

HB

333

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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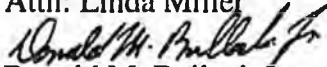
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 29, 2004

SUBJECT: CSHB 333(HES) (Work Order No. 23-LS0991\N)

TO: Representative Peggy Wilson
Attn: Linda Miller

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed with this memorandum is a final version of CSHB 333(HES). This version of the bill is based on CSHB 333(EDU) and includes the two amendments made by your committee. The first amendment allocates the receipts from the land conveyed under AS 14.40.507 so that elementary and secondary education programs receive 60 percent of the receipts and the university receives 40 percent. The second amendment was a conceptual amendment that transmits the receipts for elementary and secondary education into the Public School Trust Fund (AS 37.14.100). Since the Public School Fund Advisory board oversees the Public School Trust Fund, the bill no longer creates a new board.

Please review my memo to you concerning the risks and possible repercussions from contributing a new source of revenue into the Public School Trust Fund. In this version of the bill, I have added a duty for the commissioner of revenue to separately account for the contributions in this bill for the purpose of determining the percentage of market value that may be appropriated for elementary and secondary education.

Also, as I noted in my earlier memo, AS 29.45.030(a)(1)(B) in sec. 5 of the bill should be amended to exclude from taxation the interest in land transferred to the public school trust fund.

If I may be of further assistance, please advise.

DMB:med
04-336.med

Enclosure

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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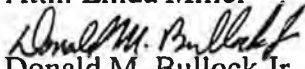
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 24, 2004

SUBJECT: CSHB 333(EDU) and Public School Trust Fund issues
(Work Order No. 23-LS0991VZ)

TO: Representative Peggy Wilson
Attn: Linda Miller

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed with this memorandum is a draft CSHB 333(HES). Although the first amendment you provided me is clear (the allocation of the income between the university and elementary and secondary education) the conceptual amendment has at least two issues that need to be addressed. In addition, I am suggesting one further amendment to be considered, either in committee or on the floor.

The first amendment passed by the committee changed the allocation of the total receipts from equal shares to 60 percent for the education trust fund and 40 percent to the university endowment trust. I changed your three-fifths and two-fifths fractions to percentages as a stylistic change. These changes appear in AS 14.40.505 which would be enacted by sec. 4 of the bill.

The conceptual amendment, passed by the committee, would make two significant changes to the bill. First, the share of the receipts for elementary and secondary education would be deposited into the Public School Trust Fund established in AS 37.14.110. Second, the Public School Trust Fund Advisory Board created in AS 37.14.120 would perform the functions that had been assigned to the Education Trust Fund Board. The latter change is included in this draft of the bill based on our conversation on March 23. However, I need additional guidance from you regarding the deposit of receipts into the Public School Trust Fund.

The conceptual amendment would direct money conveyed to the education trust under AS 14.40.507 into the Public School Trust Fund,¹ rather than to the education trust fund. The net income of the Public School Trust Fund is dedicated to the state public school

¹ Under AS 37.14.150, the Public School Trust Fund receives one half of one percent of the total receipts derived from the management of state land, including amounts paid to the states as proceeds of sale or annual rent of surface rights, mineral lease rental, royalties, royalty sale proceeds, and federal mineral revenue sharing payments or bonuses.

Representative Peggy Wilson

March 24, 2004

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program.² By comparison, AS 14.40.503, which would be enacted in sec. 4 of the bill, would allow the legislature to appropriate "up to five percent of the market value of the education trust fund" for elementary and secondary education. Thus, there is a discrepancy between the appropriation of "net income" and the percentage of market value. How would you like this discrepancy to be resolved?

Perhaps a more significant issue is the legal effect of directing an additional revenue stream into the Public School Trust Fund. Although there is no clear authority on this subject, additional contributions to the Public School Trust Fund would, in my opinion, put the dedication of the fund to public schools at risk.

A brief explanation of the purpose and history of the Public School Trust Fund is helpful in addressing this question. This fund is dedicated to the support of the public school system and is not a violation of the dedicated fund rule because it falls within an exception to the prohibition against dedicated funds. As a general rule, if a dedication is required for participation in a federal program or the fund was in existence before 1959, then the Alaska Constitution does not prohibit dedication of those funds. See Art. IX, sec. 7, Constitution of the State of Alaska.

The Public School Trust Fund (AS 37.14.110) and the required contribution of certain receipts (AS 37.14.150) were established to satisfy trust obligations imposed under federal law before 1959. In 1915 congress granted land to the state to hold in trust for public schools under 48 U.S.C. 353. In 1978, the legislature redesignated the land as general grant land and established the Public School Trust Fund. The legislature also dedicated one half of one percent of the total receipts from the management of state land and federal mineral revenue-sharing payments to the fund under AS 37.14.150.³ Therefore, the present trust fund and the dedication of revenue are intended to satisfy federal trust requirements imposed when the land was originally granted to the state for public schools.

The Attorney General has concluded that a trust obligation exists with respect to the fund and that the dedication of revenues to the fund is constitutional until the amount

² AS 37.14.140 prohibits the appropriation of the net income for a purpose other than the support of the public schools. Revenue that has not been appropriated or appropriated but not expended, remains in the fund until appropriated or expended.

³ Sec. 2, ch. 182, SLA 1978, redesignated school land as general grant land. The land redesignated consisted of, "sections 16 and 36 in each township surveyed before 1959 under the Act of March 4, 1915, 48 U.S.C. 353, and patented to or approved for patent to the state on July 1, 1978 and land designated as school land which was received in exchange for land granted under that federal land grant and land granted to the state as lieu or indemnity land." A township is approximately 36 miles square and contains 36 sections. *Black's Law Dictionary* 1492 (6th ed. 1990). The two sections in each township dedicated to schools represent approximately 5.6% of the land in the surveyed townships.

Representative Peggy Wilson

March 24, 2004

Page 3

deposited equals the fair market value of the school lands. When the amount deposited into the fund exceeds the fair market value of the school lands, the Attorney General has opined that the additional deposits conflict with the dedicated fund provision of the Alaska Constitution. (1988-1 Op. (Inf.) Att'y, Gen 293; 1985-2 (Inf.) Att'y Gen 159; See also 1992 Op. Att'y Gen. No. 1).

It is possible, however, that the current fund and dedication of revenue could be vulnerable to legal challenge. It may be that a court would not agree that the decision to reconstitute the trust in 1978 from land to money, in itself, permits the dedication of revenue to accomplish this. There is no clear legal authority on how the court would treat this issue.

With this background in mind, the authority of the legislature to increase the amount flowing into the principal of the fund, can be examined. As a creation of the legislature, AS 37.14.150 could be amended by the legislature to allow for the contribution of the new receipts identified in CSHB 333(HFS) to the existing trust fund. I do not believe any changes to federal law are required. However, it is unclear how this would affect the fund's status as an exception to the dedicated fund prohibition. It is possible that, if any significant changes are made to the present statutory framework of the fund, it would destroy the fund's protected status as an exception to the dedicated fund rule. This is one risk you incur if the amount of money flowing into the principal of the fund is increased by the legislature.

This also raises a related issue. If the legislature increases the amount that annually flows into the fund, the fund may more quickly grow beyond the original fair market value of the lands used to create the original federal trust. This issue certainly exists anyway, as noted by the Attorney General in opinions cited above. In short, any change to the Public School Trust Fund creates a risk that the fund would lose its protected status as a fund that can legally dedicate money to public schools.

*nothing to
Appropriate
fund &*
Please let me know whether you would like a new CS for HB 333 that would direct the new receipts for education into the Public School Trust Fund rather than the Education Fund, and how you would like the difference between the bill's use of percentage of market value and net income in AS 37.14.140 to be resolved.

* As a final point, in my review of the bill for your CS, I noted that AS 29.45.030(a)(1)(B), which would be amended in sec. 5 of the bill, should be amended to also shield the interest in land conveyed to the education trust from taxation.

If I may be of further assistance, please advise.

DMB:mdr
04-114.mdr

Enclosure

23-LS0991\E
Bullock
3/25/04

CS FOR HOUSE BILL NO. 333(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES OGG, COGHILL AND HOLM, Wilson

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to an endowment for public education and the University of Alaska;**
2 **relating to university land; establishing a trust fund for public education; and providing**
3 **for an effective date."**

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

5 *** Section 1. AS 14.40.170(a) is amended to read:**

6 (a) The Board of Regents shall

7 (1) appoint the president of the university by a majority vote of the
8 whole board, and the president may attend meetings of the board;

9 (2) fix the compensation of the president of the university, all heads of
10 departments, professors, teachers, instructors, and other officers;

11 (3) confer such appropriate degrees as it may determine and prescribe;

12 (4) except as provided under AS 14.40.507, have the care, control,
13 and management of

14 (A) all the real and personal property of the university; and

1 (B) land

2 [(i)] conveyed to the Board of Regents by the
3 commissioner of natural resources in the settlement of the claim of the
4 University of Alaska to land granted to the state in accordance with the
5 Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance
6 with the Act of January 21, 1929 (45 Stat. 1091), as amended; [AND

7 (ii) SELECTED BY THE UNIVERSITY OF ALASKA
8 AND CONVEYED TO IT BY THE COMMISSIONER OF
9 NATURAL RESOURCES UNDER AS 14.40.365;]

10 (5) keep a correct and easily understood record of the minutes of every
11 meeting and all acts done by it in pursuance of its duties;

12 (6) under procedures to be established by the commissioner of
13 administration, and in accordance with existing procedures for other state agencies,
14 have the care, control, and management of all money of the university and keep a
15 complete record of all money received and disbursed;

16 (7) adopt reasonable rules for the prudent trust management and the
17 long-term financial benefit to the university of the land of the university;

18 (8) provide public notice of sales, leases, exchanges, and transfers of
19 the land of the university or of interests in land of the university;

20 (9) administer, manage, market, and promote a postsecondary
21 education savings program, including the Alaska Higher Education Savings Trust
22 under AS 14.40.802 and the Alaska advance college tuition savings fund under
23 AS 14.40.803 - 14.40.817.

24 * Sec. 2. AS 14.40.291(a) is amended to read:

25 (a) Notwithstanding any other provision of law, university-grant land, state
26 replacement land that becomes university-grant land on conveyance to the university,
27 [LAND SELECTED BY AND CONVEYED TO THE UNIVERSITY OF ALASKA
28 UNDER AS 14.40.365,] and any other land owned by the University of Alaska,
29 except for land transferred under AS 14.40.507, is not and may not be treated as
30 state public domain land. [LAND CONVEYED TO THE UNIVERSITY OF
31 ALASKA UNDER AS 14.40.365 SHALL BE MANAGED UNDER AS 14.40.365 -

1 14.40.368 AND POLICIES OF THE BOARD OF REGENTS OF THE UNIVERSITY
2 OF ALASKA.]

3 * **Sec. 3.** AS 14.40.400(a) is amended to read:

4 (a) The Board of Regents shall establish a separate endowment trust fund in
5 which shall be held in trust in perpetuity all

6 (1) net income derived from the sale or lease of the land granted under
7 the Act of Congress approved January 21, 1929, as amended;

8 (2) receipts transferred to the fund under AS 14.40.505 [NET
9 INCOME DERIVED FROM THE SALE, LEASE, OR MANAGEMENT OF THE
10 LAND SELECTED BY AND CONVEYED TO THE UNIVERSITY OF ALASKA
11 UNDER AS 14.40.365]; and

12 (3) monetary gifts, bequests, or endowments made to the University of
13 Alaska for the purpose of the fund.

14 * **Sec. 4.** AS 14.40 is amended by adding new sections to read:

15 **Sec. 14.40.495. Education trust and education trust fund established.** (a)
16 The education trust and education trust fund are established as a trust and a separate
17 education trust fund of the state.

18 (b) The education trust corpus is composed of the undivided interest in lands
19 conveyed to it under AS 14.40.507.

20 (c) The principal of the education trust fund consists of

21 (1) sums transferred to the fund under AS 14.40.505; and

22 (2) gifts, bequests, and contributions of cash or other assets from a
23 person.

24 (d) The amount available for appropriation from the education trust fund shall
25 be calculated by the commissioner of revenue under AS 14.40.503.

26 **Sec. 14.40.497. Powers and duties of the commissioner of revenue.** The
27 commissioner of revenue is the treasurer of the education trust fund and has the power
28 and duty, subject to the oversight of the Public School Fund Advisory Board under
29 AS 37.14.130, to

30 (1) act as official custodian of the cash and investments belonging to
31 the education trust fund by securing adequate and safe custodial facilities;

1 (2) receive all items of cash and investments belonging to the
2 education trust fund;

3 (3) collect the principal and income from investments owned or
4 acquired by the education trust fund and deposit the amounts in the education trust
5 fund;

6 (4) invest and reinvest the assets of the education trust fund as
7 provided in this section and as provided for the investment of funds under
8 AS 37.14.170;

9 (5) exercise the powers of an owner with respect to the assets of the
10 education trust fund;

11 (6) maintain accounting records of the education trust fund in
12 accordance with investment accounting principles and AS 14.40.503;

13 (7) engage an independent firm of certified public accountants to
14 annually audit the financial condition of the education trust fund's investments and
15 investment transactions;

16 (8) enter into and enforce contracts or agreements considered
17 necessary for the investment purposes of the education trust fund;

18 (9) report to the board the condition and investment performance of the
19 education trust fund; and

20 (10) do all acts, whether or not expressly authorized, that the
21 commissioner of revenue considers necessary or proper in administering the assets of
22 the education trust fund.

23 **Sec. 14.40.503. Use of education trust fund; percentage of market value.**
24 Up to five percent of the market value of the education trust fund, as established under
25 AS 14.40.495, may be annually appropriated by the legislature equally for the support
26 of public elementary and secondary education.

27 **Sec. 14.40.505. Funding from education trust and university lands.** By
28 November 15 of each year, the commissioner of revenue shall transfer to the principal
29 of the education trust fund (AS 14.40.495) 60 percent, and to the University of Alaska
30 endowment trust fund (AS 14.40.400) 40 percent, of a sum equal to the total receipts
31 derived from the management of the land conveyed under AS 14.40.507, including

1 amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral
2 lease rentals, royalties, or royalty sale proceeds from the previous fiscal year, after
3 deducting contributions to the Alaska permanent fund that are required by law.

4 **Sec. 14.40.507. Education trust and university land endowment.** The
5 legislature conveys to the University of Alaska as tenant in common with the state,
6 and subject to the limitations of this section, an undivided two percent interest in land
7 that constitutes the state public domain, and to the education trust as tenant in common
8 with the state, and subject to the limitations of this section, an undivided two percent
9 interest in state land that is managed by the Department of Natural Resources under
10 AS 38. The conveyance shall be recorded under AS 40.17.020. Notwithstanding
11 another provision of law,

12 (1) the interest in land conveyed to the University of Alaska and the
13 education trust is strictly limited to the right to receive income earned and received by
14 the state as proceeds from royalties, rent, sale, lease, and other disposal of land that
15 constitutes the state public domain and state land that is managed by the Department
16 of Natural Resources under AS 38, after deducting contributions to the Alaska
17 permanent fund required by law and after deducting administrative service fees,
18 application fees, filing fees, processing fees, or other similar fees;

19 (2) the interest in land conveyed to the University of Alaska and the
20 education trust does not include a right or interest in possession of land, in the
21 management or disposal of the land, or in a decision-making process relating to the
22 use of the land; except where otherwise provided in law and regulation, the
23 Department of Natural Resources shall be the sole agency to manage or dispose of
24 land subject to this section;

25 (3) the Department of Natural Resources does not owe the University
26 of Alaska or the education trust a fiduciary duty with respect to its management or
27 disposition of the land subject to this section.

28 **Sec. 14.40.509. Definitions.** In AS 14.40.495 - 14.40.509,

29 (1) "board" means the Public School Fund Advisory Board established
30 by AS 37.14.120;

31 (2) "fund" means the education trust fund established in AS 14.40.495.

1 * **Sec. 5.** AS 29.45.030(a) is amended to read:

2 (a) The following property is exempt from general taxation:

3 (1) municipal property, including property held by a public corporation
4 of a municipality, state property, property of the University of Alaska, or land that is
5 in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-
6 830, 70 Stat. 709, except that

7 (A) a private leasehold, contract, or other interest in the
8 property is taxable to the extent of the interest; however, an interest created by
9 a nonexclusive use agreement between the Alaska Industrial Development and
10 Export Authority and a user of an integrated transportation and port facility
11 owned by the authority and initially placed in service before January 1, 1999,
12 is taxable only to the extent of, and for the value associated with, those specific
13 improvements used for lodging purposes;

14 (B) notwithstanding any other provision of law, property
15 acquired by an agency, corporation, or other entity of the state through
16 foreclosure or deed in lieu of foreclosure and retained as an investment of a
17 state entity is taxable; this subparagraph does not apply to federal land granted
18 to the University of Alaska under AS 14.40.380 or 14.40.390, to other land
19 granted to the university by the state to replace land that had been granted
20 under AS 14.40.380 or 14.40.390, or to an interest in land conveyed by the
21 state to the university or the education trust under AS 14.40.507
22 [AS 14.40.365];

23 (C) an ownership interest of a municipality in real property
24 located outside the municipality acquired after December 31, 1990, is taxable
25 by another municipality; however, a borough may not tax an interest in real
26 property located in the borough and owned by a city in that borough;

27 (2) household furniture and personal effects of members of a
28 household;

29 (3) property used exclusively for nonprofit religious, charitable,
30 cemetery, hospital, or educational purposes;

31 (4) property of a nonbusiness organization composed entirely of

1 persons with 90 days or more of active service in the armed forces of the United States
2 whose conditions of service and separation were other than dishonorable, or the
3 property of an auxiliary of that organization;

4 (5) money on deposit;

5 (6) the real property of certain residents of the state to the extent and
6 subject to the conditions provided in (e) of this section;

7 (7) real property or an interest in real property that is exempt from
8 taxation under 43 U.S.C. 1620(d), as amended;

9 (8) property of a political subdivision, agency, corporation, or other
10 entity of the United States to the extent required by federal law; except that a private
11 leasehold, contract, or other interest in the property is taxable to the extent of that
12 interest;

13 (9) natural resources in place including coal, ore bodies, mineral
14 deposits, and other proven and unproven deposits of valuable materials laid down by
15 natural processes, unharvested aquatic plants and animals, and timber.

16 * Sec. 6. AS 37.14.130 is amended to read:

17 **Sec. 37.14.130. Powers and duties of board.** The board created in
18 AS 37.14.120 has the following powers and duties:

19 (1) to hold regular meetings and special meetings considered
20 necessary; [AND]

21 (2) to have prepared an annual accounting of the principal and income
22 of the fund established in AS 37.14.110;

23 (3) to oversee the administration of the education trust fund
24 established in AS 14.40.495 by the commissioner of revenue; and

25 (4) to submit to the governor and make available to the legislature
26 by February 1 each year a report describing the annual level of contributions to,
27 income of, and expenses of the education trust fund [REPEALED].

28 * Sec. 7. AS 14.40.365, 14.40.366, 14.40.368, and 14.40.461 are repealed.

29 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 APPLICABILITY. AS 14.40.505, as enacted in sec. 4 of this Act, applies to receipts

1 derived from the management of state and university land received on or after the effective
2 date of this Act.

3 * **Sec. 9.** This Act takes effect July 1, 2004.



Session:
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Committee Assignments:

Member:
House Special Committee on Fisheries
House Special Committee on Education
House Transportation Committee
House Judiciary Committee

Dan Ogg
Representative

Interim:
112 Mill Bay Road
Kodiak, Alaska 99615
Phone: 907-486-8872
Fax: 907-486-5264

SPONSOR STATEMENT

House Bill 333

2/03/04

"An Act relating to an endowment for public education; and providing for an effective date."

This bill would establish a separate education fund of the state. The principal of the fund would be created by sums transferred to the account by the commissioner of revenue each year. This sum would equal the total receipts derived from the management of state and University of Alaska lands as established in AS14.40.507. In addition, the principal of the fund would be augmented by the allowance of gifts, bequests, and contributions of cash or other assets from individuals. The principal of the fund shall be retained perpetually in the fund for investment. The net income of the fund may be appropriated annually by the legislature.

In essence, the state and the University would be "tenants in common," meaning that, for the intent and purposes of this bill, one percent of the land conveyance to the state under sections 6 (a) and (b) of the Alaska Statehood Act shall be conveyed to the "tenants" upon the effective date of this bill. The tenants would then accumulate one percent of all new amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses from the effective date of this bill.

The rights of management and development of land conveyed under this concept would be retained by the Department of Natural Resources (DNR). However, the heightened fiduciary duty to the University that is usually owed by a managing tenant in common to other tenants in common will not apply. This bill does not require additional consultation or review by the University of DNR's land management decisions.

A new board within the Department of Education and Early Development (EED), entitled the Education Fund Board is established by this bill and would be responsible for administering the funds. The board would be comprised of the President of the University, two current members of the Board of Regents, and two members of the State Board of Education, the commissioner of EED, and three public members.

With the exception of four states, all of the university land grants were settled before the end of the 19th century. Alaska is one of those states. The time has come for Alaska to endow its public education system with a grant of its land. Of all the states, Alaska's Land Grant University is 49th in acreage granted by the state or federal government. The only state university that has less of a land grant is Delaware. This is not a situation of unwillingness on the part of the state or federal government, but a situation of circumstances.

District 36 - Kodiak Island Borough/Lake & Peninsula Borough
Akhiok • Chiniak • Karluk • Kodiak • Larsen Bay • Old Harbor • Ouzinkie • Port Lions
Iguigig • Iliamna • Kokhanok • Levelock • Newhalen • Nondalton • Pedro Bay • Port Alsworth

In 1634, four years after the establishment of the Massachusetts Colony, the colony's founding fathers gave an island as a land grant to Dorchester, one of the colony's towns. Dorchester dedicated the income from the island to fund the first free school in America. Granting lands for funding education has been the case ever since. The Morrill Act of 1862 entitled each state a grant of federal lands the income from which would provide the financial base of operation for at least one college or university. The University of Alaska at Fairbanks is Alaska's Land Grant University.

During the territorial days, land transferred to the University was minimal since a prerequisite to any transfer was that the land had to be surveyed. Since most of Alaska was not surveyed, only about 112,000 acres were transferred before statehood. When Alaska became a state, the federal government granted Alaska 104 million acres. Many assumed the University's land grant would come out of the state lands. Since statehood four attempts have been made by the legislature to grant lands to the University. Legislation to grant lands was vetoed once by Governor Bill Egan and three times by Governor Tony Knowles. The last land grant was Senate Bill 7 of the 21st Legislature, which granted the University 250,000 acres. The veto by Knowles was subsequently overridden by the legislature with a two-third's vote.

The governor then challenged the validity of the veto asserting that the bill was an "appropriation" and required a three-quarter veto override. The legislature challenged the Knowles decision in court. The Alaska Supreme Court's recent decision ruled in favor of the legislature indicating that they had legally overridden Knowles' veto. Unfortunately, the court remanded the case to the state Superior Court to determine if giving state land to the University created an unconstitutionally dedicated fund.

Should the grant be found by the court to be a constitutional dedication, actual revenues going to the University will be a long time coming. In response to a legislator's question on January 22, 2004 inquiring how long before land is developed under Senate Bill 7, the University responded that under the best of circumstances, the University does not expect to make anything off that land for 10 years and it could well be 20 years.

Passage of this bill will accomplish the recession of Senate Bill 7, thus ending the remaining court battle over unconstitutional dedication. It will give the University and public education a land asset without the headache of land management. It will eliminate the lengthy need for selection and separate development and the costs attached thereto. It will develop an income stream from the endowment as soon as new revenues from new developments and new land sales occur. With HB333, the education endowment could begin now, instead of 10 to 20 years from now.

Consider the size of an endowment if 1% had been set aside since statehood. In fiscal year 2003 the cumulative total petroleum revenue from just oil over these intervening years is over \$53 billion. One percent of that figure is \$530 million. That number doesn't take into account that the revenue would have been compounded yearly adding to the principal of that endowment and the subsequent income stream to the University and K-12 education.

If enacted, this bill will affect only 1% of new income from new developed resources or the new sale of state lands. This will not impact existing income streams from resources or land sales. The endowment will build over time, so present and future generations will benefit educationally from our grant land asset.

23-LS0991\X
Bullock
3/8/04

CS FOR HOUSE BILL NO. 333()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES OGG, COGHILL AND HOLM, Wilson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to an endowment for public education and the University of Alaska;
2 relating to university land; establishing a trust fund for public education; and providing
3 for an effective date."

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

5 * Section 1. AS 14.40.170(a) is amended to read:

6 (a) The Board of Regents shall

7 (1) appoint the president of the university by a majority vote of the
8 whole board, and the president may attend meetings of the board;

9 (2) fix the compensation of the president of the university, all heads of
10 departments, professors, teachers, instructors, and other officers;

11 (3) confer such appropriate degrees as it may determine and prescribe;

12 (4) except as provided under AS 14.40.507, have the care, control,
13 and management of

14 (A) all the real and personal property of the university; and

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31

(B) land

[(i)] conveyed to the Board of Regents by the commissioner of natural resources in the settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended; [AND

(ii) SELECTED BY THE UNIVERSITY OF ALASKA AND CONVEYED TO IT BY THE COMMISSIONER OF NATURAL RESOURCES UNDER AS 14.40.365;]

(5) keep a correct and easily understood record of the minutes of every meeting and all acts done by it in pursuance of its duties;

(6) under procedures to be established by the commissioner of administration, and in accordance with existing procedures for other state agencies, have the care, control, and management of all money of the university and keep a complete record of all money received and disbursed;

(7) adopt reasonable rules for the prudent trust management and the long-term financial benefit to the university of the land of the university;

(8) provide public notice of sales, leases, exchanges, and transfers of the land of the university or of interests in land of the university;

(9) administer, manage, market, and promote a postsecondary education savings program, including the Alaska Higher Education Savings Trust under AS 14.40.802 and the Alaska advance college tuition savings fund under AS 14.40.803 - 14.40.817.

* Sec. 2. AS 14.40.291(a) is amended to read:

(a) Notwithstanding any other provision of law, university-grant land, state replacement land that becomes university-grant land on conveyance to the university, [LAND SELECTED BY AND CONVEYED TO THE UNIVERSITY OF ALASKA UNDER AS 14.40.365,] and any other land owned by the University of Alaska, except for land transferred under AS 14.40.507, is not and may not be treated as state public domain land. [LAND CONVEYED TO THE UNIVERSITY OF ALASKA UNDER AS 14.40.365 SHALL BE MANAGED UNDER AS 14.40.365 -

1 14.40.368 AND POLICIES OF THE BOARD OF REGENTS OF THE UNIVERSITY
2 OF ALASKA.]

3 * Sec. 3. AS 14.40.400(a) is amended to read:

4 (a) The Board of Regents shall establish a separate endowment trust fund in
5 which shall be held in trust in perpetuity all

6 (1) net income derived from the sale or lease of the land granted under
7 the Act of Congress approved January 21, 1929, as amended;

8 (2) receipts transferred to the fund under AS 14.40.505 [NET
9 INCOME DERIVED FROM THE SALE, LEASE, OR MANAGEMENT OF THE
10 LAND SELECTED BY AND CONVEYED TO THE UNIVERSITY OF ALASKA
11 UNDER AS 14.40.365]; and

12 (3) monetary gifts, bequests, or endowments made to the University of
13 Alaska for the purpose of the fund.

14 * Sec. 4. AS 14.40 is amended by adding new sections to read:

15 **Sec. 14.40.495. Education trust and education trust fund established.** (a)

16 The education trust and education trust fund are established as a trust and a separate
17 education trust fund of the state.

18 (b) The education trust corpus is composed of the undivided interest in lands
19 conveyed to it under AS 14.40.507.

20 (c) The principal of the education trust fund consists of

21 (1) sums transferred to the fund under AS 14.40.505; and

22 (2) gifts, bequests, and contributions of cash or other assets from a
23 person.

24 (d) The amount available for appropriation from the education trust fund shall
25 be calculated by the commissioner of revenue under AS 14.40.503.

26 **Sec. 14.40.497. Powers and duties of the commissioner of revenue.** The
27 commissioner of revenue is the treasurer of the education trust fund and has the power
28 and duty, subject to the oversight of the Education Trust Fund Board under
29 AS 14.40.501, to

30 (1) act as official custodian of the cash and investments belonging to
31 the education trust fund by securing adequate and safe custodial facilities;

1 (2) receive all items of cash and investments belonging to the
2 education trust fund;

3 (3) collect the principal and income from investments owned or
4 acquired by the education trust fund and deposit the amounts in the education trust
5 fund;

6 (4) invest and reinvest the assets of the education trust fund as
7 provided in this section and as provided for the investment of funds under
8 AS 37.14.170;

9 (5) exercise the powers of an owner with respect to the assets of the
10 education trust fund;

11 (6) maintain accounting records of the education trust fund in
12 accordance with investment accounting principles and AS 14.40.503;

13 (7) engage an independent firm of certified public accountants to
14 annually audit the financial condition of the education trust fund's investments and
15 investment transactions;

16 (8) enter into and enforce contracts or agreements considered
17 necessary for the investment purposes of the education trust fund;

18 (9) report to the board the condition and investment performance of the
19 education trust fund; and

20 (10) do all acts, whether or not expressly authorized, that the
21 commissioner of revenue considers necessary or proper in administering the assets of
22 the education trust fund.

23 **Sec. 14.40.499. Administration of the education trust fund; Education**
24 **Trust Fund Board established.** (a) The education trust fund shall be administered
25 by the Education Trust Fund Board.

26 (b) The Education Trust Fund Board is established in the Department of
27 Education and Early Development. The board is composed of

28 (1) two members of the State Board of Education and Early
29 Development, selected by the president of the board;

30 (2) the commissioner of education and early development or the
31 commissioner's designee; and

1 (3) two public members appointed by the governor; in appointing the
2 public members, the governor shall give a preference to persons who have experience
3 and expertise in education.

4 (c) Each public member of the board is appointed for a term of four years, and
5 may be reappointed.

6 (d) Members of the board are entitled to per diem and travel allowances as
7 provided by law for members of state boards and commissions.

8 **Sec. 14.40.501. Powers and duties of the Education Trust Fund Board.**

9 When acting as administrator of the education trust fund, the Education Trust Fund
10 Board shall

11 (1) hold regular and special meetings it considers necessary; the board
12 may hold meetings by teleconference;

13 (2) keep audio tape recordings of each meeting of the board to be made
14 available on request; and

15 (3) oversee the administration of the education trust fund by the
16 commissioner of revenue;

17 (4) submit to the governor and make available to the legislature by
18 February 1 each year a report describing the annual level of contributions to, income
19 of, and expenses of the education trust fund.

20 **Sec. 14.40.503. Use of education trust fund; percentage of market value.**

21 Up to five percent of the market value of the education trust fund, as established under
22 AS 14.40.495, may be annually appropriated by the legislature equally for the support
23 of public elementary and secondary education.

24 **Sec. 14.40.505. Funding from education trust and university lands.** By

25 November 15 of each year, the commissioner of revenue shall transfer to the principal
26 of the education trust fund created in AS 14.40.495 and to the University of Alaska
27 endowment trust fund created in AS 14.40.400 equal shares of a sum equal to the total
28 receipts derived from the management of state and University of Alaska land
29 described under AS 14.40.507, including amounts paid to the state as proceeds of sale
30 or annual rent of surface rights, mineral lease rentals, royalties, or royalty sale
31 proceeds from the previous fiscal year.

1 **Sec. 14.40.507. Education trust and university land endowment.** The
2 commissioner of natural resources shall separately convey to the University of Alaska
3 and the education trust created under AS 14.40.495, as tenants in common, an
4 undivided two percent interest in all lands conveyed under secs. 6(a) and 6(b), Alaska
5 Statehood Act (P.L. 85-508, 72 Stat. 339), which constitutes the education trust and
6 university land endowment. Notwithstanding the transfer of ownership, the rights of
7 management and development of land conveyed under this section shall be retained by
8 the Department of Natural Resources. The Department of Natural Resources,
9 however, does not owe a heightened fiduciary duty to the University of Alaska or the
10 education trust as a result of the management and development of land under this
11 section.

12 **Sec. 14.40.509. Definitions.** In AS 14.40.495 - 14.40.509,

13 (1) "board" means the Education Trust Fund Board;

14 (2) "fund" means the education trust fund established in AS 14.40.495.

15 * **Sec. 5.** AS 29.45.030(a) is amended to read:

16 (a) The following property is exempt from general taxation:

17 (1) municipal property, including property held by a public corporation
18 of a municipality, state property, property of the University of Alaska, or land that is
19 in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-
20 830, 70 Stat. 709, except that

21 (A) a private leasehold, contract, or other interest in the
22 property is taxable to the extent of the interest; however, an interest created by
23 a nonexclusive use agreement between the Alaska Industrial Development and
24 Export Authority and a user of an integrated transportation and port facility
25 owned by the authority and initially placed in service before January 1, 1999,
26 is taxable only to the extent of, and for the value associated with, those specific
27 improvements used for lodging purposes;

28 (B) notwithstanding any other provision of law, property
29 acquired by an agency, corporation, or other entity of the state through
30 foreclosure or deed in lieu of foreclosure and retained as an investment of a
31 state entity is taxable; this subparagraph does not apply to federal land granted

1 to the University of Alaska under AS 14.40.380 or 14.40.390, to other land
2 granted to the university by the state to replace land that had been granted
3 under AS 14.40.380 or 14.40.390, or to land conveyed by the state to the
4 university under AS 14.40.507 [AS 14.40.365];

5 (C) an ownership interest of a municipality in real property
6 located outside the municipality acquired after December 31, 1990, is taxable
7 by another municipality; however, a borough may not tax an interest in real
8 property located in the borough and owned by a city in that borough;

9 (2) household furniture and personal effects of members of a
10 household;

11 (3) property used exclusively for nonprofit religious, charitable,
12 cemetery, hospital, or educational purposes;

13 (4) property of a nonbusiness organization composed entirely of
14 persons with 90 days or more of active service in the armed forces of the United States
15 whose conditions of service and separation were other than dishonorable, or the
16 property of an auxiliary of that organization;

17 (5) money on deposit;

18 (6) the real property of certain residents of the state to the extent and
19 subject to the conditions provided in (e) of this section;

20 (7) real property or an interest in real property that is exempt from
21 taxation under 43 U.S.C. 1620(d), as amended;

22 (8) property of a political subdivision, agency, corporation, or other
23 entity of the United States to the extent required by federal law; except that a private
24 leasehold, contract, or other interest in the property is taxable to the extent of that
25 interest;

26 (9) natural resources in place including coal, ore bodies, mineral
27 deposits, and other proven and unproven deposits of valuable materials laid down by
28 natural processes, unharvested aquatic plants and animals, and timber.

29 * Sec. 6. AS 14.40.365, 14.40.366, 14.40.368, and 14.40.461 are repealed.

30 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 INITIAL TERMS OF PUBLIC MEMBERS. Of the two public members first
2 appointed under AS 14.40.499(b)(3), added by sec. 4 of this Act,

3 (1) one person shall serve a term of two years; and

4 (2) one person shall serve a term of four years.

5 * Sec. 8. This Act takes effect July 1, 2004.

LEGISLATIVE RESEARCH REPORT

MARCH 1, 2004



REPORT NUMBER 04.176

REVENUE PROJECTIONS FROM FUTURE RESOURCE DEVELOPMENT

PREPARED FOR REPRESENTATIVE DAN OGG

BY CHERIE NIENHUIS, LEGISLATIVE ANALYST

You asked about potential revenues from new resource development. Specifically, you wished to know how much revenue the State would receive over the next 20 years from rents, royalties, taxes, and other revenue sharing mechanisms for the projected development of currently undiscovered natural resources. You mentioned a proposal to place one percent of the proceeds into an endowment for public education.

"Undiscovered" resources are those defined as "unspecified bodies of mineral-bearing material surmised to exist on the basis of broad geologic knowledge and theory."¹ Broad geologic knowledge and theory is just that—speculation based on geologic formations and the probability of occurrence of petroleum or other mineral deposits. Because there is no assurance that these deposits exist in commercially viable quantities, estimated amounts of undiscovered petroleum resources are usually expressed in probabilities. For example, volumes of in-place resources are often estimated in terms of three or more different levels: a conservative, or low estimate, for which geologists assign a 95 percent probability of existence; a high estimate (an optimistic one, perhaps), which is assigned a 5 percent probability; and a mean estimate, which is between the high and low volume estimates, and assigned a 50 percent probability.²

These values are further refined to include recoverability factors, such as technical and economic recoverability. Resources are *technically* recoverable when they can be extracted given current technology. Resources are *economically* recoverable when they can be extracted without net loss for producers given the current economic conditions. Both of these factors are moving targets. Although advances in technology are difficult to predict with any accuracy, changes in economic conditions affecting resource recoverability—notably, the market price of oil—are generally included in analyses of undiscovered resource development potential.

¹Howard R. Williams and Charles J. Meyers, *Manual of Oil and Gas Terms*, Eleventh Edition (New York: Matthew Bender & Company, Inc., 2000), p. 1154.

²For example, in-place petroleum resources for a portion of the Arctic National Wildlife Refuge were estimated by the U.S. Geologic Survey to be 15.6 billion barrels of crude oil at the 95th percentile; 42.3 billion barrels at the 5th percentile; and 27.8 billion barrels at the 50th percentile, or the mean level, of probability.

The Arctic National Wildlife Refuge (ANWR) and the National Petroleum Reserve-Alaska (NPR-A) are two of the most widely publicized areas in the state where large quantities of undiscovered petroleum resources are believed to exist. Over the years, several government organizations have conducted assessments of the geologic formations in the federally-owned portions of the areas to determine the oil-producing potential of each. At least eight assessments have been released since 1986 detailing the potential of the coastal plain of ANWR, including one by the Alaska Division of Oil and Gas, one by the Energy Information Administration, three by the Bureau of Land Management, and three, including the most recent, by the U.S. Geologic Survey (USGS). Each assessment produced different results. Those familiar with the intricacies of resource assessments, however, note that technological advances in data collection and processing have enabled geologists to conduct more comprehensive and accurate assessments, and most support the findings released by the USGS in 1998. Even so, estimates based on geologic assessments are not proven until exploratory wells are drilled and the resource is discovered.³ Many factors stand in the way of exploration and development of a significant proportion of Alaska's undiscovered resources, however, not the least of which are Congressional approval (ANWR) and the economic feasibility of producing and transporting the resources (gas line, and the development of remote, roadless areas).

With these caveats in mind, one section of the Department of Revenue's *Fall 2003 Revenue Sources Book* is devoted to new resource development opportunities in the state.⁴ The department addresses four major sources of oil development potential: the Central North Slope satellites, the Beaufort Sea, the NPR-A, and ANWR. Also mentioned in the context of new revenue is the Alaska natural gas pipeline. Each of these sources has hurdles to overcome before exploration and development could occur, and not all are anticipated to come on-line within the next five years. Table 1 shows the Department of Revenue's *projected cumulative revenue* from these five sources as reprinted from the revenue sources book. The department's projections include only royalty and severance tax revenue, and show accumulated revenues at five and ten year intervals, in millions of undiscounted dollars (not inflation adjusted).

Table 1: Projected Cumulative Revenue from New Oil Exploration and Gas Line Project, FY 2006 to FY 2030 (in millions of undiscounted dollars)

Year	Central North Slope Satellites	Beaufort Sea	Undiscovered NPR-A	ANWR	Natural Gas Line	Total
2006	\$ 27	\$ -	\$ -	\$ -	\$ -	\$ 27
2010	\$ 174	\$ 18	\$ -	\$ -	\$ -	\$ 192
2015	\$ 480	\$ 145	\$ 261	\$ 484	\$ 2,156	\$ 3,526
2020	\$ 854	\$ 268	\$ 1,145	\$ 2,122	\$ 5,282	\$ 9,671
2030	\$ 1,622	\$ 338	\$ 1,644	\$ 6,058	\$ 11,671	\$ 21,333

Note: Revenue amounts are cumulative; that is, in the year 2030, the revenue accrued to the State from the five resource development projects for the 25 years from 2006 to 2030 is expected to total approximately \$21.3 billion. These amounts reflect royalty and severance tax revenues only.

Source: Department of Revenue, *Fall 2003 Revenue Sources Book*, Table 3-4, p. 32.

³ As explained in the Department of Revenue's *Fall 2003 Revenue Sources Book*, p. 28, "Exploratory drilling in Alaska is risky. On the North Slope, since 1994, we estimate that about 70% of the wells failed to discover economically recoverable reserves."

⁴ We include a copy of this section of the department's publication as Attachment A.

The State also collects corporate income taxes from most oil and gas companies operating in Alaska.⁵ The amount of corporate income tax accruing from these new operations is difficult to predict, because income tax is dependent upon profitability. It is expected that producers will actually expend more money than they recover in the first couple of years of exploration and development, but that the State could see some income tax revenues in the 4th or 5th year of operation.

The Department of Revenue has not projected corporate income tax revenue for the above four oil development projects. The McDowell Group, a research-based consulting firm that has provided economic analyses to the State for several projects, has used a statistical relationship of royalty revenue and corporate income tax to determine the amount of projected corporate income tax revenue from future operations.⁶ Applying this methodology, we project a reasonable, but conservative estimate of cumulative corporate income tax revenue from the above four projects of about \$2.7 billion dollars by the year 2030. Officials at the Department of Revenue project the cumulative corporate income tax for the natural gas line to be about \$6.7 billion by the same year.

Other revenues, including cash bonuses, lease rentals, property taxes and other minor taxes are also paid against petroleum operations. Although bonus revenue can be significant, it is unpredictable. The U.S. Energy Information Administration has estimated that lease bonus revenue for ANWR alone could be as much as \$3 billion, with the State receiving 50 percent of that amount.⁷ Property taxes can add up to substantial annual revenue, but local governments receive most of the money. Altogether, we estimate that the cumulative value of these additional revenue sources will not exceed \$3.5 billion.

Should all five of the above undiscovered resource projects be developed, using the Department of Revenue's timelines and the assumptions, we conservatively project that the State will receive an accumulated total of \$34.233 billion (undiscounted) by the year 2030. One percent of this amount would equal approximately \$342.3 million.

NEW MINERAL RESOURCE DEVELOPMENT

The Department of Revenue also projects revenue from mining operations. Although they do not forecast revenue twenty years into the future, they name several new mineral resource development opportunities on the near horizon. Developers of the Pogo gold project near Delta Junction recently received crucial authorization by the U.S. Army Corps of Engineers and estimate that production will begin in late 2005. The Pogo mine is expected to produce a minimum of 375,000 ounces of gold per year and to employ 300 persons year round. When gold reached a recent peak of \$425 per ounce, the project was valued at \$2.3 billion.

The increased value of gold has renewed interest in developing the Kensington mine near Juneau and the Donlin Creek mine near the Kuskokwim River. Situated on land owned by the Calista Native Corporation, the Donlin Creek gold deposit, where 20 million ounces of the ore has been identified, if developed, would place it among the 10 largest gold mines in the world. Major

⁵ As you may know, subchapter S corporations and limited liability companies are currently not subject to Alaska's corporate income tax.

⁶ The McDowell Group found that corporate income tax revenues from petroleum operations have historically averaged 25 percent of the amount of royalties paid against those operations.

⁷ Although the State's share of revenue from the development of ANWR, if it occurs, has yet to be determined, most analysts predict that Congress would not authorize a share of greater than 50 percent.

hurdles for the Donlin Creek project are its inaccessibility and its need for large supplies of power. Developers nevertheless hope to begin production in 2007.

Compared with petroleum production revenue and royalties, mining contributes relatively little to the State coffers even when prices are high. In 2002, the entire mineral industry paid \$15.2 million in taxes, rents and royalties to the state and local governments. Of that amount, local governments received \$9.7 million, leaving \$5.5 million to the State. Assuming the best of scenarios—that these projects double the revenue the State receives—we calculate one percent of this amount to be only \$110,000.

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

Attachment A

"Resource Development Opportunities,"
Fall 2003 Revenue Sources Book,
Alaska Department of Revenue

3.

RESOURCE DEVELOPMENT
OPPORTUNITIES

Looking for New Oil Reserves

There are essentially three phases involved in bringing new oil and gas reserves into production: leasing, exploration and development. In this section we will examine current trends in leasing and exploration as well as new development issues on the Alaska North Slope.

Leasing

The state's leasing program continues to be quite successful. There are currently over 4.8 million acres of state land under oil and gas leases. Since 1995, lease sale bonuses and rents have generated over \$200 million for the state. Leases are owned by many different oil companies and private citizens. As of today, ConocoPhillips controls the largest amount of acreage at 925,785 acres. The top ten companies control 3.7 million acres while 90 other entities control the remaining 1.2 million acres.

Table 3-1. State-Owned Leases
Thousands

Company	Acreage	Percent
ConocoPhillips	926	19.0%
Anadarko	514	10.6%
Petro-Canada	411	8.4%
BP	406	8.4%
Union	321	6.6%
Chevron USA	296	6.1%
Encana	236	4.9%
ExxonMobil	191	3.9%
Burlington Resources	184	3.8%
Forest	179	3.7%
All Others	<u>1,201</u>	24.7%
Total	4,863	

Source: Lessee's Acreage Summary, Division of Oil and Gas, Alaska Department of Natural Resources, November 2003.

Since 1995 the total amount of acreage under lease has more than doubled. This suggests a successful ongoing leasing program that is generating state revenue and making a significant amount of acreage available to exploration. The diversity of ownership suggests that some leases are pursued with an eye to selling them to an entity that has the ability to explore or gain access to existing facilities. The bottom line is that considerable acreage is in the hands of lessees and the ownership of leases is diversified between large companies and smaller firms and individuals.

Exploration

In order to produce oil or gas you need to find it. Exploration is driven by many factors but the primary one is the likelihood of finding oil or gas in sufficient quantity to justify commercial production. The North Slope of Alaska has been explored by geologists since the beginning of the last century and ideas about where to drill the next exploration well continue to be refined as new pools are discovered.

The likelihood of finding oil or gas in sufficient quantity to justify commercial production is enhanced first by the availability of acreage with good potential. The use of improved technology provides a higher probability of discovery. The existence of surface facilities to collect, process and move the production to market lowers the cost of developing a discovery, thereby reducing the field size that is necessary to declare commercialization.

Table 3-2. Total Alaska Exploratory Wells, North Slope and Cook Inlet, 1995-2003

	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
Total Wells	8	10	13	14	5	8	19	21	14	113
Prudhoe Unit			1	5	1			1		8
Other North Slope Onshore	3	4	4	5	1		4	1	0	22
Other North Slope Offshore			2					1	4	7
NPR-A						4	5	4	1	14
Alpine (Colville River Unit)	4	5		1	2	1	5		1	19
Southwest Kupanuk			4		1	3	2	3		13
Cook Inlet	1	1	2	2			4	3	3	16
Shallow Gas				1				8	5	14

Source: Well data from Alaska Oil and Gas Conservation Commission through November 2003.

Exploratory drilling in Alaska is risky. On the North Slope, since 1994, we estimate that about 70% of the wells failed to discover economically recoverable reserves. There were good years in which over 60% of the wells drilled led to commercial discoveries, interspersed with bad years where drilling failed to yield a commercial discovery.

Table 3-3. North Slope Exploration Summary, 1994-2002

	Total Wells	Oil Discovery	Suspended	Plugged and Abandoned
1994	6	0	1	5
1995	7	4	2	1
1996	9	2	2	5
1997	10	6	1	3
1998	10	6	0	4
1999	5	2	3	0
2000	7	0	0	7
2001	16	3	5	8
2002	10	1	2	7

In addition to being risky, drilling exploration wells in Alaska is expensive, especially "wildcat" wells or wells drilled in remote locations. The United States Geological Survey (USGS) estimates that drilling a wildcat well in a remote area like the National Petroleum Reserve-Alaska (NPR-A) costs over two-and-a-half times what it would cost to drill a development well at Prudhoe Bay.⁽¹⁾ The USGS believes that the accumulations in the NPR-A will be moderate in size, in the reserves range "commonly developed as "stand alone" or satellite fields on the central Alaska North Slope in recent years" of less than 250 million barrels. Large accumulations like Prudhoe Bay "are not expected to occur."⁽²⁾

Between 1995 and 2003 an average of approximately 12 exploratory wells were drilled annually on the North Slope and in Cook Inlet (see Table 3-2 on the prior page.) In 1999, the year of the last major oil price crash, only five North Slope wells were drilled.

A flurry of exploration activity occurred in 2000, 2001 and 2002 as the result of several key events: (1) the discovery of Alpine; (2) the leasing of NPR-A acreage close to the developing Alpine field; (3) discoveries and development of Tam and Meltwater, southwest of the main Kuparuk field; and (4) high oil prices.

Oil discoveries were announced in the NPR-A but no specific development plans have been made public. The two key factors that underpin exploration activity, attractive acreage and proximity to existing surface facilities were definitely in play during this period. ConocoPhillips drilled 10 of the 14 NPR-A wells drilled over the 2000-2003 time period, with BP drilling two wells and Anadarko drilling one. Drilling in the NPR-A tapered off to one well in 2003 at Puviaq.

Seven offshore wells were drilled over the period 1995-2003: Liberty and Warthog in 1997, McCovey in 2002 and three wells in the Oooguruk Unit and one offshore Kuparuk in 2003. Marginally economic oil reserves lie in Liberty and oil was discovered in the Oooguruk Unit. The other three wells found little or no oil.

BP, as a Prudhoe Bay unit operator, continued a steady program of exploring near existing fields in the late 1990's that resulted in the several new commercial discoveries. BP has announced that they will not be exploring outside of existing units. Other unit partners such as ConocoPhillips and ExxonMobil would have paid a proportional share of the cost of these wells.

In 2002, policymakers decided that something must be done to encourage wildcat exploration on the North Slope. The number of exploratory wells drilled there had declined from 16 in 2001 to six in 2003. The second largest producer in Alaska, BP, swearing off frontier exploration in Alaska, had laid off or sent their exploration people to Houston, and sold off their exploration lands and 3-D seismic. As pointed out previously, wildcat exploration is expensive and risky. To encourage wildcat exploration, the legislature passed and the governor signed into law SB 185, that provides for a credit against exploration expenses for wells drilled far away from other wells or unit infrastructure.

(1) See USGS Open-File Report 03-44, "Economics of Undiscovered Oil in Federal Lands on the National Petroleum Reserve, Alaska," (January 2002) by Emil D. Attanasi [NPR-A Economic Report] at Pages 20-21.

(2) See USGS Fact Sheet 045-02, "U.S. Geological Survey 2002 Petroleum Resource Assessment of the National Petroleum Reserve in Alaska (NPR-A)" [NPR-A Fact Sheet].

Activity in the Cook Inlet saw an average of two wells per year with a total of 10 wells drilled between 2001 and 2003. The effect of higher natural gas prices and seasonal shortages of natural gas to supply industrial demand, as well as royalty incentives, all played a role in encouraging the search for new gas reserves in the Cook Inlet region.

The other major boost to exploration activity is in the drilling of shallow gas wells targeting coal bed methane as evidenced by the 13 shallow gas wells drilled by Evergreen over the last two years. Higher gas prices, proximity to the existing natural gas grid and local market as well as favorable royalty treatment no doubt have contributed to interest in exploring for this resource.

Given the high cost of drilling exploratory wells, it should come as no surprise that nearly 80% of the non-shallow gas exploratory wells over the 1995-2002 period were drilled by the two major producers/operators on the North Slope, ARCO/ConocoPhillips and BP. ARCO/ConocoPhillips accounted for roughly 60% of the exploratory wells drilled. The third major producer, ExxonMobil, did not drill any exploratory wells.

However, other companies have been drilling. In 2003, Pioneer Natural Resources drilled the three wells in the Ooguruk Unit between Kuparuk River Unit and Thetis Island that discovered oil. Winstar drilled offshore from Oliktok Point. Forest Oil has been very active exploring the Redoubt Unit in the Cook Inlet. Marathon and Unocal, as well as ConocoPhillips, have been active exploring for gas in the Cook Inlet.

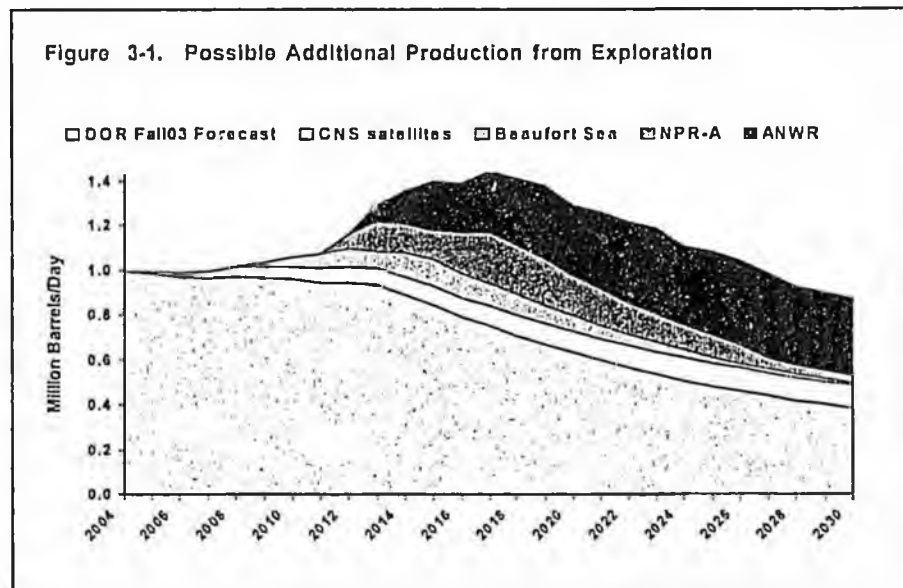
Conclusion

- Recent exploration activity has been relatively concentrated in one firm, ConocoPhillips.
- New entrants, however, are buying leases and in some cases drilling wells (Encana, Winstar and Pioneer Resources)
- Major increases in exploration drilling are going to overwhelmingly be driven by the opening up of new areas that are located close to existing surface infrastructure. The most recent example is the NPR-A, where the eastern area lies close to the western edge of the North Slope oil gathering infrastructure at Alpine.
- Although oil and gas prices can make a difference in terms of cash available to explore, high oil prices alone may not be enough to cause the biggest current producers on the North Slope to drill North Slope exploration wells in 2004.
- Clearly, investment in surface infrastructure can dramatically improve the commerciality of exploring and development. This is the motivation for the initiative by the state to plan for road and bridge access to the NPR-A. Some exploration wells have been drilled recently by companies with little or no access to surface facilities; however most wells are drilled by companies with existing production and facilities.

Developing New Oil Fields

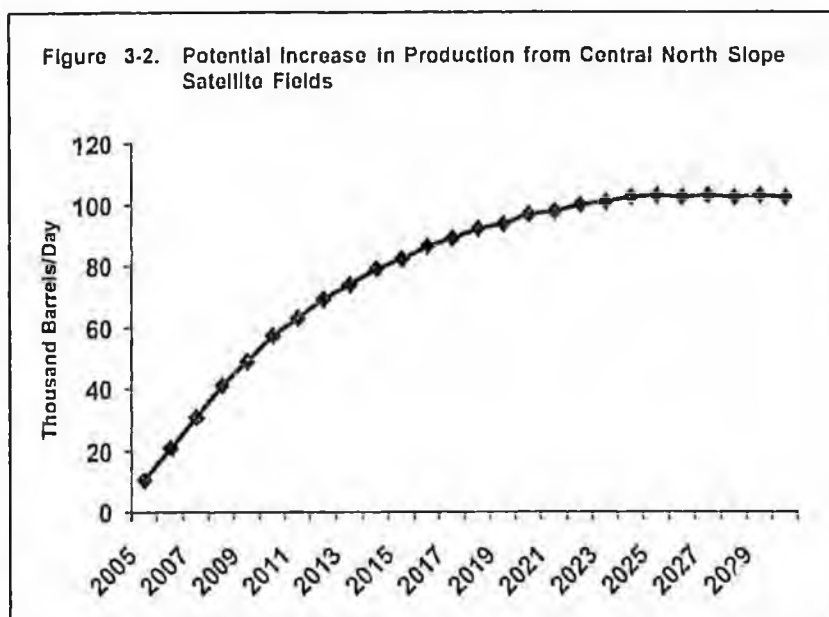
Exploration and aggressive development of found oil reserves could place ANS production on an increasing path by the end of this decade. Here, we have highlighted four areas that could be sources for such growth: the Central North Slope satellites, Beaufort Sea, NPR-A and ANWR. ANWR could provide as much — or more — in oil reserves and production as the other three areas combined. Oil exploration incentives, as provided in the recently adopted exploration tax credit, as well as the initiative to build a new year-round access road to the NPR-A are designed to encourage the exploration necessary to realize this additional oil production.

Also, exploration is not the only way to add reserves. For instance, more aggressive development of heavy oil resources could add reserves and production. Whether we reach this higher production path depends crucially on the level of exploration and development spending, something which must increase from depressed 2002 and 2003 levels.



Central North Slope Satellites

In its last slope-wide evaluation of oil and gas resources, the USGS estimated that there were 2.3 billion barrels of technically recoverable, undiscovered oil reserves in the Central coastal regions of the North Slope. The USGS believed this oil would mainly be in the "Turbidite" and "Barrow Arch Beaufortian" geological plays.⁽¹⁾ Since that evaluation in 1995, producers have discovered and put into production more Turbidite (Meltwater, Tam, Tabasco, Midnight Sun and Aurora) and Barrow Arch Beaufortian (Alpine and Polaris) reservoirs.⁽²⁾ Adjusting these technically recoverable barrels to take into account recent discoveries, we estimate that there are about 1.9 billion barrels of technically recoverable oil still remaining to be found in the Central Coastal regions. The USGS also felt that around half of this technically recoverable oil would be economically recoverable.⁽³⁾ Of the estimated 1.9 billion barrels of technically recoverable oil remaining net of post-1995 discoveries, 880 million barrels should be economically recoverable.



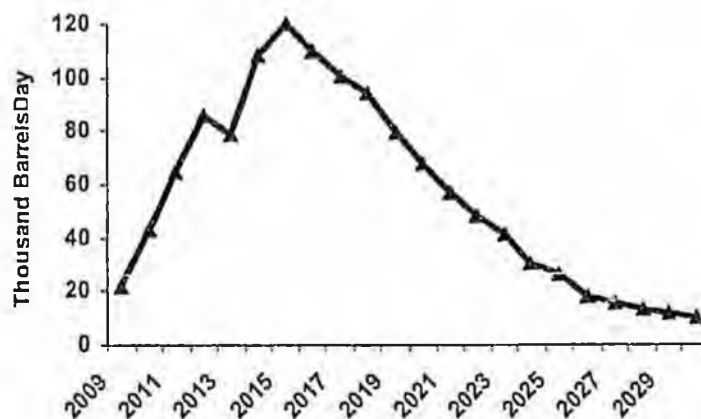
(1) USGS Open-File Report 95-751, Emil Attanasi and Ken Bird, "Economics and undiscovered conventional oil and gas accumulations in the 1995 National Assessment of U.S. Oil and Gas Resources: Alaska," [USGS95], Table 3, Page 37.
 (2) Since these barrels were put into production and therefore economically recoverable, we could have adjusted the economically recoverable, rather than technically recoverable, reserve numbers down. However, recent discoveries will not only turn undiscovered barrels into discovered barrels. They will add geological information that increases the estimate of undiscovered, technically recoverable, reserves. To roughly offset this effect we have kept constant the percentage of technically recoverable barrels that are economically recoverable.
 (3) Of the Central Coastal region's 1.9 billion barrels of remaining technically recoverable reserves, 45.75% (916 million barrels) should be economically recoverable. The economic recovery factors reflect mid-points between the \$18 and \$30 cases of USGS[95] Table 3.

Finding and producing these reserves will require further investments in exploration and development. Due to capital constraints, these reserves will come on slowly. We derive a conservative production forecast for these satellites and fields by assuming that 75 million barrels of additional Central North Slope reserves will be put into production every other year starting in 2005. The 75 million barrels assumption is conservative because in 2001 and 2002 the producers put three satellites with about 300 million barrels of reserves into production. However, in 2003 there were no new satellite discoveries put into production. Exploration efforts continue though. Pioneer recently announced an oil find just north of Kuparuk in the newly formed Oooguruk unit. By 2010, currently unannounced satellite developments could add around 50,000 barrels a day to our forecast.

Beaufort Sea

In total, U.S. Minerals Management Service (MMS) estimates that there are 8.82 billion barrels of technically recoverable reserves and 2.27 billion barrels of economically recoverable oil at \$18 per barrel oil prices and around 2.5 billion barrels at \$22 per barrel. The MMS recently held Beaufort Sea Lease Sale 186 that garnered \$10 million in bonus bids. For the Beaufort Shelf area, the MMS projects that the three fields developed from areas leased in this sale will yield 460 million barrels of reserves. See James D. Craig, "Economic Results, Beaufort Shelf Province."

Figure 3-3. Possible Production from Beaufort Sea-Lease Sale 186



NPR-A

In 2001, ConocoPhillips announced an oil discovery in the NPR-A. Currently, the Bureau of Land Management (BLM) is completing an environmental impact statement (EIS) for possible development of these discoveries as Alpine satellites. We estimate that the NPR-A will yield 430 million barrels of oil in our production forecast. Production starts in FY 2009 and ramps up to 60,000 barrels a day by 2015.

The NPR-A might yield more oil reserves, oil reserves that could be produced at a higher rate. The USGS evaluated the oil and gas resources in the NPR-A in 2002, and concluded that there were 9.3 billion barrels of technically recoverable reserves there. Of that amount, the USGS concluded that 1.3 billion barrels would be economic to explore for and produce at a \$22 per barrel ANS West Coast oil price — our long run price forecast.⁽¹⁾ In the EIS, BLM envisions a development of multiple drill sites along with two new central processing facilities in the NPR-A. Provisionally, the BLM estimates the NPR-A reserves from this development would be around 1.4 billion barrels, slightly higher than the USGS's 2002 number.

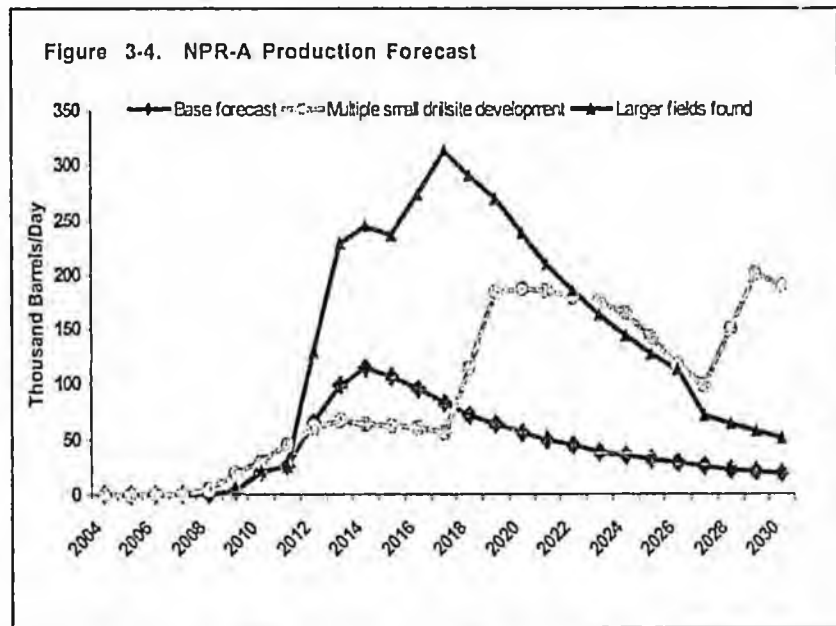
How quickly these reserves are produced depends on the pace of exploration and the size of the fields discovered. Since 2000, 14 exploration drills have been drilled in the NPR-A and a further three or four are planned for the 2003-2004 drilling season. The USGS assumed that there were about eight accumulations with 256 to 512 million barrels in the NPR-A, three of which were in "Subarea 110" of the NPR-A, the area closest to Alpine and TAPS.⁽²⁾ For the NPR-A these are large fields, and these larger fields would be produced before smaller accumulations since they are easier to find and more economic to develop.⁽³⁾ After an initial round of exploration (assuming 20 wildcat wells), the USGS believes that one of these three 256-512 million barrel fields would result in a 430 million barrel field discovery. Under the USGS's cost and development assumptions, to overcome the challenges facing NPR-A development requires that the potential prize of a larger field (400 million barrels or more) is needed for exploration at \$22 per barrel oil prices. Once found, a relatively small field (250 million barrel) will be economic. Explorers just will not incur high exploration costs to look for those fields.

(1) See NPR-A fact sheet.

(2) See USGS fact sheet histogram. The USGS divided the NPR-A into eight subareas for the purpose of estimating product transportation costs to TAPS. See Economic report at Page 17.

(3) See USGS fact sheet, "The economic analysis simulates exploration by assuming that larger accumulations will be discovered early..."

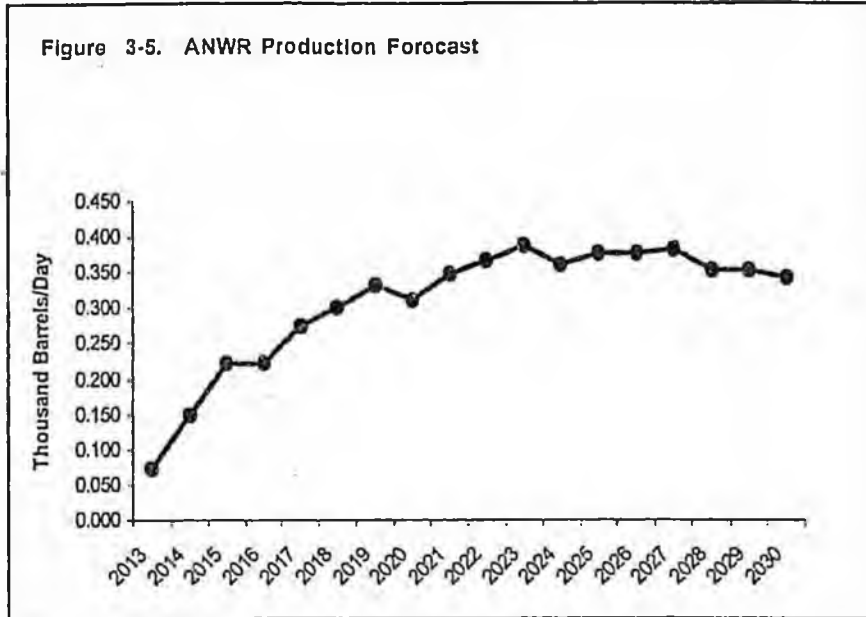
The graph illustrates the production from the NPR-A in our forecast, and the additional production from the NPR-A if a larger field is found or, alternatively, if smaller fields are found and can be economically produced. Lowering exploration costs (through the recently enacted SB 185 or through a permanent road) make the higher forecast more likely to occur. The USGS estimates that the initial finding costs per barrel for the NPR-A is \$0.39, or \$168 million.⁽¹⁾ Explorers pay out these millions of dollars years before first production. Decreasing the cost of this frontier exploration by roughly 30% due to the passage of SB 185 will increase the rate of return on a 430 million barrel field a full percentage point — from 13% to 14% — at \$22 per barrel oil prices.



ANWR

The USGS estimates that there are 10.3 billion barrels of technically recoverable reserve in the Arctic National Wildlife Refuge (ANWR), or more barrels than the original estimate for the giant Prudhoe Bay field. At our forecast price of \$22 per barrel, the USGS estimates that 4.4 billion barrels are economically recoverable from federal lands, and almost another billion from non-federal lands. Since ANWR production will probably come from larger fields (with an 80% chance of there being a 1.024 to 2.048 billion barrel field), production should ramp up quickly. We estimate that once Congress opens ANWR to oil exploration and development it will take seven years for the first oil to be produced from the area. If opened in 2006, ANWR is assumed to add between 200 and 400 thousand barrels a day of production by the middle of the next decade.

(1) See NPR-A Economic Report, Table 4, Page 37.



Gas Line

The producers, the state and other interested parties continue to explore ways to monetize the over 30 trillion cubic feet of natural gas on the North Slope.⁽¹⁾ The three largest producers on the North Slope (BP, ConocoPhillips, and ExxonMobil) have looked at a project to pipe about 4.5 billion cubic feet of gas per day to markets in the Lower 48 or Canada. Many hurdles must be overcome for the project to proceed. If these hurdles are overcome, the state stands to receive around \$600 million a year in royalty and severance tax payments per year. Including corporate income tax and property tax, revenues to the state and municipalities increase to around \$1 billion per year.⁽²⁾

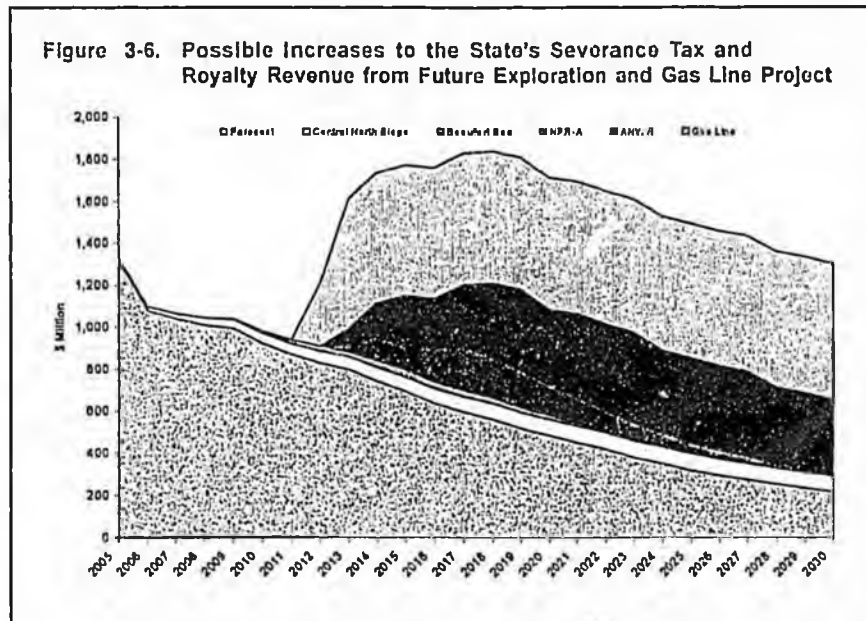
(1) Producers on the North Slope currently use the natural gas there to enhance oil production through miscible injection (EOR) projects, cycling and pressure maintenance. Natural gas also is used as field fuel, to fuel some of the pump stations on the Trans-Alaska pipeline and is sold in small quantities to local utilities.

(2) For purposes of this analysis, we have assumed a \$4 per mmBtu price at market. We have not factored in possible changes to the state fiscal system. The state and municipal-take is based on the current fiscal structure. We also have not taken into account oil losses due to gas voidage from an oil and gas reservoir.

3.

Conclusion

In our forecast of oil and gas base revenue (production tax and royalty), we project a decline of 30% by FY 2010 and almost 50% by FY 2015. However, by FY 2015 revenue from future oil exploration and a gas line could more than offset this anticipated decline in oil and gas base revenue from currently producing or discovered fields. With a very active oil and gas exploration and development effort, by FY 2015 our oil and gas base revenue could be 30% higher than it is today.



**Table 3-4. Cumulative Revenue from New Oil Exploration and Gas Line Project to FY 2030
\$ Millions (Undiscounted Dollars)**

	Central North Slope and Satellites	Beaufort Sea	Additional NPR-A	ANWR	Gas Line	Total
2006	27	0	0	0	0	27
2010	174	18	0	0	0	192
2015	480	145	261	484	2,156	3,526
2020	854	268	1,145	2,122	5,282	9,672
2030	1,622	338	1,644	6,058	11,671	21,333

Minerals

Alaska's traditional resource-based industries in mining, fish, tourism and timber all have potential for growth. In this Revenue Sources Book, we have chosen to examine the mining industry. Most of this information comes from the "Alaska Minerals Industry 2002" report, Department of Natural Resources, 2003.

Mining

Between 2001 and 2002, the production value of industrial, energy and metal minerals increased 10% to over \$1 billion. Industrial minerals (e.g., sand and gravel) increased from \$82.4 million to \$152.2 million, mostly as a result of increased road repair and construction. Energy minerals (e.g., coal) decreased from \$48.3 million to \$37.6 million, mostly due to the loss of exports to Korea. Metal minerals increased from \$788.6 million to \$823.1 million, mostly as a result of an increase in the price of gold.

In 2002, zinc prices decreased by more than 12% from 2001 but, as production increased, the total value of zinc decreased only by 1%. Even with prices dropping since the first half of 2001, zinc still accounted for over 60% of the production value for all metals.

Both gold and silver prices increased by 14% and 5%, respectively in 2002 and have continued to rise in 2003. In fact the price of gold in 2003 (January-October) is currently 16% higher and zinc prices are 3% higher than in 2002. According to Andrew Keen at the London Metal Exchange, lead and zinc prices should improve slowly in 2004. Additionally, Korea has signed a new two-year agreement to once again import coal from Alaska.

Employment in the minerals industry in 2002 was 2,824 full-time equivalent jobs, down by 11 from 2001. Average annual earnings in 2002 of \$63,763 were among the highest in the state.

Producing Mines

The four largest producing mines in Alaska are:

Red Dog: Is a joint venture between Nana Regional Corporation and Teck-Cominco and the largest producer of zinc concentrate in the world. Out of a total of 718,106 tons of zinc produced in Alaska in 2002, Red Dog accounted for 637,800 or 89%. Red Dog has almost 550 employees.

Fort Knox: Is owned by Kinross Gold Corporation and produced 410,519 ounces of gold in 2002. This is 73% of the total production of gold in the state. Fort Knox has almost 400 employees.

Greens Creek: Is a joint venture between Kennecott Minerals and Hecla mining and is the third largest silver producer in North America. Out of a total of 17,858,183 ounces of silver produced in Alaska in 2002, Greens Creek produced 10,913,183 or 61%. Greens Creek has over 260 employees.

Usibelli Coal: Is owned by Usibelli Coal Mines Inc. and has among the lowest sulfur coal in the world. Usibelli produced 1,157,879 tons of coal which is essentially all of the commercial coal produced in Alaska. Usibelli had approximately 80 employees in 2002. In 2003, Korea signed a contract valued at \$20 million with Usibelli to resume importing coal from Korea.

Advanced Stage Projects

The three largest advanced stage projects are:

Pogo: Is a joint venture between Sumitomo and Teck-Cominco and the closest of the three projects to construction. Start of construction should be by late 2003 or early 2004 and production should begin in late 2005 or early 2006. The mine should produce greater than 375,000 ounces of gold per year and should employ about 360 employees during production.

Kensington: Is owned by Coeur d'Alene mines and still has some hurdles to overcome before construction can begin. However, if production does occur, then the mine should produce approximately 85,000 ounces of gold per year and have about 225 employees.

Donlin Creek: Is a joint venture between Placer Dome, NovaGold Resources, Calista Corporation and TKC and has the largest gold resource in Alaska. According to the Alaska Journal of Commerce (Bradner, 2003) the largest "challenge" to overcome for Donlin Creek to become a producing mine is to find enough power to operate the mine.

Revenue

According to the Department of Natural Resources, the mining industry paid \$15.2 million to the state and municipalities in 2002. Most of this revenue was from payments to municipalities (\$9.7 million.) The mining industry makes revenue payments to the state in the form of rents and royalties, corporation income taxes (if the businesses are subchapter C corporations) and mining license taxes. We do expect some increase in the state revenues as a result of strong gold prices, improving zinc prices, a new coal contract with South Korea and in the long run from new developments.

The only advanced stage project development that we included in the forecast was Pogo because this project is the closest to construction and is the most likely to begin production within the next five years. No tax revenue would be realized in the two-year forecast window because production is not slated to begin until early 2006. Additionally, because of the 3½-year tax holiday after production starts, we would not see any mining license revenue until FY 2010 or 2011 at the earliest. Exploration credits may be applied against 50% of royalties and tax liabilities and further reduce revenue.

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THE SUPREME COURT OF THE STATE OF ALASKA

THE ALASKA LEGISLATIVE)	Supreme Court No. S-10344
COUNCIL, on behalf of the Alaska)	
State Legislature,)	Superior Court No.
)	1JU-00-1237 CI
Appellant,)	
)	<u>OPINION</u>
v.)	
)	[No. 5768 - January 9, 2004]
HONORABLE TONY KNOWLES,)	
in his official capacity as Governor)	
of the State of Alaska,)	
)	
Appellee.)	

Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Patricia A. Collins, Judge.

Appearances: James P. Crawford, Division of Legal and Research Services, Legislative Affairs Agency, Juneau, for Appellant. Joanne M. Grace, Assistant Attorney General, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee. Thomas S. Waldo, Earthjustice, Juneau, for Amici Curiae Alaska Center for the Environment, Northern Alaska Environmental Center, and Southeast Alaska Conservation Council.

Before: Fabe, Chief Justice, Matthews, Eastaugh, Bryner, and Carpeneti, Justices.

CARPENETI, Justice.

I. INTRODUCTION

The Alaska Legislative Council appeals the superior court's denial of its challenge to former Governor Tony Knowles's veto of, and refusal to implement, Senate Bill 7, which transfers land and the income derived from that land to the University of Alaska. The legislative council argues that the superior court erred in holding that S.B. 7 constitutes an appropriation subject to the governor's enhanced veto power requiring a three-fourths vote by the legislature in order to override the veto under article II, section 16 of the Alaska Constitution. Because the superior court erred in concluding that S.B. 7 is an appropriation to the University of Alaska, we reverse the superior court's grant of summary judgment to the governor.

II. FACTS AND PROCEEDINGS

A. Facts

The Alaska Legislature passed S.B. 7 on March 30, 2000. Senate Bill 7 enacted AS 14.40.365, which entitles the University of Alaska to select between 250,000 and 260,000 acres of state lands.¹ The bill provides that selected land would then be

¹ Under Committee Substitute for Senate Bill (C.S.S.B.) 7, 21st Leg. 2nd Sess. (2000), AS 14.40 is amended by adding AS 14.40.365, which reads in relevant part:

University land from Statehood Act land selection conveyances.

(a) The University of Alaska may select and is entitled to receive the conveyance of not less than 250,000 and not more than 260,000 acres of land conveyed to the state under Sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339). The Board of Regents of the University of Alaska shall periodically submit a list of selections to the commissioner of natural resources and, if the list of selections contains land within the boundaries of a municipality, the Board of Regents

(continued...)

conveyed to and managed by the university under amendments to AS 14.40.170(a)² and

¹(...continued)

of the University of Alaska shall submit the list to the municipality. The Board of Regents and the commissioner of natural resources shall periodically and jointly submit to the legislature, within 30 days of the beginning of a regular legislative session, a list of the selections of land proposed to be conveyed by the state to the University of Alaska under this section. If the list submitted to the legislature contains land within the boundaries of a municipality, the Board of Regents and the commissioner of natural resources shall provide a copy of the list to the municipality. Each list must contain not more than 25 percent of the total acres of land to which the university is entitled after subtracting previous conveyances under this section, but not less than 25,000 acres or the remaining entitlement under the section, whichever is less. A list of selections submitted shall be considered approved for conveyance to the University of Alaska unless the legislature acts to disapprove the list during the legislative session during which the list was submitted. If the amount of land to be conveyed exceeds the balance due the university under this section, the university shall set out the land to be conveyed in priority order.

² C.S.S.B. 7 amends AS 14.40.170(a) to read in relevant part (underlined text is new):

(a) The Board of Regents shall

...

(4) have the care, control, and management of

(A) all the real and personal property of the university; and

(B) land

(i) conveyed to the Board of Regents by the commissioner of natural resources in the settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214),

(continued...)

AS 14.40.291.³ Senate Bill 7 also provides that the income from the transferred land will be held in perpetual trust for the benefit of the university.⁴

²(...continued)

as amended, and in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended; and

(ii) selected by the University of Alaska and conveyed to it by the commissioner of natural resources under AS 14.40.365:

³ C.S.S.B. 7 amends AS 14.40.291 to read (underlined text is new; bracketed text is deleted):

(a) Notwithstanding any other provision of law, university-grant land, state replacement land that becomes university-grant land on conveyance to the university, land selected by and conveyed to the University of Alaska under AS 14.40.365, and any other land owned by the University of Alaska is not and may not be treated as state public domain land. Land conveyed to the University of Alaska under AS 14.40.365 shall be managed under AS 14.40.365 - 14.40.368 and policies of the Board of Regents of the University of Alaska.

(b) Title to or interest in [TO] land described in (a) of this section may not be acquired by adverse possession, prescription, or in any other manner except by conveyance from the university.

(c) The land described in (a) of this section is subject to condemnation for public purpose in accordance with law.

⁴ C.S.S.B. 7 amends AS 14.40.400(a) to read (underlined text is new; bracketed text is deleted):

(a) The Board of Regents shall establish a separate endowment trust fund in which shall be held in trust in perpetuity all

(1) [ALL] net income derived from the sale or lease of the land granted under the Act of Congress approved

(continued...)

Governor Knowles vetoed the bill on April 17, 2000, stating that “‘earmarking’ state lands for dedicated projects ‘ will complicate state land management, contribute to significant land use conflicts, and likely lead to years of litigation.’ ” On April 21, 2000 the legislature voted to override the veto by a margin of forty-one to nineteen, a margin representing more than two-thirds but less than three-fourths of the legislature voting to override the veto. Governor Knowles rejected the override vote, asserting that the legislature did not reach the three-fourths override vote required to override a veto of an appropriations bill.

B. Proceedings

The legislative council brought suit to force Governor Knowles to implement S.B. 7, asserting that it is not an appropriations bill subject to the governor’s enhanced appropriations veto. The conservation amici⁵ attempted to intervene in that action in order to challenge the constitutionality of S.B. 7, but the superior court denied their motion to intervene because that court decided only the question whether S.B. 7 was an appropriations bill subject to the governor’s enhanced veto. The superior court

⁴(...continued)

January 21, 1929, as amended; [AND]

(2) net income derived from the sale, lease, or management of the land selected by and conveyed to the University of Alaska under AS 14.40.365; and

(3) [All] monetary gifts, bequests, or endowments made to the University of Alaska for the purpose of the fund.

⁵ The Alaska Center for the Environment, the Northern Alaska Environmental Center, and the Southeast Alaska Conservation Council are collectively referred to as the conservation amici.

held that S.B. 7 was an appropriations bill, thereby upholding the governor's veto of S.B. 7. The legislative council appeals.⁶

III. STANDARD OF REVIEW

We review constitutional issues *de novo*, as they present questions of law.⁷ In reviewing such questions we "adopt the rule of law that is most persuasive in light of precedent, reason, and policy."⁸

IV. DISCUSSION

A. Non-Monetary Asset Transfers Are Not Appropriations Subject to the Governor's Enhanced Veto Under Article II of the Alaska Constitution.

This appeal requires us to decide whether S.B. 7 constitutes an appropriation under article II, section 16 of the Alaska Constitution. Under article II, section 15, the governor is empowered to "veto bills passed by the legislature" and "may, by veto, strike or reduce items in appropriation bills."⁹ The legislature's power to override the Governor's veto depends on the type of bill that has been vetoed. Under article II, section 16, "[b]ills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the

⁶ Conservation amici seek to intervene if we decide this case on the basis of the constitutional prohibition against dedicated funds. If we decline to reach that issue but determine that S.B. 7 is not an appropriations bill, the conservation amici ask that the case be remanded so that they may renew their motion to intervene.

⁷ *State v. Malloy*, 46 P.3d 949, 951 (Alaska 2002).

⁸ *Guin v. Ha*, 591 P.2d 1281, 1284 n.6 (Alaska 1979).

⁹ Alaska Const. art. II, § 15.

membership of the legislature.”¹⁰ Accordingly, if S.B. 7 was an appropriation bill, the legislature failed to override the governor’s veto; if it was not an appropriation bill, the affirmative vote of forty-one members of the legislature was sufficient to enact it into law. For the reasons that follow, we hold that S.B. 7 was not an appropriation and that the legislature therefore successfully overrode the governor’s veto.

The governor argues that our previous decisions allowing non-monetary asset transfers to be classified as appropriations under article XI, section 7 of the Alaska Constitution should be extended to govern the scope of an appropriations veto under article II. But these decisions arose in the context of article XI of the Alaska Constitution, which grants Alaska’s citizens the right to “propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.”¹¹ This right is limited, and initiatives and referenda cannot be used to “make or repeal appropriations.”¹² We previously held that “by the term ‘appropriations,’ article XI, section 7 prohibits an initiative whose primary object is to require the outflow of state assets in the form of land as well as money.”¹³ More recently, we expanded the non-monetary definition of “appropriations” under article XI to include initiatives prioritizing the right to harvest salmon¹⁴ and designating University of Alaska land for use by the

¹⁰ Alaska Const. art. II, § 16.

¹¹ Alaska Const. art. XI, § 1.

¹² Alaska Const. art. XI, § 7.

¹³ *Thomas v. Bailey*, 595 P.2d 1, 7 (Alaska 1979) (ballot initiative granting state land to certain Alaska residents was an unconstitutional appropriation by initiative).

¹⁴ *Pullen v. Ulmer*, 923 P.2d 54, 59 (Alaska 1996).

Community College System of Alaska.¹⁵ These decisions struck down non-monetary asset transfers as unconstitutional appropriations under article XI, section 7 of the Alaska Constitution.

In the present case, the superior court held that article II, section 16 of the Alaska Constitution shares article XI, section 7's broad definition of an appropriation, and that "a bill [that] results in removing or dedicating assets from the treasury that would otherwise be available to fund state government" is therefore an appropriations bill.¹⁶ While it is appealing to interpret the Alaska Constitution to have a consistent definition of "appropriations" throughout the document, articles II and XI require different interpretations of "appropriations" because they serve vastly different purposes.¹⁷ Article XI provides citizens with a limited power to enact laws. The limitations concerning appropriations have two parallel purposes — preventing the dissipation of state resources by popular vote and vindicating legislative control over the allocation of state assets. As we stated in *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*:

¹⁵ *McAlpine v. University of Alaska*, 762 P.2d 81, 87-89 (Alaska 1983).

¹⁶ *Legislative Council v. Knowles*, No. 1JU-00-1237 CI (Alaska Super., August 17, 2001).

¹⁷ We have held that even within the context of article XI, section 7, the word "appropriations" may have different meanings depending on whether the challenged initiative seeks to make an appropriation or repeal one. *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153, 1156-57 (Alaska 1991). A broad construction is used to prevent the enactment by initiative of state asset give-away programs. *Id.* at 1156. But as this reason does not apply when an initiative merely seeks to repeal an appropriation, a narrow construction is used in repeal cases. In repeal cases the term "appropriations" is construed to refer only to annual spending decisions. *Id.* at 1157.

Our prior cases defining "appropriation" in the context of article XI, section 7 have concentrated on the two parallel purposes for preventing the making of appropriations through the initiative process. First, initiatives should not be "used to enact give-away programs, which have an inherent popular appeal, that would endanger the state treasury." *Thomas v. Bailey*, 595 P.2d 1, 7 (Alaska 1979). This is because "[i]nitiatives for the purpose of requiring appropriations were thought to pose a special danger of 'rash, discriminatory, and irresponsible acts.'" *Id.* (quoting V. Fischer, Alaska's Constitutional Convention 80-81 (1975)). The second "reason for prohibiting appropriations by initiative is to ensure that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs." *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 88 (Alaska 1988).¹⁸⁾

Accordingly, in cases involving making appropriations by initiative, we have carried out the framers' design to prevent popular give-away programs and maintain legislative control over the allocation of state assets by broadly interpreting the scope of "appropriations" under article XI of the Alaska Constitution.

In contrast, article II's definition is not governed by the overriding goal of preventing initiatives from wasting public assets or encroaching on protected legislative powers. Instead, article II, sections 15 and 16 of the Alaska Constitution govern the balance of power between the legislative and executive branches of Alaska's government. Because articles II and XI serve different purposes, we reject the governor's argument that the expansive scope given "appropriations" in article XI as to the making of appropriations should be extended to article II. We determine the scope of "appropriations" as used in article II by examining the minutes of the Constitutional Convention and the Alaska Constitution itself.

¹⁸ 818 P.2d 1153, 1156 (Alaska 1991).

We have previously treated article II appropriations as being limited to monetary appropriations. In *Alaska Legislative Council v. Knowles*,¹⁹ (*Knowles II*) we determined the scope of the governor's power to veto individual items in an appropriations bill under article II, section 15 of the Alaska Constitution.²⁰ We assumed that items in appropriations bills, and therefore bills composed of individual items, can only appropriate monetary assets:

Reducing an item lessens its amount; striking it lessens its amount to nothing. This implies that an 'item' must include a sum of money. Likewise, a passage that does not include a 'sum of money dedicated to a particular purpose' is not an 'item' which the governor can strike or reduce. Therefore, a veto that does not delete or reduce the amount of money appropriated is not a valid exercise of the power article II, section 15 grants.²¹

Though *Knowles II* involved the governor's veto of language restricting a monetary appropriation under the item veto power,²² rather than the veto of a non-monetary appropriation under the general power to veto an entire bill as presented by this case, its understanding of article II appropriations is instructive. We now explicitly adopt

¹⁹ 21 P.3d 367 (Alaska 2001).

²⁰ In addition to providing the governor with the power to veto entire bills, the issue presented by this case, Alaska Constitution article II, § 15 also grants the governor the power to "veto, strike, or reduce items in appropriations bills."

²¹ *Knowles II*, 21 P.3d at 373.

²² *Id.* at 370-71.

Knowles II's exclusively monetary characterization of article II appropriations items and hold that the governor's appropriations veto applies only to monetary appropriations.²³ *

This conclusion finds ample support in the minutes of the Alaska Constitutional Convention, which demonstrate that the framers of the Alaska Constitution intended the governor's appropriations veto under article II, sections 15 and 16 to apply only to monetary appropriations. The framers repeatedly referred to appropriations in monetary terms during the debates over article II, section 15. Delegate Sundborg understood that the enhanced, three-fourths veto override requirement would apply to "any bill dealing with taxation or any bill affecting payments of money under existing statutes or an item or items in the general appropriations bill."²⁴ Delegate McCutcheon, a member of the committee that drafted that section, understood the section to provide that "a greater number [of votes were] required to override the veto on money matters."²⁵ Delegate V. Rivers stated that this section was "a provision in regard to the appropriation and spending of money which would allow somewhat more power to lie in the strong executive."²⁶ If the delegates had intended the governor's appropriation veto to encompass non-monetary asset transfers, we would expect to see in the minutes and the section proposals some indication of that intention. Instead the minutes indicate

²³ We gave a similarly narrow construction to the use of the term "appropriations" in article XI, section 7 with respect to the prohibition on repealing appropriations by initiative in *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153, 1157 (Alaska 1991).

²⁴ 3 PROCEEDINGS OF THE ALASKA CONSTITUTIONAL CONVENTION (PACC) 1739 (January 11, 1956).

²⁵ *Id.* at 1740.

²⁶ *Id.* at 1741.

that the delegates never intended the governor's article II appropriations veto power to apply to anything other than monetary appropriations.

The framers' intention to limit the scope of article II appropriations to money bills is made clear by the entire constitutional framework, as extending the scope of article II appropriations to encompass non-monetary asset transfers would create a host of problems in interpreting other articles of the Alaska Constitution. For example, if non-monetary asset transfers were deemed appropriations, application of article II, section 13 — confining bills for appropriations only to appropriations²⁷ — would become problematic. *Knowles II* adopted a five-part test for determining whether a bill satisfies that section's clause confining appropriations bills only to appropriations, stating that

to satisfy the confinement clause, "the qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally the language must be germane, that is appropriate, to an appropriations bill."²⁸

As evidenced by S.B. 7, which governs both the transfer of land to the university and the management of that land by the university, the separation of bills concerning appropriations and substantive law mandated by article II, section 13 of the Alaska Constitution's confinement clause would be virtually impossible to maintain if non-

²⁷ Alaska Const. art. II, § 13 provides in relevant part that "[e]very bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations."

²⁸ *Knowles II*, 21 P.3d at 377 (quoting No. 1JU-80-1163 CI (Alaska Super., May 25, 1983)).

monetary asset transfers were considered appropriations under article II.²⁹ As difficult as it is for the legislature to maintain the line between making monetary appropriations and creating substantive law, it would be far more difficult for the legislature to make non-monetary asset transfers without straying into substantive law. Adopting an exclusively monetary concept of appropriations under article II of the Alaska Constitution comports with the overall constitutional intent to avoid such confusion.

Article IX of the Alaska Constitution, which governs finance and taxation, also supports limiting the scope of the governor's article II, section 15 appropriations veto power to monetary bills. Article IX requires the governor to submit a budget to the legislature at a fixed time each year; the budget must "set[] forth all proposed expenditures and anticipated income."³⁰ At the same time, the governor must submit a general appropriation bill to authorize the proposed expenditures.³¹ This strictly monetary concept of appropriations suggested by article IX, section 12 of the Alaska Constitution is instructive in this case. If non-monetary asset transfers were deemed to be appropriations, article IX, section 12 would presumably require such asset transfers to be included in the several appropriation bills submitted by the governor.

²⁹ C.S.S.B. 7.

³⁰ Alaska Const. art IX, § 12.

³¹ Alaska Const. art. IX, § 12 provides:

The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.

Additionally, viewing non-monetary land transfers as appropriations would not comport with article IX, section 16 of the Alaska Constitution,³² which establishes a \$2.5 billion limit on annual legislative appropriations (adjusted for inflation). Treating non-monetary asset transfers as appropriations is not only inconsistent with the language of article IX, section 16, but it poses the further problem of how to calculate the value of such asset transfers to ensure that they fall within the appropriations limits imposed by the Alaska Constitution. In expressing the limit in dollars, article IX, section 16 reflects a constitutional structure that treats "appropriations" as dealing exclusively with money transfers. Because article IX does not include non-monetary asset transfers within the scope of "appropriations," it provides further proof that non-monetary asset transfers are not subject to the governor's appropriations veto under article II of the Alaska Constitution. *

That the governor's appropriations veto under article II is limited to money bills is also suggested by article VIII, which grants broad powers over land to the legislature. A number of sections of article VIII grant the legislature a land-disposal power that is not consistent with the enhanced appropriations veto power claimed by the

³² Alaska Const. art. IX, § 16 provides in relevant part that:

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, appropriations 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.

governor. Article VIII, section 2 establishes the legislature's general power to manage and control Alaska's land, stating that "[t]he legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people."³³ Section 9 establishes the legislature's power to "provide for the sale or grant of state lands, or interests therein, and establish sales procedures."³⁴ Section 12 provides that the legislature can transfer non-monetary state assets by law through the creation of mineral leases and permits.³⁵ These sections of article VIII establish the legislature's power to dispose of and manage state land and the minerals contained within that land. The existence of this power is inconsistent with the governor's argument that the disposal of state lands is subject to the enhanced veto reserved for appropriations. Article VIII in its entirety suggests that the framers intended to provide the legislature with control over state lands subject only to the governor's less restrictive, non-appropriations veto. *

Because the minutes of the Constitutional Convention and articles VIII and IX of the Alaska Constitution mandate an exclusively monetary concept of "appropriations," we hold that only monetary asset transfers constitute "appropriations" under article II of the Alaska Constitution. Therefore, S.B. 7's transfer of land to the university is not subject to the governor's enhanced appropriations veto.

³³ Alaska Const. art. VIII, § 2.

³⁴ Alaska Const. art. VIII, § 9.

³⁵ Alaska Const. art. VIII, §12 provides, in relevant part:
Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas . . . may be authorized by law.

B. Senate Bill 7's Provisions Concerning the Income from Transferred Land Do Not Provide the University with a Sufficiently Definite Sum of Money To Constitute an Appropriation.

The legislative council argues that the superior court erred in holding that the portions of S.B. 7 governing income produced by the transferred lands make S.B. 7 an appropriations bill. It contends that S.B. 7 does not contain any of the elements necessary to qualify as an appropriation under articles II and IX of the Alaska Constitution. The legislative council proposes that an appropriation is defined by three essential elements and argues that S.B. 7 meets none of them: It does not authorize a government expenditure, it does not sufficiently state a purpose for the alleged expenditure, and it does not set aside a certain sum of money. The governor responds that S.B. 7 must be considered an appropriation because it restricts the income derived from the transferred land to the university.³⁶ Because we agree with the legislative council that appropriations must set aside a certain sum of money and that S.B. 7 does not specifically appropriate a certain sum of money to the university, we do not consider the other two prongs of this proposed test.

We have previously defined an "appropriation" as "the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more,

³⁶ C.S.S.B. 7 amends AS 14.40.400(a) to read (underlined text is new):

The Board of Regents shall establish a separate endowment trust fund in which shall be held in trust in perpetuity all

.....
(2) net income derived from the sale, lease, or management of the land selected by and conveyed to the University of Alaska under AS 14.40.365[.] . . .

for that object, and no other.’ ”³⁷ Subsequently, in *Knowles II* we defined an item in an appropriations bill as “ ‘a sum of money dedicated to a particular purpose.’ ”³⁸ While neither of the above cases specifically dealt with the “sum certain” requirement, they both recognized that an act must authorize the expenditure of an ascertainable sum of money in order to qualify as an appropriation. The governor’s item and general appropriation vetoes apply to items and bills that provide state officials with enough of a description to ascertain the transfer of a specific amount of money at a specific point in time.³⁹ In this case, the income that S.B. 7 seeks to provide for the university is so uncertain, due to its dependance on the university’s selection and management of the land, that it may never materialize or it may take many years to do so. Because the provisions of S.B. 7 concerning income derived from transferred lands are so indefinite, we hold that those portions of S.B. 7 are not appropriations subject to the governor’s enhanced appropriations veto.

C. We Decline To Address Whether S.B. 7 Is an Unconstitutional Dedication Under Article IX, Section 7 of the Alaska Constitution.

³⁷ *Thomas v. Rosen*, 569 P.2d 793, 796 (Alaska 1977) (quoting *State ex rel. Finnegan v. Dammann*, 264 N.W. 622, 624 (Wis. 1936)).

³⁸ 21 P.3d at 373.

³⁹ The requirement that the legislature sufficiently describe monetary asset transfers exists so that the legislature cannot purposefully fail to include a sum certain in order to avoid the governor’s appropriations veto. But the degree of specificity required is only that necessary to allow identification of the monies involved. For example, we have previously treated as an appropriation a bill containing language stating that “an amount equal to the unexpended and unobligated balance on June 30, 1997, of the fiscal year 1997 general fund receipts from the salmon marketing tax (AS 43.76.110), from the seafood marketing assessment (AS 16.51.120), and from the fishery resource landing tax (AS 43.77.011) is appropriated from the general fund to the Alaska Seafood Marketing Institute.” *Id.* at 386, app. A.

The legislative council argues that the superior court determined that S.B. 7 was an unconstitutional dedication under article IX, section 7 of the Alaska Constitution.⁴⁰ While there is language in the superior court's decision that might be interpreted to address S.B. 7's constitutionality,⁴¹ the superior court explicitly declined to address whether S.B. 7 was an unconstitutional dedication because the parties only contested whether S.B. 7 was an appropriation subject to the governor's enhanced veto. The conservation amici now argue that we should "bear in mind the Dedicated Funds Clause and the important policies underlying it." They also claim that they should be allowed to renew their motion to intervene upon remand to represent the position that S.B. 7 is an unconstitutional dedication. We agree. *

We decline to address the question of whether S.B. 7 violates the constitutional prohibition on dedications because the matter was not fully litigated below. The superior court correctly declined to decide the dedication issue because the only question before the court was whether S.B. 7 is an appropriations bill. Because that is the only question presented by this appeal, we decline to address the dedication issue.⁴²

⁴⁰ Alaska Const. art. IX, § 7 states: "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."

⁴¹ The superior court stated that S.B. 7 "is not . . . a simple land transfer bill. Rather, the bill explicitly removes land from the public domain and dedicates income from that land exclusively to the University in perpetuity." It further stated that "Senate Bill 7 results in a sum of money, income from the land grant, being dedicated to a particular purpose, funding for the University[.]" *Legislative Council v. Knowles*, No. 1JU-00-1237 CI (Alaska Super., August 17, 2001).

⁴² *Earth Movers of Fairbanks, Inc. v. State, Dep't of Transp. and Pub.*
(continued...)

V. CONCLUSION

Because we hold that S.B. 7 was not an appropriation, we REVERSE the superior court's decision holding that the governor's enhanced appropriations veto applies to S.B. 7. We REMAND for consideration of the issue whether S.B. 7 is an unconstitutional dedication.⁴³

⁴²(...continued)
Facilities, 824 P.2d 715, 718 (Alaska 1992).

⁴³ On remand, the superior court should first rule on the motion of the conservation amici to intervene.

Sec. 14.40.365. University land from Statehood Act land selection conveyances. [See editor's note].

(a) The University of Alaska may select and is entitled to receive the conveyance of not less than 250,000 and not more than 260,000 acres of land conveyed to the state under Sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339). The Board of Regents of the University of Alaska shall periodically submit a list of selections to the commissioner of natural resources and, if the list of selections contains land within the boundaries of a municipality, the Board of Regents of the University of Alaska shall submit the list to the municipality. The Board of Regents and the commissioner of natural resources shall periodically and jointly submit to the legislature, within 30 days of the beginning of a regular legislative session, a list of the selections of land proposed to be conveyed by the state to the University of Alaska under this section. If the list submitted to the legislature contains land within the boundaries of a municipality, the Board of Regents and the commissioner of natural resources shall provide a copy of the list to the municipality. Each list must contain not more than 25 percent of the total acres of land to which the university is entitled after subtracting previous conveyances under this section, but not less than 25,000 acres or the remaining entitlement under this section, whichever is less. A list of selections submitted shall be considered approved for conveyance to the University of Alaska unless the legislature acts to disapprove the list during the legislative session during which the list was submitted. If the amount of land to be conveyed exceeds the balance due the university under this section, the university shall set out the land to be conveyed in priority order. Land may not be selected if, on the date of its selection by the university, it

(1) is identified in AS 16.20, AS 41.15.300 - 41.15.330, or AS 41.21 or has been reserved by law from the public domain;

(2) is located within a municipality unless the land is vacant, unappropriated, unreserved land; if land included on the list of selections is selected by the municipality with remaining selection rights under AS 29.65 within 120 days of receiving the Board of Regents' list of selections under this subsection, the university may not select the land unless a binding agreement between the university and the municipality is negotiated to allow the selection; if the municipal selection is disapproved, in whole or in part, the university may select the land, or any available portion of the land, and that selection will relate back to the date of the Board of Regents' list of selections under this subsection and shall have priority over all other selections or claims made subsequent to that notice; in this paragraph, "vacant, unappropriated, unreserved land" has the meaning given in AS 29.65.130;

(3) is land

(A) included in a five-year proposed oil and gas leasing program under AS 38.05.180(b); or

(B) leased under, or for which a lease application is pending under, AS 38.05.180(d) or 38.05.150;

(4) is subject to

(A) an oil, gas, or coal lease, or coal prospecting permit;

(B) a mining claim, offshore prospecting permit, a prospecting site, an upland mining lease, or a mining leasehold location;

(5) is necessary to carry out the purpose of an interagency land management agreement; or

(6) is subject to conveyance under a land exchange or land settlement agreement.

(b) Notwithstanding AS 38.05.125(a), the transfer of ownership and management of land from the Department of Natural Resources to the Board of Regents of the University of Alaska under this section includes the interest of the state in

(1) the coal, ores, minerals, fissionable materials, geothermal resources, and fossils that may be in or on the land; and

(2) the oil and gas that may be in or on the land, but only as to land that is selected by the University of Alaska under this section on and after July 20, 2003.

(c) When the University of Alaska selects the land to which it is entitled under this section, selections must be made in parcels of 40 acres or larger unless the selection is an isolated tract or the commissioner of natural resources finds it is in the best interest of the state to convey less. When the University of Alaska becomes entitled to land under this section, the commissioner of natural resources shall convey a document of interim conveyance under (j) of this section or a patent to land.

(d) Notwithstanding any other provision of law, for land selected under (a) of this section but not yet patented to the University of Alaska or for which a document of interim conveyance has not been issued to the University of Alaska under this section,

(1) the state, with the concurrence of the University of Alaska, is authorized to enter into contracts and grant leases, licenses, prospecting sites, claims, permits, rights-of-way, or easements and any interim conveyance or patent shall be subject to the contract, lease, license, prospecting site, claim, permit, right-of-way, or easement, except that the authority granted the state by this paragraph is the authority that the state otherwise would have had under existing laws and regulations had the land not been selected by the University of Alaska;

(2) income from and management of the land is subject to AS 14.40.368.

(e) The list of selections of land submitted to the legislature may not include a land selection made by the University of Alaska under this section if the commissioner of natural resources determines in writing that the proposed selection

(1) includes land that the commissioner, in consultation with the commissioner of fish and game, determines has demonstrated value to the public as a habitat area that is especially critical to the perpetuation of fish or wildlife;

(2) includes land for which, at the time of its selection under this section, a municipality has made a selection under AS 29.65 unless the land selection is, at a later date, rejected by the commissioner of natural resources or relinquished by the municipality;

(3) includes land that the commissioner reasonably believes may be selected by a newly formed municipality under AS 29.65.030, but the commissioner may not withhold selection under this paragraph for more than three years after the municipality's incorporation;

(4) includes land within the boundaries of a municipality, the municipality has a remaining entitlement under AS 29.65, and the municipality selects the land under AS 29.65 within 120 days after receipt by the municipality of the Board of Regents' list of selections under (a) of this section;

(5) includes land that, at the time of its selection under this section,

(A) is subject to an oil and gas exploration license; or

(B) the commissioner reasonably believes will be made part of an oil and gas exploration license issued under AS 38.05.131 - 38.05.134; the commissioner may not refuse to convey title to land to the University of Alaska under this subparagraph for more than two years after its first selection by the University of Alaska; or

(6) includes land the commissioner of natural resources reasonably believes would not be in the best interests of the state to convey outside of state ownership.

(f) When land is conveyed to the University of Alaska under this section, the University of Alaska takes the land subject to any valid possessory interest held by another person on the effective date of the conveyance.

(g) In conveying land to the University of Alaska under this section, the commissioner of natural resources shall give public notice that substantially complies with notice requirements under AS 38.05.945(b) and (c) and provide for access under AS 38.05.127, but other provisions of AS 38.04 and AS 38.05 do not apply.

(h) Land transferred or conveyed to the University of Alaska under this section

(1) is subject to

(A) Sec. 6(i) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339);

(B) art. IX of the state constitution;

(C) AS 19.10.010;

(D) the payment requirements to the Alaska permanent fund under AS 37.13.010(a) and (b); and

(E) any easement, right-of-way, or other access under former 43 U.S.C. 932 (sec. 8, Act of July 26, 1866, 14 Stat. 253);

(2) excludes any interest transferred to the state by quitclaim deed dated June 30, 1959, under authority of the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 141;

(3) based on a land selection filed by the University of Alaska on or after July 20, 2000 and until July 19, 2003, is subject to reservation by the state in perpetuity of all oil and gas that may be in or on the land, together with the right to explore the land for oil and gas and to remove from the land all oil and gas located in and on it.

(i) The University of Alaska shall bear all of its own costs of selection, platting, surveying, and, except as provided in (k) of this section, conveyance of the land that it selects under this section and, subject to appropriation, shall reimburse the Department of Natural Resources for the reasonable costs incurred by that department relating to that selection, platting, surveying, and conveyance. As to land due the University of Alaska under (c) of this section,

(1) if the land has been surveyed, the boundaries of the land conveyed must conform to the public land subdivisions established by the approved survey;

(2) if the land is unsurveyed, the commissioner shall survey the exterior boundaries of the land to be conveyed without interior subdivision and shall issue patent in terms of the exterior boundary survey within one year of the later of the effective date of the approval by the legislature of the list containing the land or the adjournment of the legislative session during which the list containing the land was not disapproved by the legislature.

(j) For land due the University of Alaska under (c) of this section that is unsurveyed, pending the survey of exterior boundaries and issuance of patent, the

commissioner of natural resources shall, within one year of the later of the effective date of the approval by the legislature of the list containing the land or the adjournment of the legislative session during which the list containing the land was not disapproved by the legislature, prepare and provide to the University of Alaska a document of interim conveyance for the land to be conveyed.

(k) Management of land conveyed to the University of Alaska by patent or by a document of interim conveyance vests with the University of Alaska from the date of recording of the patent or document of interim conveyance. The state shall pay the cost of recording all patents and documents of interim conveyance.

(l) The University of Alaska may not make a land selection under this section after December 31, 2010.

(m) The commissioner of natural resources, when conveying land under this section, shall reserve easements, rights-of-way, and other forms of access

(1) required under the Constitution of the State of Alaska or other law; and

(2) sufficient to ensure reasonable access to the public to all navigable and public water under AS 38.05.127.

(n) The University of Alaska may seek review of the decision of the commissioner of natural resources under (e) of this section through the process established by the Department of Natural Resources.

(o) Notwithstanding (a)(1) of this section, land identified under AS 41.23 or included within the Tanana Valley State Forest created in AS 41.17.400 may be selected by the University of Alaska if the selection satisfies the other requirements of this section.

History -

(Sec. 5 ch 136 SLA 2000)

Cross References -

For findings and intent related to the enactment of this section, see secs. 1 and 2, ch. 136, SLA 2000 in the 2000 Temporary and Special Acts.

Effective Date Notes -

Section 5, ch. 136, SLA 2000, which enacted this section, took effect on July 20, 2000.

See the editor's note for additional information as to the effectiveness of this enactment.

Editors Notes -

The Superior Court has held that HCS CSSB 7(FIN), which has been designated as ch. 136, SLA 2000, and which amended this section, was not validly enacted. Alaska Legislative Council Knowles, 1-JU-00-1237 CI (First Jud. Dist. at Juneau; August 17, 2001). Appeal is pending before the Alaska Supreme Court (Supreme Court No. S-10344).

Sec. 14.40.366. Management requirements for university land. [See editor's note].

(a) The Board of Regents shall, by policy, establish procedures for mineral entry or location and mineral leasing on university land selections made under AS 14.40.365 that are consistent with the Constitution of the State of Alaska and the Alaska Statehood Act (P.L. 85 - 508, 72 Stat. 339).

(b) Notwithstanding other provisions of law, the University of Alaska shall seek public comment on proposals for development, exchange, or sale of university selections made under AS 14.40.365. The Board of Regents shall adopt policies that provide that the university shall prepare an annual plan for management and disposition of university land under this section and shall, not less than 60 days before scheduled approval by the Board of Regents of the plan,

(1) make copies of the plan available at all legislative information offices and at other locations as the university may designate;

(2) publish a notice in newspapers of general circulation in the state that provides the public with information on the locations where the plan is available for public inspection;

(3) give notice to all legislators and to local governments with jurisdiction over the land affected by the proposal; and

(4) seek public comment on the annual plan before action by the Board of Regents approving the plan.

(c) Subject to appropriation of the income, the Board of Regents shall use an amount up to 20 percent of the earnings derived from the management of university land conveyed to the university under AS 14.40.365 for programs and services supporting the development of natural resources within the region from which the earnings were derived. The earnings shall be used by the campus or campuses located within the region from which the earnings were derived if a municipality within which the campus or campuses are located provides to the campus or campuses a match of the same amount. This subsection does not apply if the match is not made available by a municipality.

(d) Before the conveyance or the disposal of an interest in the land to a third party, land conveyed to the University of Alaska under AS 14.40.365 shall be managed in a manner that, to the extent practicable, permits reasonable activities of the public that do not interfere with the use or management of the land by the university. The Board of Regents shall adopt a permitting process consistent with this subsection.

History -

(Sec. 5 ch 136 SLA 2000)

Effective Date Notes -

Section 5, ch. 136, SLA 2000, which enacted this section, took effect on July 20, 2000.

See the editor's note for additional information as to the effectiveness of this enactment.

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The Superior Court has held that HCS CSSB 7(FIN), which has been designated as ch. 136, SLA 2000, and which amended this section, was not validly enacted. *Alaska Legislative Council v. Knowles*, 1-JU-00-1237 CI (First Jud. Dist. at Juneau; August 17, 2001). Appeal is pending before the Alaska Supreme Court (Supreme Court No. S-10344).

Sec. 14.40.368. Encumbrances and trespasses. [See editor's note].

Except as provided in AS 14.40.365(b), for the land selected by the University of Alaska under AS 14.40.365 that is subject to a lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement, or to trespass,

(1) if the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, easement, or trespass

(A) existed before the selection of the land by the University of Alaska, the state is entitled to receive the income obtained from the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, easement, or trespass until the land is conveyed to the University of Alaska by the issuance of a document of interim conveyance or a patent;

(B) did not exist before the selection of the land by the University of Alaska, the income obtained from the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement, or from trespass

(i) before the recording of the conveyance to the University of Alaska by the issuance of a document of interim conveyance or a patent shall be separately accounted for under AS 37.05.142, and the legislature may appropriate the balance of the account to the University of Alaska; nothing in this sub-subparagraph creates a dedicated fund;

(ii) on the date of and after the recording of the conveyance to the University of Alaska by the issuance of a document of interim conveyance or a patent is the property of the University of Alaska;

(2) the responsibility for the management of the land vests with the University of Alaska on the date of recording of the conveyance of the land to the university by a document of interim conveyance or patent.

History -

(Sec. 5 ch 136 SLA 2000)

Effective Date Notes -

Section 5, ch. 136, SLA 2000, which enacted this section, took effect on July 20, 2000.

See the editor's note for additional information as to the effectiveness of this enactment.

Editors Notes -

The Superior Court has held that HCS CSSB 7(FIN), which has been designated as ch. 136, SLA 2000, and which amended this section, was not validly enacted. *Alaska Legislative Council v. Knowles*, 1-JU-00-1237 CI (First Jud. Dist. at Juneau; August 17, 2001). Appeal is pending before the Alaska Supreme Court (Supreme Court No. S-10344).

Sec. 14.40.461. University demonstration forest. [See editor's note].

(a) For the purpose of advancing research into forest management practices, from land conveyed to the University of Alaska under AS 14.40.365 that is suitable for the purpose, the Board of Regents may establish a University of Alaska demonstration forest.

(b) The demonstration forest shall be managed under

(1) the principles of multiple use and sustained yield; and

(2) a management plan prepared by the University of Alaska in consultation with residents of any community within or adjacent to the demonstration forest.

(c) The Board of Regents shall

(1) include within the demonstration forest sufficient land that is within one watershed so that management of the resources of the demonstration forest under multiple-use and sustained yield principles applicable to forest land within a watershed may be fairly tested and evaluated; and

(2) analyze possible timber utilization programs for the demonstration forest to illustrate how timber in the forest can be completely and profitably used, including, to the extent possible, on-site or off-site value-added product manufacture in the state.

(d) The information generated as a result of management of the demonstration forest established under this section is public information. The Board of Regents shall compile, analyze, and distribute the information for the benefit of the timber industry and the state and federal governments.

(e) In this section, "sustained yield" has the meaning given in AS 41.17.950.

History -

(Sec. 7 ch 136 SLA 2000)

Effective Date Notes -

Section 7, ch. 136, SLA 2000, which enacted this section, took effect on July 20, 2000.

See the editor's note for additional information as to the effectiveness of this enactment.

Editors Notes -

The Superior Court has held that HCS CSSB 7(FIN), which has been designated as ch. 136, SLA 2000, and which amended this section, was not validly enacted. Alaska Legislative Council v. Knowles, 1-JU-00-1237 CI (First Jud. Dist. at Juneau; August 17, 2001). Appeal is pending before the Alaska Supreme Court (Supreme Court No. S-10344).

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December 7, 1992

MEMORANDUM

TO:

FROM: Christine M. Cheff *CWC*
Legislative Analyst

RE: Land Endowments to United States Land Grant Colleges and Universities
Research Request 93.033

You asked for information about land endowments made to colleges and universities in the United States. Specifically, you wanted to know how much land was given to the institutions by state and federal governments, what restrictions applied to those lands, and the lands selection methods employed by each state.

Under the Morrill Act of 1862, each state was entitled to receive a grant for public lands, the income from which would provide the financial base of operation for at least one college or university (Attachment A).¹ The purpose of the act was to "promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." We found many sources of historical information concerning the Morrill Act itself, but were unable to find any comprehensive information about the individual state grants.² The Bureau of Land Management (BLM) did provide some approximate figures on the amount of land received by each state (Attachment B).³ Because the results of the initial research were unsatisfactory, we consulted with your staff and agreed to conduct

¹The Morrill Act did not limit states to the establishment of just one land grant school; however, the "Second Morrill Act" of 1890 specifically authorized states to split original land grant funds so that agricultural schools for "colored students" could be established. Additional federal funds, rather than lands, were provided for those schools.

²We contacted the following: Association of American Colleges, National Agricultural Library, National Association of State Universities and Land Grant Colleges, United States Department of Education and United States Department of Interior.

³The figures are approximate because they are described in a table as, grants made to "other schools." June Wrona, BLM public affairs officer in Washington, D.C., believes the figures are principally reflective of university lands granted. They do not include lands for the public or "common schools" of grades K-12.

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separate state surveys concerning the following geographically representative land grant schools: Colorado State University, Cornell University (New York), the University of Kentucky, Michigan State University, the University of Nevada, South Carolina State College, Washington State University and the University of Wyoming.

Brief summaries of the Morrill Act's general provisions and restrictions, and of the state survey results, are provided below.

The Morrill Act of 1862

With passage of the Morrill Act, all of the states were granted the right to select specific amounts of public land within their borders for purposes of establishing university endowments. Individual grants were equal to 30,000 acres for each of a state's congressional representatives and senators. If a state had no available public lands, as was the case in most eastern states, it received government scrip in an amount equivalent to the land entitlement.⁴ The intention was for the states to sell the land or the scrip and to assign the proceeds for the operation of designated "land grant" institutions. Legislative action was required of any state wishing to accept a grant.⁵ Included in that acceptance was an agreement to abide by the following provisions of the Act:

- no mineral lands could be selected or purchased;
- no more than one million total acres of land scrip purchases could be made in any single state;
- all proceeds from the sale of land or scrip were to be invested and the principal "forever remain unimpaired";
- interest on the principal was to be used for the endowment, support and maintenance of a college "where the leading object shall be . . .to teach such branches of learning as are related to agriculture and the mechanic arts . . ."; and
- no portion of the fund or the interest was to be used for the purchase, erection, preservation, or repair of any building or buildings.

⁴The scrip was paper proof of a state's entitlement to a certain number of acres of public land.

⁵Under the original act, state legislatures had two years from the date the Morrill Act was approved by the president to accept its provisions. An 1866 amendment extended that time to three years from the date the act passed, and new states were allowed three years from the date of their admission into the Union.

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Twenty-seven states received scrip instead of land, but most of them quickly sold it. They were primarily motivated by the need to establish support endowments for the new schools. The market was so flooded with scrip that its value dropped from \$1.25 to as low as \$0.42 an acre. Not surprisingly, a few individuals ended up owning the majority of the scrip that had been issued.⁶ Historians seem to agree that, with the exception of New York, states east of the Mississippi did not make enough profit from either the land or the scrip to adequately endow their universities.

State Survey Results

The purpose of this survey was to obtain specific information about the university lands selection process employed in eight states and to determine if the states had made any additional grants of land to their universities. We made telephone calls to the land grant schools and government agencies in Colorado, Kentucky, Michigan, Nevada, New York, South Carolina, Washington and Wyoming. Our contacts included university administrators and librarians, state librarians and archivists, land commissioners, and departments of natural resources staff.

Despite talking with such a wide range of people, we obtained a surprisingly small amount of additional information. With the exception of four states, all of the university land grants were settled before the turn of this century.⁷ Gaining access to that historical information apparently requires considerable research effort. No information about state lands that may have been added to the original federal grants was available from the agencies we contacted.

Books written about the Cornell University and Michigan State University grants indicate that at the time of the Morrill Act the competition for land was strong among the settlers, railroads and speculators. By the time the universities began their selection, most of the prime land was gone. Michigan and New York were able, however, to realize some success from their grants.

In 1863 the Michigan legislature established an agricultural land grant board to control and manage the selection, care and disposal of its 240,000 acre grant. The original plan was to select land based on its agricultural potential, rather than for its timber. The board reasoned that if a forest was destroyed by fire, the value of the land would be depreciated. That logic was not exclusively

⁶Paul Wallace Gates, *The Wisconsin Pine Lands of Cornell University*, (The State Historical Society of Wisconsin, 1943).

⁷Alaska, Arizona, Hawaii and Oklahoma.

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applied and a large amount of timber land was selected. Because of conservative management practices, Michigan still had 50,000 unsold acres as late as 1927.⁸

Two of the states in our survey received their grants in scrip. Kentucky sold its 330,000 scrip acres at a loss, for \$0.50 an acre. On the other hand, all of New York's 989,920 acres of scrip was purchased by one man, Ezra Cornell. He had secured the charter for Cornell University and was determined to secure its future as well. With the scrip, he bought available public lands in Wisconsin, Kansas and Minnesota. Those lands eventually produced five million dollars in profit for the university's endowment.⁹

I hope this information will be useful. Please call if we can be of further assistance on this or any other matter.

Attachments

⁸Herbert Andrew Berg, *The State of Michigan and The Morrill Land Grant College Act of 1862*, Michigan State University, 1965.

⁹*The Wisconsin Pine Lands of Cornell University*, 242 - 243.

ATTACHMENT A
The Morrill Act of July 2, 1862
Land-Grant Colleges and Universities, 1862-1962

Section III

Federal Laws and Rulings

Federal Laws and Rulings Relating to Federal Funds for
Instruction for Land-Grant Colleges and Universities

FROM THE passage of the Morrill Act in 1862 to July 1, 1939, Federal funds for instruction in the land-grant colleges and universities were administered by the Department of the Interior.

From July 1, 1939 to April 11, 1953, these funds were administered through the Federal Security Agency. Under provisions of the act approved April 1, 1953 (67 Stat., 5 U.S.C. 623), known as the Reorganization Plan I of 1953, the Federal Security Agency was abolished and the Department of Health, Education, and Welfare was created. All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare, and all components of the Agency to the new department. Hence, the legal authority for the administration of the Morrill Act of 1862 and its several amendments and supplements appropriating funds for instruction in the land-grant colleges rests with the Secretary of Health, Education, and Welfare. Apart from the certification of grants, the Secretary exercises this authority through the U.S. Commissioner of Education and the Assistant Commissioner for Higher Education.

Act of July 2, 1862 (First Morrill Act)

[Providing for the Endowment, Support and Maintenance of Colleges of
Agriculture and Mechanic Arts]

[AN ACT Donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts]

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there be granted to the several States, for the purposes hereinafter mentioned, an amount of public land, to be apportioned to each State a quantity equal to thirty thousand acres for each Senator and Representative in Congress to which the States are respectively entitled by the apportionment under the census of 1860; *Provided,* That no mineral lands shall be selected or purchased under the provisions of this act.

Sec. 2. And be it further enacted, That the land aforesaid, after being surveyed, shall be apportioned to the several States in sections or subdivisions of sections, not less than one-quarter of a section; and wherever there are public lands in a State, subject to sale at private entry at one dollar and twenty-five cents per acre, the quantity to which said State shall be entitled shall be selected from such lands, within the limits of such State; and the Secretary of the Interior is hereby directed to issue to each of the States, in which there is not the quantity of public lands subject to sale at private entry, at one dollar and twenty-five cents per acre, to which said State may be entitled under the provisions of this act, land scrip to the amount in acres for the deficiency of its distributive share; and scrip to be sold by said States, and the proceeds thereof applied to the uses and purposes prescribed in this act, and for no other purpose whatsoever; *Provided,* That in no case shall any State to which land scrip may thus be issued be allowed to locate the same within the limits of any other State, or of any territory of the United States; but their assignees may thus locate said land scrip upon any of the unappropriated lands of the United States subject to sale at private entry, at one dollar and twenty-five cents, or less, an acre: *And provided further,* That not more than one million acres shall be located by such assignees in any one of the States: *And provided further,* That no such location shall be made before one year from the passage of this act.

Sec. 3. And be it further enacted, That all the expenses of management, superintendence, and taxes from date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of moneys which may be received therefrom, shall be paid by the States to which they may belong, out of the treasury of said States, so that the entire proceeds of the sale of said lands shall be applied, without any diminution whatever, to the purposes hereinafter mentioned.

Sec. 4 (as amended April 13, 1920, 44 Stat. L. 247). That all moneys derived from the sale of lands aforesaid by the States to which lands are apportioned and from the sales of land scrip hereinbefore provided for shall be invested in bonds of the United States or of the States or some other safe bonds; or the same may be invested by the States having no State bonds in any manner after the legislatures of such States shall have assented thereto and engaged that such funds shall yield a fair and reasonable rate of return, to be fixed by the State legislatures, and that the principal thereof shall forever remain unimpaired; *Provided,* That the moneys so invested or loaned shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section 5 of this act), and the interest of which shall be inviolably appropriated, by each State which may take and claim the benefit of this act, to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

Sec. 5. And be it further enacted, That the grant of land and land scrip hereby authorized shall be made on the following conditions, to which, as

well as to the provisions hereinbefore contained, the previous assent of the several States shall be signified by legislative acts:

First. If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest thereon, shall, by any action or contingency, be diminished or lost, it shall be replaced by the State to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in the fourth section of this act, except that a sum, not exceeding 10 per centum upon the amount received by any State under the provisions of this act, may be expended for the purchase of lands for sites or experimental farms, whenever authorized by the respective legislatures of said States;

Second. No portion of said fund, nor the interest thereon, shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings;

Third. Any State which may take and claim the benefit of the provisions of this act shall provide, within five years, at least not less than one college, as prescribed in the fourth section of this act, or the grant to such State shall cease; and said State shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchasers under the State shall be valid;

Fourth. An annual report shall be made regarding the progress of each college, recording any improvements and experiments made, with their costs and results, and such other matters, including State industrial and economical statistics, as may be supposed useful; one copy of which shall be transmitted by mail free, by each, to all the other colleges which may be endowed under the provisions of this act, and also one copy to the Secretary of the Interior;

Fifth. When lands shall be selected from those which have been raised to double the minimum price in consequence of railroad grants, they shall be computed to the States at the maximum price, and the number of acres proportionally diminished;

Sixth. No State, while in a condition of rebellion or insurrection against the Government of the United States, shall be entitled to the benefit of this act;

Seventh. No State shall be entitled to the benefits of this act unless it shall express its acceptance thereof by its legislature within two years from the date of its approval by the President.

SEC. 6. *And be it further enacted,* That land scrip issued under the provisions of this act shall not be subject to location until after the first day of January, 1863.

SEC. 7. *And be it further enacted,* That land officers shall receive the same fees for locating land scrip issued under the provisions of this act as is now allowed for the location of military bounty land warrants under existing laws: *Provided,* That maximum compensation shall not be thereby increased.

SEC. 8. *And be it further enacted,* That the governors of the several States to which scrip shall be issued under this act shall be required to report annually to Congress all sales made of such scrip until the whole shall be disposed of, the amount received for the same, and what appropriation has been made of the proceeds.

Approved, July 2, 1862. (13 Stat. 507.)

Act of 1866 Amending First Morrill Act

[Providing for the Extension of Time Within Which States May Accept Provisions of First Morrill Act]

AN ACT To amend the fifth section of an act entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2, 1862, so as to extend the time within which the provisions of said act shall be accepted and such colleges established.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time in which the several States may comply with the provisions of the act of July second, eighteen hundred and sixty-two, entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," is hereby extended so that the acceptance of the benefits of the said act may be expressed within three years from the passage of this act, and the colleges required by the said act may be provided within five years from the date of the filing of such acceptance with the Commissioner of the General Land Office: *Provided,* That when any Territory shall become a State and be admitted into the Union such new States shall be entitled to the benefits of the said act of July second, eighteen hundred and sixty-two, by expressing the acceptance therein required within three years from the date of its admission into the Union, and providing the college or colleges within five years after such acceptance, as prescribed in this act: *Provided further,* That any State which has heretofore expressed its acceptance of the act herein referred to shall have the period of five years within which to provide at least one college as described in the fourth section of said act, after the time for providing said college, according to the act of July second, eighteen hundred and sixty-two, shall have expired.

Approved, July 23, 1866. (14 Stat. 208.)

Digest of Rulings and Opinions on Act of July 2, 1862

Accounting and reports.—"Accounts should be kept by the 'proper officers' of all the States having grants 'showing all the facts relating to the sale and leasing of lands granted for agricultural colleges, and the receipt, investment, and disposition of the proceeds arising from such sales and leases; and such officers should, when called on to do so, timely report such facts to the Secretary of the Interior or permit an ascertainment of such facts through inspection and examination of their records by some officer of the Government or other person designated by the Secretary of the Interior for that purpose."

The representatives of the Office of Education or some other officer designated by the Secretary of the Interior should, through reports from the officers of each of the States, or otherwise, from time to time as the occasion may require, ascertain all facts and conditions tending to show the manner in which the funds arising from the lands granted for agricultural colleges are being handled, invested, and disposed of; or furnish a full statement thereof to the Secretary of the Interior.—*Rulings approved by the Secretary of the Interior, October 11, 1923.*

In order that the Department of the Interior through the Commissioner of Education may be able to ascertain whether or not the States are complying with the provisions of the act of 1802, the institutions receiving the benefit of that act are required to submit a statement of the disbursements of the annual income received by them under said act.—*Ruling of Secretary of the Interior, July 11, 1930.*

Division of fund.—"A State may by appropriate legislation divide the original 1802 land-grant fund into two parts and provide that the interest of each part shall be available to a particular college and vest in such college, as an agency of the State, the duty of investing its particular part of the funds in bonds of the United States or of the State or some other safe bonds, the determination of the safety of which is to rest with the college."—*Ruling of Secretary of the Interior, September 13, 1935.*

Income and its use.—"The income" from the 1802 land-grant endowment "is not a fiscal year or limited fund. It must remain forever at the disposal of the institution entitled to the benefit of the fund. Nor may it ever be covered into the general State funds or used for general State purposes. There can be no default to the State by the institution."

"Proceeds from rentals, sale of timber rights, water rights, and other privileges, and interest on deferred payments of purchase money partake of the same character as the income from invested funds, and must be devoted, without diminution, to the purposes" of the act.

"The only restriction placed by the act of Congress of July 2, 1802, upon the expenditures of the income derived from the sale of public lands granted for the endowment of colleges of agriculture and the mechanic arts and the investment of the purchase money is that no part of such income may be expended for the purchase, erection, preservation, or repair of any building or buildings, nor may this income be used for the purchase of land."—*Rulings of Secretary of the Interior, May 23, 1910.*

Instruction for women students.—Instruction in the industries for women is included in instruction in agriculture and mechanic arts.—*Ruling of Secretary of the Interior, May 23, 1916.*

Military tactics.—An agricultural college which offers a proper, substantial course in military tactics complies sufficiently with the requirements as to military tactics in the act of July 2, 1802, and the other acts, even though the students at that institution are not compelled to take that course.—*Opinion of Attorney General, June 30, 1930.*

Default of act of 1862.—The act of 1860 (20 Stat. 417) with the amendment of 1907 (34 Stat. 1291) is supplementary to the act of 1802; therefore any default of the provisions of the act of 1802 renders the State liable for non-certification for the annual installments of the funds appropriated by the acts of 1860 and 1907.—*Ruling of Secretary of the Interior, May 23, 1916.*

Act of August 30, 1890 (Second Morrill Act)

[Providing for the Further Endowment and Support of Colleges of Agriculture and Mechanic Arts]

[AN ACT To apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of an act of Congress approved July second, eighteen hundred and sixty-two]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be, and hereby is, annually appropriated, out of any money in the Treasury not otherwise appropriated, arising from the sale of public lands, to be paid as hereinafter provided, to each State and Territory for the more complete endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts now established, or which may be hereafter established, in accordance with an act of Congress approved July second, eighteen hundred and sixty-two, the sum of fifteen thousand dollars for the year ending June thirtieth, eighteen hundred and ninety, and an annual increase of the amount of such appropriation hereafter for ten years by an additional sum of one thousand dollars over the preceding year, and the annual amount of be paid thereafter to each State and Territory shall be twenty-five thousand dollars to be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematical, physical, natural, and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction: *Provided,* That no money shall be paid out under this act to any State or Territory for the support and maintenance of a college where a distinction of race or color is made in the admission of students, but the establishment and maintenance of such colleges separately for white and colored students shall be held to be a compliance with the provisions of this act if the funds received in such State or Territory be equitably divided as hereinafter set forth: *Provided,* That in any State in which there has been one college established in pursuance of the act of July second, eighteen hundred and sixty-two, and also in which an educational institution of like character has been established, or may be hereafter established, and is now aided by such State from its own revenue, for the education of colored students in agriculture and the mechanic arts, however named or styled, or whether or not it has received money heretofore under the act to which this act is an amendment, the legislature of such a State may propose and report to the Secretary of the Interior a just and equitable division of the fund to be received under this act between one college for white students and one institution for colored students established as aforesaid, which shall be divided into two parts and paid accordingly, and thereupon such institution for colored students shall be entitled to the benefits of this act and subject to its provisions, as much as it would have been if it had been included under the act of eighteen hundred and sixty-two, and the fulfillment of the foregoing provisions shall be taken as a compliance with the provision in reference to separate colleges for white and colored students.

SEC. 2. That the sums hereby appropriated to the States and Territories for the further endowment and support of colleges shall be annually paid on or before the thirty-first day of July of each year, by the Secretary of the Treasury, upon the warrant of the Secretary of the Interior, out of the Treasury of the United States, to the State or Territorial treasurer, or to such officer as shall be designated by the laws of such State or Territory to receive the same, who shall, upon the order of the trustees of the college, or the institution for colored students, immediately pay over said sums to the treasurers of the respective colleges or other institutions entitled to receive the same, and such treasurer¹ shall be required to report to the Secretary of Agriculture and to the Secretary of the Interior, on or before the first day of September of each year, a detailed statement of the amount so received and of its disbursement. The grants of moneys authorized by this act are made subject to the legislative assent of the several States and Territories to the purpose of said grants: *Provided*, That payments of such installments of the appropriation herein made as shall become due to any State before the adjournment of the regular session of legislative meeting next after the passage of this act shall be made upon the assent of the governor thereof, duly certified to the Secretary of the Treasury.

SEC. 3. That if any portion of the moneys received by the designated officer of the State or Territory for the further and more complete endowment, support, and maintenance of colleges, or of institutions for colored students, as provided in this act, shall, by any action or contingency, be diminished or lost, or be misapplied, it shall be replaced by the State or Territory to which it belongs, and until so replaced no subsequent appropriation shall be apportioned or paid to such State or Territory; and no portion of said moneys shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings. An annual report by the president of each of said colleges shall be made to the Secretary of Agriculture, as well as to the Secretary of the Interior, regarding the condition and progress of each college, including statistical information in relation to its receipts and expenditures, its library, the number of its students and professors, and also as to any improvements and experiments made under the direction of any experiment stations attached to said colleges, with their costs and results, and such other industrial and economical statistics as may be regarded as useful, one copy of which shall be transmitted by mail free to all other colleges further endowed under this act.

SEC. 4. That on or before the first day of July in each year, after the passage of this act, the Secretary of the Interior shall ascertain and certify to the Secretary of the Treasury as to each State and Territory whether it is entitled to receive its share of the annual appropriation for colleges, or of institutions for colored students, under this act, and the amount which thereupon each is entitled, respectively, to receive. If the Secretary of the Interior shall withhold a certificate from any State or Territory of its appropriation, the facts and reasons therefor shall be reported to the President, and the amount involved shall be kept separate in the Treasury until the close of the next Congress, in order that the State or Territory may, if it should so desire, appeal to Congress from the determination of the Secretary of the Interior. If the next Congress shall not direct such sum to be paid, it shall be covered into the Treasury. And the Secretary of the Interior is hereby charged with the proper administration of this law.

¹ Treasurers of the respective colleges, not State treasurers. (Ruling Oct. 19, 1917.)

SEC. 5. That the Secretary of the Interior shall annually report to Congress the disbursements which have been made in all the States and Territories, and also whether the appropriation of any State or Territory has been withheld, and if so, the reasons therefor.

SEC. 6. Congress may at any time amend, suspend, or repeal any or all of the provisions of this act.

Approved, August 30, 1890. (26 Stat. 417.)

Nelson Amendment of March 4, 1907

[Providing for the More Complete Endowment and Maintenance of Land-Grant Colleges]

[Extract from an act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and eight]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

That there shall be, and hereby is, annually appropriated, out of any money in the Treasury not otherwise appropriated, to be paid as hereinafter provided, to each State and Territory for the more complete endowment and maintenance of agricultural colleges now established, or which may hereafter be established, in accordance with the act of Congress approved July second, eighteen hundred and sixty-two, and the act of Congress approved August thirtieth, eighteen hundred and ninety, the sum of five thousand dollars, in addition to the sums named in said act for the fiscal year ending June thirtieth, nineteen hundred and eight, and an annual increase of the amount of such appropriation thereafter for four years by an additional sum of five thousand dollars over the preceding year, and the annual sum to be paid thereafter to each State and Territory shall be fifty thousand dollars, to be applied only for the purposes of the agricultural colleges as defined and limited in the act of Congress approved July second, eighteen hundred and sixty-two, and the act of Congress approved August thirtieth, eighteen hundred and ninety.

That the sum hereby appropriated to the States and Territories for the further endowment and support of the colleges shall be paid by, to, and in the manner prescribed by the act of Congress approved August thirtieth, eighteen hundred and ninety, entitled "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts established under the provisions of the act of Congress approved July second, eighteen hundred and sixty-two," and the expenditure of the said money shall be governed in all respects by the provisions of the said act of Congress approved July second, eighteen hundred and sixty-two, and the said act of Congress approved August thirtieth, eighteen hundred and ninety: *Provided*, That said colleges may use a portion of this money for providing courses for the special preparation of instructors for teaching the elements of agriculture and the mechanic arts.

Approved, March 4, 1907. (34 Stat. L. 1281.)

ATTACHMENT B
United States Public Land Grants
Agricultural Colleges

**UNITED STATES PUBLIC LAND GRANTS
AGRICULTURAL COLLEGES***

Alabama	383,785	Maine	210,000	Oklahoma	1,050,000
Alaska	112,084	Maryland	210,000	Oregon	136,165
Arizona	849,197	Massachusetts	360,000	Pennsylvania	780,000
Arkansas	196,080	Michigan	286,080	Rhode Island	120,000
California	196,080	Minnesota	212,160	South Carolina	180,000
Colorado	138,040	Mississippi	348,240	South Dakota	366,080
Connecticut	180,000	Missouri	376,080	Tennessee	300,000
Delaware	90,000	Montana	388,721	Texas	180,000
Florida	182,160	Nebraska	136,080	Utah	556,141
Georgia	270,000	Nevada	136,080	Vermont	150,000
Idaho	386,686	New Hampshire	150,000	Virginia	300,000
Illinois	526,080	New Jersey	210,000	Washington	336,080
Indiana	436,080	New Mexico	1,346,540	West Virginia	150,000
Iowa	286,080	New York	990,000	Wisconsin	332,160
Kansas	151,270	North Carolina	270,000	Wyoming	136,800
Kentucky	330,000	North Dakota	336,080		
Louisiana	256,292	Ohio	699,120		

* The figures are approximate. They were obtained from the Bureau of Land Management, Public Affairs, Washington, D.C. (Public Land Statistics, Table 4 "Other Schools," U.S. Department of Interior, 1985).

We are unable to account for the fact that the amounts of land received by some western states are significantly disproportionate to entitlements allotted under the Morrill Act formula.

Prepared by the Legislative Research Agency, December 1992 (93.033).


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Anchorage Daily News

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High court backs land grant to UA**NOT AN APPROPRIATION: Lower court must still rule if law is illegal dedicated fund.**

By DAN JOLING

The Associated Press

(Published: January 10, 2004)

The Legislature can grant the University of Alaska a 250,000-acre land endowment, the state Supreme Court ruled Friday.

Justices reversed a Superior Court decision that disallowed the grant, which was approved in a law nearly four years ago. The Superior Court had ruled the land was not an "appropriation."

However, the high court declined to make a ruling on whether the law granting the land was a "dedicated fund" and sent that issue back to the Superior Court.

Under the Alaska Constitution, with some exceptions, "the proceeds of any state tax or license shall not be dedicated to any special purpose."

The decision mostly resolves a bitter fight between a Republican-controlled Legislature and former Gov. Tony Knowles, a Democrat.

The Legislature in 2000 passed the bill, sponsored by then-Sen. Robin Taylor, R-Wrangell, over the objections of Knowles and Alaska environmentalists.

Taylor pushed the bill with the argument that development of the land would give the University of Alaska a stable source of future income. The university at the time had 112,000 acres in its land endowment, the second smallest in the nation among land-grant universities.

Knowles had vetoed similar bills twice before and said they were an inefficient and unsuccessful way to secure reliable funding for the university. Knowles said the bill would complicate state management, contribute to significant land-use conflicts and lead to years of litigation. He followed through by vetoing Taylor's bill.

It took two tries, but lawmakers mustered 40 votes for a two-thirds majority to override the veto. The late Rep. Ramona Barnes, R-Anchorage, who had been home suffering from a bout of asthma, made it to the floor to provide the crucial 40th vote.

Knowles, however, claimed victory. He immediately released an attorney general's opinion that said the bill was an appropriation, which requires a three-fourths vote by the Legislature to override.

The state Alaska Legislative Council, controlled by a Republican majority, sued.

Taylor, now a special assistant in the state Department of Transportation, said he was confident of the outcome.

"We have believed all along we would prevail," he said.

Increasing the land grant for the university has been a 40-year process that is finally coming to

fruition, he said.

Gov. Frank Murkowski, a former U.S. senator, worked on legislation that would have granted 500,000 federal acres to the university if the state matched it with the quarter-million acre endowment, Taylor said.

"We have now fulfilled our portion of that opportunity," he said.

Murkowski said he was pleased with the decision.

"I've asked the commissioner of Natural Resources to move forward with the process to provide additional land to the University of Alaska," he said. "DNR will work with the university in the months ahead on a process and schedule to implement the land conveyance."

UA spokesman Bob Miller said the university is not looking for immediate riches from the decision. He said the land conveyance process could take as long as 10 years.

"At best it will be 20 to 25 years before modest financial impacts will be generated," Miller said.

Environmental groups, which filed friend-of-the-court briefs in the case, hold out hope that the measure could be stopped by the part of the decision remanded to Superior Court. Randy Virgin, executive director of the Alaska Center for the Environment, said it still must be decided whether the law violates the constitutional prohibition on dedicating funds for one part of state government.

"The Legislature prevailed in round one, but they still have to deal with the Constitution," Virgin said.

Taylor, a lawyer, questioned whether Virgin's group has any standing in the case if the Legislature and the governor agree to settle the matter.

He said if the Supreme Court has determined that the land grant is not an appropriation, it's not likely to determine that it's dedicated revenue.

"I think that's a specious argument," Taylor said.

Virgin said the law was billed as a way of helping the university but was a thinly veiled attempt by Taylor to liquidate public lands and get them into private hands.

He said the university would choose land that can be developed at the expense of environmental concerns and that it had a poor record at land management, citing a logging project near Yakutat.

UA's Miller took issue with that opinion.

"I don't think they understand diddly squat about land management," Miller said.

TO READ the Alaska Supreme Court's decision, visit

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Talking Points on CSHB 333

University and Education Land Grant Endowment Bill

This Bill endows the University of Alaska and the Public School Trust Fund with land grants.

Each will receive a grant of an undivided 2% interest in all state domain land. See. Sec 14.40.507

- 1 Rights and management will be retained by DNR.
- 2 DNR will not owe a heightened fiduciary duty to either the University or the Education Trust Fund.
- 3 Each shall receive receipts annually from their respective interests.
- 4 After deducting contributions to the Permanent Fund; and deducting administrative/ service fees, etc.

Receipts are limited to new receipts accruing to each's interest after the effective date of the act.

This Bill rescinds Senate Bill 7 (the 250 to 260,000 acre) land grant to the University

Question asked "can the existing Public School Trust Fund be utilized instead of creating an Education Trust fund?

Answer seems to be: YES.

Conceptual Amendment: *replace in bill where applicable language creating an Education Trust Fund and Board with the existing Public School Trust Fund and Public School Trust Fund Advisory Board (As 37.14.110-170)*

Questioned asked: Does the transfer of an interest in state lands and mineral rights to these trusts violate Section 6(i) of the statehood compact?

University indicated: NO

1964 Attorney General Opinion No. 7 indicates: NO.

“The use of the words “hereby granted” signifies a present grant of lands to be thereafter identified by selection. By virtue of that grant the state became at once vested with the right of property in selected lands. It cannot be divested of such right. 1964 Op. Attorney General No. 7.”

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Three changes from last Draft are included in version \C

