

HJR

60

**Effect of HJR 60 on the Amount of Money Available for Permanent Fund Dividends and the Earnings Reserve Account
(The Permanent Fund Balance and thus the amount needed for Inflation-Proofing are not affected)**

Columns b - f, i and j are in millions of dollars

(a) Fiscal Year End	(b) Permanent Fund Balance	(c) 2% of income to Community Dividend Fund	(d) Inflation Proofing	(e) - (g) Amount available for PFD				(h) - (k) Earnings Reserve Account		
				(e) As is, W/out HJR 60	(f) With HJR 60	(g) Percent Change	(h) % change effect on a \$1200 PFD	(i) FY End Balance As is w/out HJR 60	(j) FY End Balance w/HJR 60	(k) Percent Change
				1999	19,248	27	524	881	881	0.00%
2000	20,061	28	546	923	923	0.00%	1,200.00	944	887	-6.04%
2001	20,911	29	570	890	889	-0.11%	1,198.65	939	850	-9.48%
2002	21,793	30	594	835	834	-0.12%	1,198.56	1,023	899	-12.12%
2003	22,699	31	618	767	764	-0.39%	1,195.31	1,216	1,053	-13.40%
2004	23,625	33	643	798	795	-0.38%	1,195.49	1,426	1,223	-14.24%
2005	24,561	34	669	832	827	-0.60%	1,192.79	1,654	1,407	-14.93%
2006	25,515	36	695	869	863	-0.69%	1,191.71	1,898	1,604	-15.49%
2007	26,488	37	721	909	901	-0.88%	1,189.44	2,157	1,812	-15.99%
2008	27,480	39	748	950	941	-0.95%	1,188.63	2,431	2,033	-16.37%
2009	28,495	41	776	993	982	-1.11%	1,186.71	2,720	2,264	-16.76%
2010	29,536	42	804	1,037	1,024	-1.25%	1,184.96	3,025	2,508	-17.09%
2011	30,602	44	834	1,082	1,067	-1.39%	1,183.36	3,346	2,764	-17.39%
2012	31,702	46	863	1,128	1,111	-1.51%	1,181.91	3,686	3,034	-17.69%
2013	32,830	48	894	1,176	1,157	-1.62%	1,180.61	4,044	3,318	-17.95%
2014	33,990	50	926	1,225	1,204	-1.71%	1,179.43	4,421	3,616	-18.21%
2015	35,179	51	958	1,276	1,252	-1.88%	1,177.43	4,817	3,929	-18.43%

Note: Compiled from data provided by Alaska Permanent Fund Corporation projections (copies available upon request)
The column showing the effect on the PFD amounts are for illustration purposes only. This column indicates what the percentage decrease in funds available for PFDs translate to a \$1200 PFD.

Community Dividend Fund Projections
(Millions of Dollars)

(a) Fiscal Year	(b) Without Inflation Proofing					(g) With Inflation Proofing					
	(b) Beginning Balance	(c) Net Income	(d) 2% from PF Income	(e) Available for Distribution	(f) Ending Balance	(g) Beginning Balance	(h) Net Income	(i) 2% from PF Income	(j) Inflation Proofing @ 2.8%	(k) Available for Distribution	(l) Ending Balance
1999	750	0	27	0	777	750	0	27			777
2000	777	56	28	56	805	777	56	28	23	32	828
2001	805	58	29	58	834	828	59	29	25	34	882
2002	834	60	30	60	864	882	63	30	26	37	939
2003	864	62	31	62	895	939	67	31	28	39	998
2004	896	64	33	64	929	998	71	33	30	42	1,061
2005	928	66	34	66	962	1,061	76	34	32	44	1,127
2006	963	69	36	69	999	1,127	81	36	34	47	1,197
2007	999	71	37	71	1,036	1,197	86	37	36	50	1,270
2008	1,036	74	39	74	1,075	1,270	91	39	38	53	1,347
2009	1,075	77	41	77	1,116	1,347	96	41	40	56	1,428
2010	1,115	80	42	80	1,157	1,428	102	42	43	59	1,514
2011	1,158	83	44	83	1,202	1,514	108	44	45	63	1,603
2012	1,202	86	46	86	1,248	1,603	115	46	48	67	1,697
2013	1,248	89	48	89	1,296	1,697	121	48	51	71	1,795
2014	1,295	93	50	93	1,345	1,795	129	50	54	75	1,899
2015	1,345	96	51	96	1,396	1,899	136	51	57	79	2,007

Note: Compiled from data provided by Alaska Permanent Fund Corporation projections (copies available upon request)
\$750 million beginning balance in FY 1999 is the deposited from the Constitutional Budget Reserve Fund

Assumptions Community Dividend Fund earns 7.16 percent rate of return
Community Dividend Fund is inflation proofed at a rate of 2.8% per year
All net income remaining after inflation-proofing is paid out each year.

upon the character of the use to which the property will be put. *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963).

It is not essential that the entire community or any particular number of persons should benefit from remedial legislation in order that a public purpose be served. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Court will not set aside finding of legislature. — Where the legislature has found that a public purpose will be served by the expenditure or transfer of public funds or the use of the public credit, the court will not set aside the finding of the legislature unless it clearly appears that such finding is arbitrary and without any reasonable basis in fact. *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717 (Alaska 1962); *Walker v. Alaska State Mtg. Ass'n*, 416 P.2d 245 (Alaska 1966).

The courts will not interfere with the exercise of legislative discretion unless it is clearly shown that the legislative determination that a public purpose will be served by the means chosen is arbitrary and without any reasonable basis in fact. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Industrial development. — It is recognized that the location of an industry in a particular community may have widespread economic benefits and that these do fulfill the public purpose and the general welfare of the community, broadly conceived. *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970).

The test which the supreme court must apply is whether a plan for the development of industry within a municipality is so unreasonable as to transgress the limitations of the Alaska Constitution. *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970).

A general obligation bond issue for the purpose of encouraging industrial development within a municipality was held valid in *Wright v. City of Palmer*, 468 P.2d 326 (Alaska 1970).

Relief and support of the poor has long been recognized as an obligation of government and a public purpose. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Relieving economic distress. — It is a public purpose to expend public moneys to relieve economic distress by aiding those persons in the state who have suffered a substantial financial burden as a result of a natural disaster. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Establishment of savings account. — The proposed sales and use tax did not violate this section as it had a public purpose, the establishment of a savings account for future public purposes. *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

The issuance of the debenture certificates by

Alaska State Development Corporation does not constitute a transfer of public funds and the use of public credit for other than a public purpose. *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717 (Alaska 1962).

Alaska Mortgage Adjustment Program held constitutional. — See *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

The purpose of the Alaska Mortgage Adjustment Program is no less public because its benefits may be limited by circumstances to a comparatively small part of the public. *Suber v. Alaska State Bond Comm.*, 414 P.2d 546 (Alaska 1966).

Alaska State Development Corporation. — The announced purpose of the act creating the Alaska State Development Corporation (former AS 44.59.480) was a sound basis in fact and the dominant purpose was a public one. *DeArmond v. Alaska State Dev. Corp.*, 376 P.2d 717 (Alaska 1962).

Alaska State Mortgage Association. — Since the Alaska State Mortgage Association (AS 44.83.010 — 44.83.240) was created for a public purpose within the meaning of this section, the use of public grants and loans is constitutionally permissible. *Walker v. Alaska State Mtg. Ass'n*, 416 P.2d 245 (Alaska 1966).

The purposes for which the Alaska State Mortgage Association (former AS 44.83.010 — 44.83.240) was created were public purposes within the ambit of this section. *Walker v. Alaska State Mtg. Ass'n*, 416 P.2d 245 (Alaska 1966).

Ketchikan hospital. — The moneys used to construct the Ketchikan hospital were spent for a public purpose, since a community hospital serves the general welfare. That purpose does not become nonpublic when the hospital is turned over to a charitable, nonprofit corporation for operation, rather than being operated by the city itself. The public purpose remains unchanged. *Lien v. City of Ketchikan*, 383 P.2d 721 (Alaska 1963).

Customer telephone equipment. — Anchorage Telephone Utility's lease, rental, and sale of customer telephone equipment is not an unlawful use of public funds in violation of this section. Marketing of customer telephone equipment fulfills a public purpose; the Municipality of Anchorage's providing telephone services through the utility promotes access and convenience and fulfills a need for reliability. *Comtec, Inc. v. Municipality of Anchorage*, 710 P.2d 1004 (Alaska Ct. App. 1985).

Quoted in *City of Juneau v. Hixson*, 373 P.2d 743 (Alaska 1962); *Sheldon Jackson College v. State*, 599 P.2d 127 (Alaska 1979); *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287 (Alaska 1984).

Cited in *Ault v. Alaska State Mtg. Ass'n*, 387 P.2d 698 (Alaska 1963).

Collateral references. — 63A Am.Jur.2d, Public Funds, §§ 7, 8, 10 to 12.

81A C.J.S., States, § 225.

→ **Section 7. Dedicated Funds.** The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

subject of a lease-purchase agreement between the Department of Natural Resources and Alaska Court System did not constitute unrestricted "program receipts" for deposit in the state treasury and did not violate this provision. *Carr-Gottstein Properties v. State*, 899 P.2d 136 (Alaska 1995).

Quoted in *Zerbetz v. Alaska Energy Ctr.*, 708 P.2d 1270 (Alaska 1985).

Cited in *Ault v. Alaska State Mtg. Ass'n*, 387 P.2d 698 (Alaska 1963); *Vest v. Schafer*, 757 P.2d 588 (Alaska 1988); *Public Employees' Local 71 v. State*, 775 P.2d 1062 (Alaska 1989); *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Section 14. Legislative Post-Audit. The legislature shall appoint an auditor to serve at its pleasure. He shall be a certified public accountant. The auditor shall conduct post-audits as prescribed by law and shall report to the legislature and to the governor.

Section 15. Alaska Permanent Fund. At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

Cross references. — For provisions governing the management of the Alaska permanent fund, see AS 37.13; for provisions concerning permanent fund dividends, see AS 43.23.

Effective dates. — This section took effect February 21, 1977 (9th Legislature's SCS CSSSHJR 39 (Res) am S (1976)).

Legislative history reports. — For report on House Joint Resolution No. 39 (CS SSHJR 39), SSHJR 39), see 1976 House Journal, p. 683.

Opinions of attorney general. — Since this section specifically authorizes dedications to the Permanent Fund of "at least" 25 percent of certain revenues, any additional dedication to the fund by statute or by appropriation is also permissible. November 30, 1982 Op. Att'y Gen.

If the legislature enacts any other distribution program which is consistent with the intent of the

permanent fund dividend law (AS 43.23), any appropriation to implement that program will be exempt from the appropriation limit of § 16, art. IX, of the state constitution. 1983 Op. Att'y Gen. No. 01.

The appropriation limit of section 16 of this article must be interpreted consistently with the permanent fund amendment contained in this section. 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 for 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 philosophies concerning the propriety of making cash payments directly to residents, which this section expressly reserves to it. 1983 Op. Att'y Gen. No. 01.

NOTES TO DECISIONS

Expectancy is not a financial interest. — An Alaska federal district judge's receipt of a permanent fund dividend does not give rise to a cause for recusal because it is only a possible future receipt of Alaska Permanent Fund dividends; where the judge's order denying recusal neither disclosed nor betrayed even the slightest hint of personal bias or prejudice and where the plaintiffs' arguments substantially oversimplified the extremely complex matter of how the profits of the Alaska Permanent Fund, out of which dividends derive, are generated, recusal was not required. *Exxon Corp. v. Heinze*, 792 F. Supp. 77 (D. Alaska 1992).

In a suit in federal court seeking injunctive relief barring state trial judges and jurors from deciding a dispute over royalties allegedly due from a plaintiff corporation to the state for oil drilled on state land, where the plaintiff contended that its counterclaims

in the royalty litigation might conceivably affect the quantity of money in Alaska's Permanent Fund, and where the United States District Court Judges for this District of Alaska received dividends, as do all resident Alaska judges, recusal of the judge was not warranted because the expectancy a citizen has in receiving Permanent Fund dividends is not a financial interest but is subject to legislative whim. *Exxon Corp. v. Heinze*, 792 F. Supp. 72 (D. Alaska 1992).

Quoted in *Williams v. Zobel*, 619 P.2d 422 (Alaska 1980); *Alaska Oil Co. v. Alaska*, 45 Bankr. 358 (D. Alaska 1985); *State v. Anthony*, 810 P.2d 155 (Alaska 1991); *State, Dep't of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993).

Stated in *Zobel v. Williams*, 457 U.S. 55, 102 S. Ct. 2309, 72 L. Ed. 2d 672 (1982).

Cited in *United States v. Fleier*, 849 F. Supp. 1321 (D. Alaska 1994).

Section 16. Appropriation Limit. Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, appropri-

ations from the treasury made for a fiscal year shall not exceed \$2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981. Within this limit, at least one-third shall be reserved for capital projects and loan appropriations. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations for capital projects, whether of bond proceeds or otherwise, if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without signature, and is also approved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to capital projects of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury.

Effective dates. — This section took effect December 24, 1982 (12th Legislature's FSS FCCSSJR 4 (1981).)

Opinions of attorney general. — This section imposes an appropriation limit rather than a spending limit. The legislature may make appropriations which exceed available revenues, but obligations may not be paid under those appropriations unless there is enough surplus money available in the treasury. 1983 Op. Att'y Gen. No. 01.

There is history which supports a liberal interpretation of the term "capital project" as used in this section. 1983 Op. Att'y Gen. No. 01.

If the legislature enacts any other distribution program which is consistent with the intent of the permanent fund dividend law (AS 43.23), any appropriation to implement that program will be exempt from the appropriation limit of this section. 1983 Op. Att'y Gen. No. 01.

If the legislature provides that an appropriation may not be expended until a later fiscal year, the

appropriation should be counted only against the limit for that later fiscal year. 1983 Op. Att'y Gen. No. 01.

The one-third appropriation allocation reserved for capital projects and loan appropriations may be disregarded when economic conditions impose a total appropriation limit which is more restrictive than that set out in this section. 1983 Op. Att'y Gen. No. 01.

Appropriations that are available for expenditure in a fiscal year should be counted only against the appropriation limit of this section for the first fiscal year during which they could be completely expended. This should be done even if an unexpended balance is carried forward into the next fiscal year; that balance must be considered obligated for the purposes of the appropriation limit. 1983 Op. Att'y Gen. No. 01.

Appropriations to retire municipal general obligation school bond indebtedness under AS 14.11 are "required" and qualify as an exception to the spending limit of this section. 1983 Op. Att'y Gen. No. 01.

→ **Section 17. Budget Reserve Fund.** (a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

(b) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund. However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year.

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of three-fourths of the members of each house of the legislature.

(d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

Effective date. — This section became effective on January 2, 1991 (16th Legislature's HCS CSSSSJR 5 (Fin) am H (1990).)

Opinions of attorney general. — Since this section clearly and unambiguously states that it applies to revenues received after July 1, 1990, it applies retrospectively to settlement proceeds received after the beginning of fiscal year 1990, even though the section did not take effect until January 2, 1991. 1993 Op. Att'y Gen. No. 2.

This section did not repeal the statutory budget reserve fund established by AS 37.05.54, and the statutory fund continues in effect until amended or repealed by the legislature. 1993 Op. Att'y Gen. No. 2.

Pre-existing dedications of revenue established by statute to satisfy trust obligations imposed by federal law are excluded from the reach of this section, which applies to proceeds net of dedications otherwise permitted under Alaska Const., art. IX, § 7, which permits dedications that are required for participation in a federal program. 1993 Op. Att'y Gen. No. 2.

The term "administrative proceeding" in this section does not include the informal conference process established by AS 43.05.240 for the resolution of tax disputes. The section applies only to the proceeds of disputes that have progressed to an adjudicatory stage of the dispute resolution process. 1993 Op. Att'y Gen. No. 2.

NOTES TO DECISIONS

- I. Administrative Proceedings.
- II. Appropriation Amounts.
- III. Applications.

I. ADMINISTRATIVE PROCEEDINGS.

Attributes. — Attributes of an administrative proceeding include: 1) a dispute must exist; 2) a document reflecting the fact of the dispute which serves a function similar to that of a complaint in a civil action, or an accusation or statement of issues under the Administrative Procedure Act, AS 44.62.360, 370, must be served by one party on the other party; and 3) the document must set in motion mechanisms prescribed by statute or regulation under which the dispute will ultimately be resolved. *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994).

Rulemaking proceedings excluded. — Rulemaking administrative proceedings are clearly not included within the meaning of the term "administrative proceeding" used in subsection (a). *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994).

Express consent and termination. — An administrative proceeding under subsection (a) may terminate with or without the express consent of all of the parties. *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994).

Taxpayer assessment. — An assessment issued by the Department of Revenue to a taxpayer under AS 43.05.270 satisfies all of the essential elements of an administrative proceeding under subsection (a). *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994).

Audit letter. — An audit letter does not satisfy the essential elements of an administrative proceeding; mere notice of an intention to investigate neither indicates the existence of a dispute nor sets in motion mechanisms for the resolution of a dispute. *Hickel v. Halford*, 872 P.2d 171 (Alaska 1994).

II. APPROPRIATION AMOUNTS.

Amount available for appropriation. — Funds which require further legislative appropriation before

expenditures can be made against them are available for appropriation; thus the Railbelt energy fund, AS 37.05.520, the Alaska marine highway system vessel replacement fund, AS 37.05.550, and the educational facilities maintenance and construction fund, AS 37.05.560, remained "available for appropriation," within the meaning of section 17(b). *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Amount unavailable for appropriations. — Monies which already have been validly committed by the legislature to some purpose should not be counted as available and, in addition, illiquid assets owned by the state are not available so long as they remain illiquid. *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Because the legislature made the entire balance of the oil and hazardous substance release response fund available for expenditure, the amounts deposited into the fund were validly appropriated and therefore no longer available for appropriation. *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

III. APPLICATIONS.

37.10.420 unconstitutional. — Because AS 37.10.420(a)(2) does not include all actual appropriations made for the previous fiscal year in the "amount appropriated for the previous fiscal year," it does not accurately reflect the meaning of the constitutional term under subsection (b). *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Because AS 37.10.420(b) fails to consider all amounts which are "available for appropriation" within the meaning of subsection (d) in determining the state's repayment obligation, it is unconstitutional. *Hickel v. Cowper*, 874 P.2d 922 (Alaska 1994).

Article 1. Alaska Permanent Fund.

Section	Section
10. Alaska permanent fund	110. Conflicts of interest
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Sec. 37.13.010. Alaska permanent fund. (a) Under art. IX, § 15 of the state constitution, there is established as a separate fund the Alaska permanent fund. The Alaska permanent fund consists of

(1) 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued on or before December 1, 1979, and 25 percent of all bonuses received by the state from mineral leases issued on or before February 15, 1980;

(2) 50 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued after December 1, 1979, and 50 percent of all bonuses received by the state from mineral leases issued after February 15, 1980;

(3) any other money appropriated to or otherwise allocated by law to the Alaska permanent fund.

(b) Payments due the Alaska permanent fund under (a) of this section shall be made to the fund within three banking days after the day the amount due to the fund reaches at least \$3,000,000 and at least once each month.

(c) The Alaska permanent fund shall be managed by the Alaska Permanent Fund Corporation established in this chapter. (§ 5 ch 18 SLA 1980; am § 2 ch 134 SLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, inserted "within three banking days after the day the amount due to the fund reaches at least \$3,000,000 and at least" in subsection (b).

Legislative history reports. — For the Free Conference Committee Report on ch. 18, SLA 1980 (FCCSSB 161), see 1980 House Journal, Joint Supplement No. 7, April 2, 1980.

NOTES TO DECISIONS

Stated in State, Dep't of Revenue v. Cosio, 858 P.2d 691 (Alaska 1993).

Sec. 37.13.020. Findings. The people of the state, by constitutional amendment, have required the placement of at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the state into a permanent fund. The legislature finds with respect to the fund that

(1) the fund should provide a means of conserving a portion of the state's revenue from mineral resources to benefit all generations of Alaskans;

(2) the fund's goal should be to maintain safety of principal while maximizing total return;

(3) the fund should be used as a savings device managed to allow the maximum use of disposable income from the fund for purposes designated by law. (§ 5 ch 18 SLA 1980; am § 3 ch 134 SLA 1992)

(l) The board shall invest the assets of the fund in in-state investments to the extent in-state investments are available if the in-state investments

(1) have a risk level and expected yield comparable to alternate investment opportunities; and

(2) are included in the list of permissible investments in (g) of this section.

(m) Certificates of deposit or the equivalent instruments that are not of a quality that may be readily sold in a secondary market at prices reflecting fair value must be secured by a pledge as collateral of

(1) investments authorized for the fund under (g)(1), (2), (4), or (8) — (10) of this section;

(2) obligations of the state or instrumentalities of the state that are rated at least "A" by a major bond rating service and have a demonstrated secondary market;

(3) the guaranteed portion of Federal Small Business Administration loans;

(4) the portion of first lien real estate mortgages guaranteed by the federal Department of Veterans Affairs; or

(5) notes secured by mortgages granting a first lien on commercial or residential real estate improved by completed buildings if the originating financial institution retains at least 25 percent of the mortgage until maturity.

(n) Investments or obligations pledged as collateral under (m) of this section must have value at least equal to the face value of the certificates of deposit being secured. The board may require substitution of collateral in order to ensure continued satisfaction of the requirements set out in (m) of this section.

(o) For purposes of (g) of this section, "investment grade" means a Standard & Poor's Corporation rating BBB or better, or Moody's Investors Service, Inc., rating of Baa or better, including a rating with a "+" or "-" designation or other variations that occur within these ratings, or a comparable rating by another nationally recognized rating organization. (§ 5 ch 18 SLA 1980; am §§ 5 — 7 ch 81 SLA 1982; am § 1 ch 83 SLA 1986; am §§ 1 — 6 ch 4 SLA 1989; am §§ 8 — 17 ch 134 SLA 1992; am § 1 ch 56 SLA 1994; am §§ 1 — 4 ch 104 SLA 1996)

Effect of amendments. — The 1989 amendment, effective March 14, 1989, in subsection (g), added "domestic" to the beginning and "or nondomestic corporate debt securities of comparable quality" to the end of paragraph 7, rewrote paragraph 9, inserted "or nondomestic" in two places and substituted "outside of the United States" for "in a foreign country" and "capital, surplus, and retained earnings" for "capital and surplus" in paragraph 15, and added paragraphs 21 and 22 in subsection (h), inserted "or for the sale of nondomestic currencies" and substituted "investments" for "securities"; and in subsection (i), deleted the former last sentence, which was similar to the present last sentence, and added the present last sentence.

The 1992 amendment, effective July 1, 1992, rewrote this section.

The 1994 amendment, effective May 25, 1994, in

paragraph (g) 16, inserted "the total value held by the fund in each investment does not exceed \$150,000,000, and, if the total value held by the fund in each investment exceeds \$150,000,000," and made a related stylistic change in the introductory language, substituted "33 percent" for "60 percent" in subparagraphs (A) and (B), and substituted "67 percent" for "40 percent" in item (B)(i).

The 1996 amendment, effective June 26, 1996, substituted "investment grade" for "A or better" in paragraphs (g) 7 and (g) 19, rewrote paragraph (i) 4, repealed paragraph (i) 5, and added subsection (o).

Legislative history reports. — For Senate letter of intent related to the 1989 amendments to this section by ch. 4, SLA 1989 (CSHB 69SA), see 1989 Senate Journal 621.

Sec. 37.13.130. Gains and losses. [Repealed, § 13 ch 81 SLA 1982.]

→ **Sec. 37.13.140. Income.** Net income of the fund includes income of the earnings reserve account established under AS 37.13.145. Net income of the fund shall be computed annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses. Income available for distribution equals 21 percent of the net income of the fund for the last five fiscal years, including the fiscal year just ended, but may not exceed net income of the fund for the fiscal year just ended plus the balance in the earnings reserve account described in

AS 37.13.145. (§ 5 ch 18 SLA 1980; am § 8 ch 81 SLA 1982; am § 1 ch 28 SLA 1986; am § 18 ch 134 SLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, inserted near the beginning of the fund includes income of the earnings reserve account established under AS 37.13.145. Net income of the fund and substituted "fund" for "corporation" in three places.

→ **Sec. 37.13.145. Disposition of income.** (a) The earnings reserve account is established as a separate account in the fund. Income from the fund shall be deposited by the corporation into the account as soon as it is received. Money in the account shall be invested in investments authorized under AS 37.13.120.

(b) At the end of each fiscal year, the corporation shall transfer from the earnings reserve account to the dividend fund established under AS 43.23.045, 50 percent of the income available for distribution under AS 37.13.140.

(c) After the transfer under (b) of this section, the corporation shall transfer from the earnings reserve account to the principal of the fund an amount sufficient to offset the effect of inflation on principal of the fund during that fiscal year. The corporation shall calculate the amount to transfer to the principal under this subsection by

(1) computing the average of the monthly United States Consumer Price Index for all urban consumers for each of the two previous calendar years;

(2) computing the percentage change between the first and second calendar year average; and

(3) applying that rate to the value of the principal of the fund on the last day of the fiscal year just ended.

(d) Notwithstanding (b) of this section, income earned on money awarded in or received as a result of *State v. Amerada Hess, et al.*, 1JU-77-847 Civ. (Superior Court, First Judicial District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund. (§ 9 ch 81 SLA 1982; am § 2 ch 28 SLA 1986; am § 19 ch 134 SLA 1992)

Conditional repeal of subsection (d). — Under § 28, ch. 134, SLA 1992, subsection (d) is repealed on the day that the revisor of statutes certifies to the legislature that the Alaska Supreme Court has made a final determination that in the absence of AS 43.23.045(e), repealed by sec. 29 of this Act, or AS 37.13.145(d), added by sec. 19 of this Act, no judge or juror is disqualified from serving as a judge or juror

solely because the judge or juror may qualify to receive a permanent fund dividend."

Cross references. — For transfer of certain income earned by the Alaska permanent fund prior to July 1, 1962, to the undistributed income account, see § 15, ch. 81, SLA 1982.

Effect of amendments. — The 1992 amendment, effective July 1, 1992, rewrote this section:

NOTES TO DECISIONS

Stated in *State, Dept of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993); *Exxon Corp. v. Heinze*, Nos. 92-35266, 92-35323, 32 F.3d 1399 (9th Cir. 1994)

Sec. 37.13.150. Corporation budget. The revenue generated by the fund's investments must be identified as the source of the operating budget of the corporation in the state's operating budget under AS 37.07 (Executive Budget Act). The unexpended balance of the corporation's annual operating budget does not lapse at the end of the fiscal year but shall be treated as income under AS 37.13.140. (§ 5 ch 18 SLA 1980; am § 10 ch 81 SLA 1982; am § 20 ch 134 SLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, substituted "fund's investments" for "corporation's investments."

subsection (d) and near the beginning of subsection (f) and inserted "disabled or" before "Incompetent" near the end of subsection (f).

The first 1991 amendment, effective June 11, 1991, in subsection (b), substituted "12 months" for "24 months" near the beginning of the third and fourth paragraphs.

The second 1991 amendment, effective July 1, 1991, made the same changes as the first and inserted "unless this requirement has been waived under AS 43.23.005(f)" in two places.

The 1992 amendment, effective January 1, 1993, added the last two sentences in subsection (a) and rewrote subsection (b).

The 1996 amendment, effective January 1, 1997, rewrote subsection (g) and added subsection (i). For the provisions of subsection (g) in effect before January 1, 1997, see the 1995 supplement for AS 43.

Editor's notes. — Under § 20, ch. 4, SLA 1992, the amendment to (a) of this section made by § 10, ch. 4, SLA 1992, is retroactive to January 1, 1992.

NOTES TO DECISIONS

Extension of filing time denied. — Department of revenue ruling that an extension of time for filing an application for a permanent fund dividend was not available because the information submitted in the original application was deceptive was reasonable and not arbitrary, where applicant submitted false residency verifications containing forged signatures. *Handley v. State, Dep't of Revenue, 838 P.2d 1231 (Alaska 1992).*

Prohibiting permanent fund distribution to illegal aliens. — An administrative regulation, which restricted permanent fund dividend eligibility to aliens with resident alien or refugee status, fell within the delegated authority of the commissioner of revenue to regulate the eligibility of individuals for permanent fund dividends. The regulation was also

constitutional under the state and federal equal protection clauses. Limiting the distribution of dividends to those who are lawful permanent residents is rationally related to legitimate objectives of the dividend program. *State, Dep't of Revenue v. Cosio, 858 P.2d 621 (Alaska 1993).*

Out-of-state students. — Regulation 15 AAC 23.175(c)(2) is consistent with subsection (a) because it defines "absent only for secondary or postsecondary education" and thereby resolves the question of who is a permanent resident qualified to receive a permanent fund dividend. The regulation is not arbitrary or unreasonable. Thus, an out-of-state part-time student was properly denied dividend. *State, Dep't of Revenue v. Bradley, 896 P.2d 237 (Alaska 1995).*

Sec. 43.23.016. Voter registration. The commissioner shall include voter registration forms prepared under AS 15.07.070(b) with permanent fund dividend applications. (§ 1 ch 48 SLA 1992)

Effective dates. — Section 2, ch. 48, SLA 1992 makes this section effective on January 1, 1993.

Legislative history reports. — For legislative letter of intent and request for report in connection

with the enactment of this section by § 1, ch. 48, SLA 1992 (CSSB 362(STAXtitle am)), see 1992 Senate Journal, p. 2053.

Sec. 43.23.020. Proof of eligibility. [Repealed, § 22 ch 102 SLA 1982.]

→ **Sec. 43.23.025. Amount of dividend.** (a) By October 1 of each year the commissioner shall determine the value of each permanent fund dividend for that year by

- (1) determining the total amount available for dividend payments, which equals
 - (A) the amount of income of the Alaska permanent fund transferred to the dividend fund under AS 37.13.145(b) during the current year;
 - (B) plus the unexpended and unobligated balances of prior fiscal year appropriations that lapse into the dividend fund under AS 43.23.045(d);
 - (C) less the amount necessary to pay dividends from the dividend fund in the current year under AS 43.23.055(3) and (7);
 - (D) less the amount necessary to pay dividends from the dividend fund due to eligible applicants who, as determined by the department, filed for a previous year's dividend by the filing deadline but who were not included in a previous year's dividend computation;
 - (E) less appropriations from the dividend fund during the current year, including amounts to pay costs of administering the dividend program and the hold harmless provisions of AS 43.23.075;
- (2) determining the number of individuals eligible to receive a dividend payment for the current year; and
- (3) dividing the amount determined under (1) of this section by the amount determined under (2) of this section.

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Representative Gary Davis

SPONSOR STATEMENT HOUSE JOINT RESOLUTION 60

"Proposing amendments to the Constitution of the State of Alaska relating to the community dividend fund, the permanent fund and the budget reserve fund"

HJR 60 proposes a constitutional amendment creating a dedicated fund to pay dividends to municipalities within the state. Principal will be invested to yield competitive market rates and a portion of the fund's income will be distributed annually to municipalities. Fund principal will consist of an initial \$750 million from the Budget Reserve Fund, with 2% of the Permanent Fund's income added to the principal for the next 20 years. As the principal of the fund increases, so will earnings, and thus payments to communities. As dividends increase, local taxes can decrease providing more money to individuals without a decrease in local services.

Local governments have individualized needs that must be met in addition to providing basic services. Unfortunately, they do not have sufficient land, economic or tax bases to provide the necessary funding; nor can the state continue to give it to them. With oil production decreasing, there is less general fund money available to the state. The state continues to funnel mandated services to local governments, but as revenues diminish, the state cannot provide adequate sustainable funding to local governments to meet their service demands.

Creating a dedicated fund provides more funding reliability to local governments. With a dedicated fund where only interest from the fund is paid out, communities can better estimate the income they will derive based on current interest rates and changes in population. It provides a more stable and predictable stream of revenues for them to plan and provide services. With local government receiving the funds directly, residents have the opportunity to be more knowledgeable about where the funds will be used and able to provide more input on how they should be spent. Local governments are insured a certain amount of money and will answer to their citizens for the way in which it is spent. The state can then concentrate its efforts on statewide programs and support directed more to specific or specialized needs.

Another equally important benefit is that this strengthens the argument that the Permanent Fund and its proceeds are used for the public's purpose and are thus eligible to retain the federal tax-exempt status. The Permanent Fund was created as a public trust, the proceeds from which were to be used for a public purpose. The principal of the fund came from resource assets received at statehood because Congress did not believe Alaska could meet its collective needs from taxes alone. Dedicating a portion of the income to communities reiterates the argument that the state fulfills the public purpose by using "income from a collective asset to meet collective needs." Requiring the citizens of the state to approve this dedication by a vote reinforces that the public believes in the purpose for which it is to be used.

Representing House District 8

Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna

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Alaska State Legislature

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Representative Gary Davis

SECTIONAL ANALYSIS HOUSE JOINT RESOLUTION 60

"Proposing amendments to the Constitution of the State of Alaska relating to the community dividend fund, the permanent fund and the budget reserve fund"

- Section 1: Establishes a Community Dividend Fund as a dedicated fund within the state treasure. Allows for appropriations to be made to the fund, but prohibits appropriations from the fund's principal. Money in the fund is to be invested to yield competitive market rates. Specifies that the prohibition of dedicated funds does not apply to the Community Dividend Fund
- Specifies that the income from the fund will be distributed to organized boroughs and cities in a manner set out by statute.
- Section 2: Adds a transitional section to Article XV of the constitution specifying that the fund will consist of an initial deposit of \$750 million transferred from the Budget Reserve Fund. In addition, two percent of the permanent fund income earned each fiscal year from FY 1999 to FY 2018 will be deposited into the principal of the community dividend fund.
- Section 3: Provides for a vote on this constitutional amendment at the next (1998) general election.

*Representing House District 8
Cooper Landing, Funny River, Hope, Moose Pass, Seward, Sterling, Soldotna*

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HJR60

Revision Date (Note if correction) _____ Dept. Affected Office of the Governor
 Title Const. Amend: Relating to the community BRU Elective Operations
 dividend fund, permanent fund, and budget reserve fund Component General and Primary
 Sponsor Representative Davis
 Requester House Judiciary Committee Component Serial No. #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by Gail Fenusia *Gail Fenusia* Phone 465-3935
 Division Division of Elections Date 3/6/98
 Approved by C Lt. Governor Fran Ulmer *Fran Ulmer* Date 3/6/98
 Agency Office of the Lieutenant Governor

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**A Resolution of the Alaska Conference of Mayors and
the Alaska Municipal League Board of Directors**

RESOLUTION 98-01

**URGING THE LEGISLATURE TO REFRAIN FROM MAKING
ADDITIONAL DEPOSITS OF UNALLOCATED EARNINGS OF THE
PERMANENT FUND INTO THE CORPUS OF THE FUND**

WHEREAS, regardless of the price of oil, the state of Alaska is faced with the problem of seriously deteriorating schools, roads, harbors, and other public facilities that will **only become more expensive to fix if we fail to fix them now**; and

WHEREAS, the key purpose for the Permanent Fund Reserve Account and the Constitutional Budget Reserve is to help sustain Alaska's public services and facilities when oil revenues alone cannot; and

WHEREAS, Alaskans and municipal governments do not want the body of the Permanent Fund "raided", however, the **residual unallocated earnings of the Permanent Fund are not part of the body, or corpus, of the Permanent Fund**, and constitute money left over after the maximum allowable Permanent Fund Dividends are paid and after the Permanent Fund is fully inflation-proofed; and

WHEREAS, the use of earnings from the residual unallocated earnings of the Permanent Fund to meet Alaska's critical public facility needs is preferable to increasing taxes; and

WHEREAS, as state oil revenues shrink, the public must be allowed to choose between:

- ◆ Steeply increasing property and sales taxes,
- ◆ Loss of critical public facilities (like schools, harbors, and roads) or,
- ◆ Creative use of Alaska's enormous financial resources, as intended by the past Legislatures and Governor's

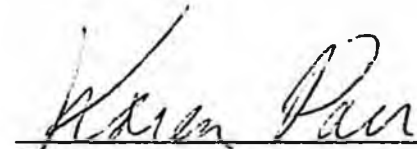
WHEREAS, Governor Walter Hickel, and other notable Alaskans, have proposed the creation of a **Community Permanent Fund Dividend Program** that would keep Alaska's economy strong by avoiding excessive property taxes; and

NOW, THEREFORE, BE IT RESOLVED, the Governor and the Legislature are urged to:

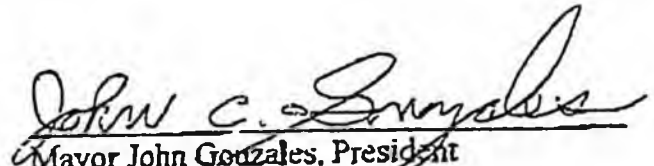
1. **Keep the residual unallocated earnings of the Permanent Fund in the Unallocated Earnings Reserve Account, and**

2. Allow Alaskans to approve using the interest earnings from the unallocated earnings as a permanent source of revenue to maintain and improve Alaska's schools, roads, harbors, and other critical public facilities.

PASSED and APPROVED on April 1, 1998, Juneau, Alaska.



Karen Parr, President
Alaska Municipal League



Mayor John Gonzales, President
Alaska Conference of Mayors