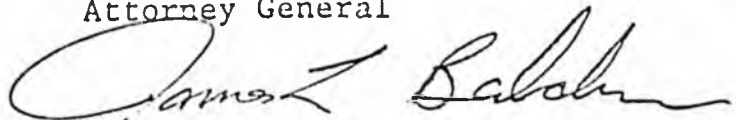
VI. CONCLUSION

The wording of the appropriation limit does not begin to live up to the high standards of clarity and simplicity adopted by the original framers of the Alaska Constitution. There are many who will regard this opinion as mere justification to exploit "loopholes" woven into the fabric of the amendment. However, we hope this opinion will provide the impetus to either adopt amendments to clarify the ambiguities noted or to enact legislation which interprets the amendment so that the ambiguities are avoided. We hope this opinion has answered your questions

Sincerely yours,



Norman C. Gorsuch
Attorney General



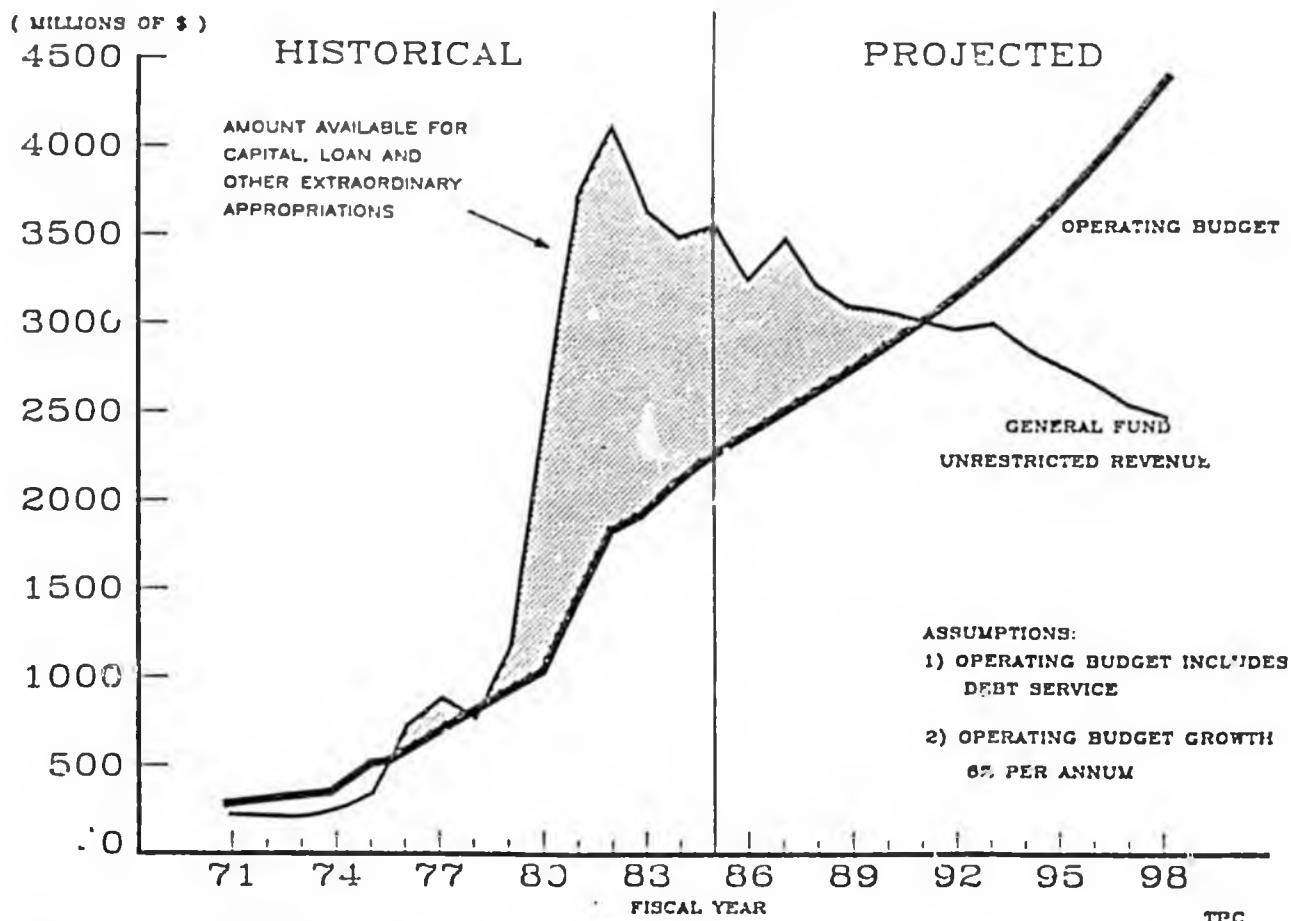
James L. Baldwin
Assistant Attorney General

JLB:NCG:pjg

Handwritten notes: No opinion 3-7-53

REVENUE AND BUDGET TRENDS

(Unrestricted General Funds)



BASED ON DOR 50TH % REVENUE FORECAST

This figure illustrates in general terms the requirement for long-range fiscal planning by the State of Alaska. The projection of operating budget growth at 6 percent is used only for purposes of illustration (inflation is assumed to continue at approximately 6 percent) and does not represent the Governor's policy with regard to future budget growth.

Sources:

- FY 71-83 Revenues - Department of Revenue, Revenue Sources FY 1984-1987, Quarterly Update, September 1984, p. 7.
- FY 84-98 Revenues - Based on 50th percentile forecasts provided by the Department of Revenue, December 1984.
- FY 71-82 Operating Budgets - Authorization totals (Legislative Finance Memorandum, August 6, 1982).
- FY 83-85 Operating Budgets - FY 84-85 authorized, FY 86 proposed (OMB).
- FY 86-98 Operating Budgets - OMB estimates (assume annual inflation adjustment of 6 percent).

FY 86 APPROPRIATION LIMIT
Unrestricted General Funds
(\$ millions)

		<u>Totals</u>	
1	<u>FY 86 Appropriation Limit</u>	<u>\$3,998.0</u>	1)
2	<u>FY 86 Recommended Appropriations</u>	<u>3,094.3</u>	
3	<u>Not Subject to Limit (Line 4 + Line 5)</u>	<u>264.0</u>	
4	General Obligation Bond Debt Service	163.3	
5	School Debt Retirement	100.7	
6	<u>Subject to Limit (Line 2 - Line 3)</u>	<u>2,830.3</u>	
7	Operating (General Appropriations)	2,130.9	2)
8	FY 86 Supplementals (Estimated)	20.0	3)
9	Capital Projects	297.9	
10	Continuing Capital Appropriations	250.0	
11	Loans	131.5	

1) The indices and calculations for the FY 86 appropriation limit appear on the following page.

When appropriations equal or exceed the limit, at least one-third shall be reserved for capital projects and loan appropriations. However, this allocation is inoperative when revenues are below the limit, according to an Attorney General's opinion of February 7, 1983.

2) Proposed appropriations for operating expenses (\$2,394.9) less payment of interest and principal on general obligation bonds and local school debt (\$264.0) = \$2,130.9.

3) This item is not included in the Governor's general appropriations bill (see footnote 6, Table I-1).

FY 86 APPROPRIATION LIMIT CALCULATION
(Unrestricted General Funds)

Article IX, Section 16 of the Alaska Constitution establishes an annual appropriation limit of \$2.5 billion plus adjustments for changes in population and inflation since July 1, 1981. To calculate the appropriation limit for FY 86, two published Federal indices were used: 1) the mid-year estimate of Alaska's population, prepared by the U.S. Bureau of Census; and 2) the measure of change in the price of goods and services purchased by state and local governments, published quarterly in the Survey of Current Business by the U.S. Department of Commerce.

A complication in calculating the annual appropriation limit is that published rates of change are not available for all the time periods required. The latest published population numbers are for FY 84, and the latest published price index for state and local government purchases was third quarter 1984. To determine the FY 86 limit, the missing numbers were calculated from the simple arithmetic average of the published annual rates for FY 81-84, producing the appropriation limit for FY 86 of \$3,998 million.

Calculation of the FY 86 appropriation limit is shown below.

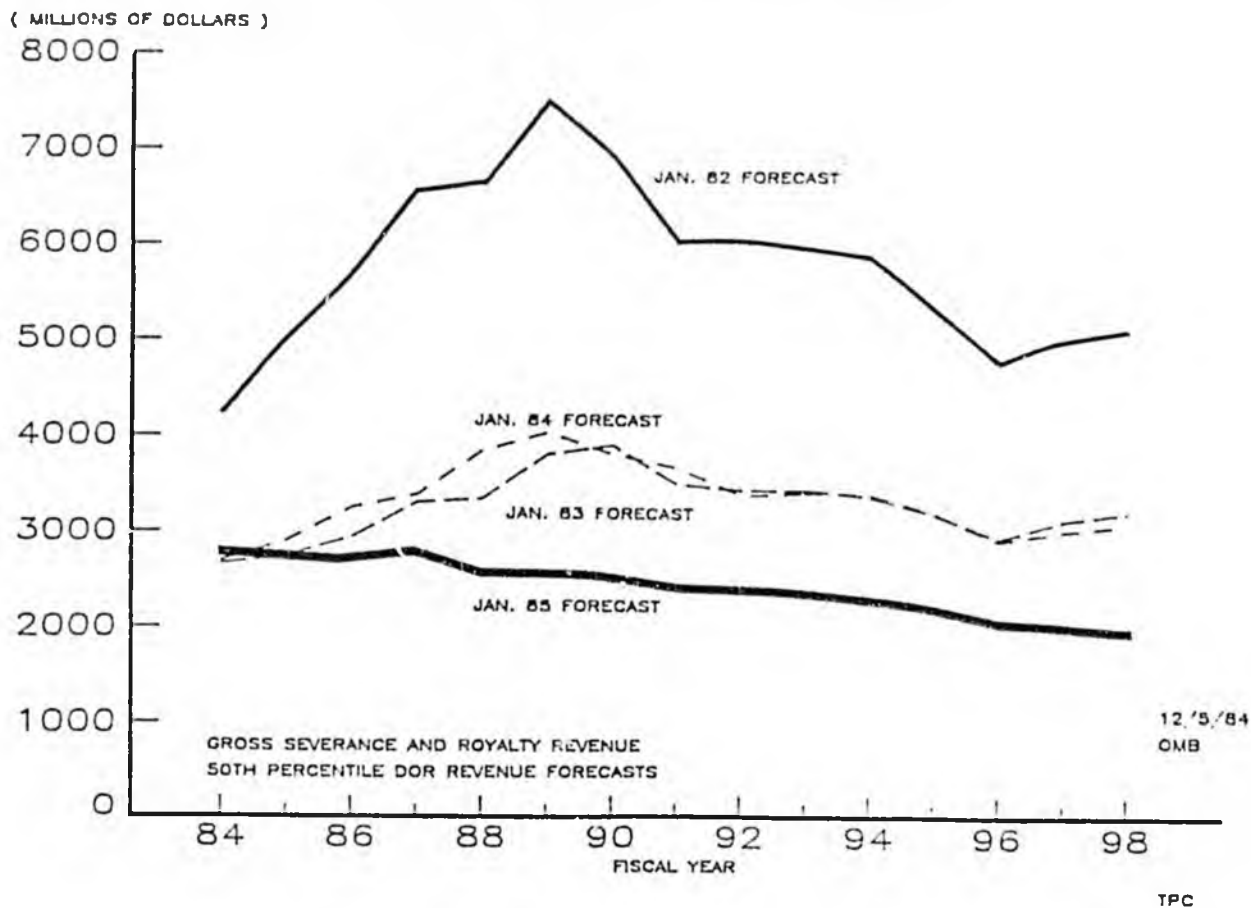
FY	Rate of Population Growth (%)	Rate of Change in the Price of Government Goods and Services (%)	
82	6.73 (actual)	7.07 (actual)	
83	8.33 (actual)	2.58 (actual)	
84	3.95 (actual)	7.68 (actual)	
85	6.34 (estimated) 1)	5.78 (estimated) 1)	

FY	(Prior year's) (base)	x (1 + Population) (growth rate)	x (1 + Inflation) (rate)	=	
82					\$2,500
83	2,500	x 1.0673	x 1.0707	=	2,857
84	2,857	x 1.0833	x 1.0258	=	3,175
85	3,175	x 1.0395	x 1.0768	=	3,554 2)
86	3,554	x 1.0634	x 1.0578	=	<u>3,998</u>

1) FY 85 growth rates = $\frac{\text{Growth rates for (FY 82 + FY 83 + FY 84)}}{3}$

2) The appropriation limit for FY 85 is \$3,654 million. Subsequent to January 1984, when the FY 85 limit was published in the FY 85 Executive Budget Book, the federal agencies revised and updated their population and inflation index figures. These revisions produced the numbers displayed above.

Changing Revenue Forecasts (Royalty and Severance Income Only)



This figure shows changes in forecasts of State severance tax and royalty income since 1981. These two sources of petroleum income comprise approximately 85% of the State's Unrestricted General Fund revenue, as well as the Constitutionally-mandated deposit to the Permanent Fund.

These are 50th percentile forecasts.

Source: OMB, based on Department of Revenue January 1985 revenue forecast.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

JAN 18 1985

REQUEST
 Bill/Resolution No.: HJR No. 2
 Title: Constitutional Amendment
 Sponsor: Davis
 Requestor: _____
 Date of Request: 1/14/85

FISCAL DETAIL
 Agency Affected: Office of the Governor
 Program Category Affected: _____
 Division of Elections
 BRU, Program or Subprogram(s) Affected: _____
 Division of Elections

relating to appropriations of the Legislature.

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact is anticipated if this bill is enacted.

Prepared By: Sherry Valentine, Deputy Director Phone: 465-4611
 Division: Division of Elections Date: 1/18/85
 Approved by Commissioner: *[Signature]* for Lt. Gov. McAlpin Date: 1-18-85
 Agency: Lt. Gov.

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

LETTER OF INTENT

2nd Free Conference Committee on SJR 4

The basic problem faced by Alaska is runaway growth in spending for state government operations and for capital projects. This growth is generated by revenues from resources which are nonrenewable and finite. Some limitation is therefore essential. The constitutional amendment proposed by the 2nd Free Conference Committee will provide a realistic limitation and yet allow, by popular approval, for expenditures in excess of the limitation for capital projects and for contributions to the permanent fund. Those who favor such expenditures can have no reasonable objection to the voters determining which capital projects and contributions are worthwhile and which are not.

The term "capital project" is used rather than the term "capital improvement" in order to have a broader reach. Capital improvements are pretty much limited to public facilities having a more or less permanent nature. Highways, airports, buildings, and ferries are examples. Capital projects include capital improvements and also other expenditures which require a multi-year investment or otherwise tend to fall into the category of capital costs as opposed to day-to-day expenses. Computers, large-scale resources inventories, and high-cost special equipment and instruments for libraries, schools, and museums are some examples.

ALASKA
POLICE STATE CENTER
ANCHORAGE, ALASKA

In addition to limiting the excess appropriations to capital projects and contributions to the permanent fund, the proposed amendment requires bills for capital projects to be confined to capital projects of the same type. This is somewhat more narrow than the single-subject rule. It will require projects in a bill to be parts of an overall system. This will inhibit the packaging of diverse projects into one bill. As a further restraint on logrolling, the bills for excess appropriations are subject to the item veto, including the appropriation of general obligation bond proceeds which are in excess of the limit. Bond proceeds which are not in excess of the limit are not subject to an item veto.

There are three exclusions from the limitation. Debt service is necessarily excluded. An additional exclusion is provided for appropriations for permanent fund dividends. Non-state money, that is, money received from the United States or others to be used for specific purposes, is also excluded. This exclusion includes revenue bond proceeds, the revenues generated by the international airports, and other public enterprises which operate on revenue bonds. The first exclusion is required by the federal constitution's prohibition against impairing contracts. The other exclusions are provided because the use of the money for those purposes is not a part of the problem.

The proposed amendment requires the governor to cause any unexpended and unappropriated balance to be invested

so as to yield competitive rates to the treasury. The words "as prescribed by law" were not included so that the clause will be self-executing. However, the governor performs all executive functions in the manner prescribed by law, and the statutes on loan programs and investments will control here so long as they are consistent with the constitution's requirements.

.. Additionally, so as to eliminate any reasonable grounds for opposition by those who wish to relocate the capital, the resolution includes a transitional measure to exclude relocation costs, if they are approved at the 1982 general election, from the requirement of additional voter approval under the amendment. Another transitional measure provides for the amendment to take effect beginning with the budget for fiscal year 1984.

Finally, still another transitional measure places the amendment on the ballot again at the 1986 general election to allow it to be repealed by the electorate should it prove to be unworkable. If it is unworkable, the people will repeal it. If it works, they will not.

Sen. Bill Ray

Rep. Richard W. Halford

Sen. Donald E. Gilman

Rep. Robert H. Bettisworth

Sen. Frank R. Ferguson

Rep. Hugh Malone

- 3 -