

**CONF. OF
ALASKANS
RES.**

3/15/04

(FILE 1 OF 2)

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Governor's Statement—Senate Finance

March 15, 2004

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- In my January State of the State message, I noted that Alaskans when confronted with challenges have shown the heartwarming ability and firm resolve to balance individual and shared needs.
 - Our state faces one of those challenging situations today.
 - Now that we have the recommendations from the Conference of Alaskans that address the state's fiscal gap, it is time for the Legislature to act on them.
 - Your responsiveness to date has been noteworthy. Thank you for agreeing to take up the recommendations of the Conference of Alaskans beginning today and working to resolve the issue by the end of the month.
 - We all agree that the state needs a resolution this session of Alaska's long-term fiscal problem.
 - It is not responsible to pass on to a future Legislature or Governor the fiscal gap with which I was confronted on assuming office in December 2002.
 - The fiscal solution we need must cover the period between now and the time when revenue from the gas pipeline and other natural resource development starts to fill our treasury
 - - In short, Alaska needs a fiscal bridge.
 - With regard to the distance which the financial bridge will have to span - I can report that we are continuing to make great progress on the gasline -- which is the major pier on the other shore.

Governor's Statement—Senate Finance

March 15, 2004

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- First on the gasline: We have met, and will be meeting, with:
 - The producers who have lease rights to the gas:
 - TransCanada which has pipeline rights in Canada, and
 - MidAmerican which is working on a plan to construct the line in Alaska.
 - This administration intends to have firm commitments if at all possible to get the line committed before the end of the year. These proposals will be referred to you for approval. Obviously they will help solve our budget shortfall.
 - A prompt fiscal solution is necessary so that we are able to avoid the harms which would otherwise come to our citizens from the loss of public services between now and when we receive revenues from the gasline and other natural resource development.
 - We have done well in FY04 due to the high price of oil and by keeping our commitment to follow our plan to reduce government spending below the previous year and by limiting the CBR draw to under \$400 million.
 - We have been blessed by an increase in oil prices far beyond our expectations.

Governor's Statement—Senate Finance

March 15, 2004

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- But we cannot bet our children's future education, our families' public safety, or our social obligations on the continued high price of oil. It is our obligation to act now.
 - Just as we can't bank on continued high oil prices, we cannot continue to count on the CBR to bail Alaska out every year.
 - What happens if the price of oil drops significantly over the next couple of years? This would result in a major draw on the CBR, which I will not allow to go below \$1 billion. This minimum balance is necessary to provide a cushion against dramatic disruptions in public services.
 - The CBR cannot be considered a permanent crutch.
 - On the revenue side: We must look for new revenue. On February 2nd we provided you a list of \$212 million in potential new revenues of which we need \$150 million for FY05.
 - We have been discussing a \$1 per pack increase in the tobacco tax, which would raise \$36 million.
 - I can't help reflect on the scourge of alcohol in our state. The cost of alcohol treatment is \$463 million –more than half of what we spend on education.
 - State revenue raised from alcohol tax is only \$25 million.
 - We average the highest alcohol consumption in the nation – an average of 500 drinks per year for every man, woman, and child.
 - We must continue to increase state government efficiency and reduce waste. While we have cut spending by \$245 million, our

Governor's Statement—Senate Finance

March 15, 2004

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- missions and measures process continues to allow us to identify lower priorities and less effective programs that can be eliminated.
- We received very good direction from the Conference of Alaskans:
 - Pass POMV, which will limit to 5% the amount of money which the Legislature can use from the Permanent Fund earnings
 - Maintain a prudent level in the CBR
 - Protect the dividend
 - Use some of the Permanent Fund earnings to maintain essential public services.
 - Consider broad-based taxation
 - I do not intend today to propose a specific package for the Legislature to pass. You will want first to consider the results of the hearings like those you plan for this week before we reach that point.
 - But as you put the fiscal package together, please be guided by the following criteria: Will it raise the revenue needed to meet the state's fiscal needs during the bridging period?
 - Even though it might fall short of any individual's or group's maximum desires, is it better than the adverse impacts of the loss of public services if there is no resolution?
 - Will it have bipartisan support both in the Legislature and with the public?

Governor's Statement—Senate Finance

March 15, 2004

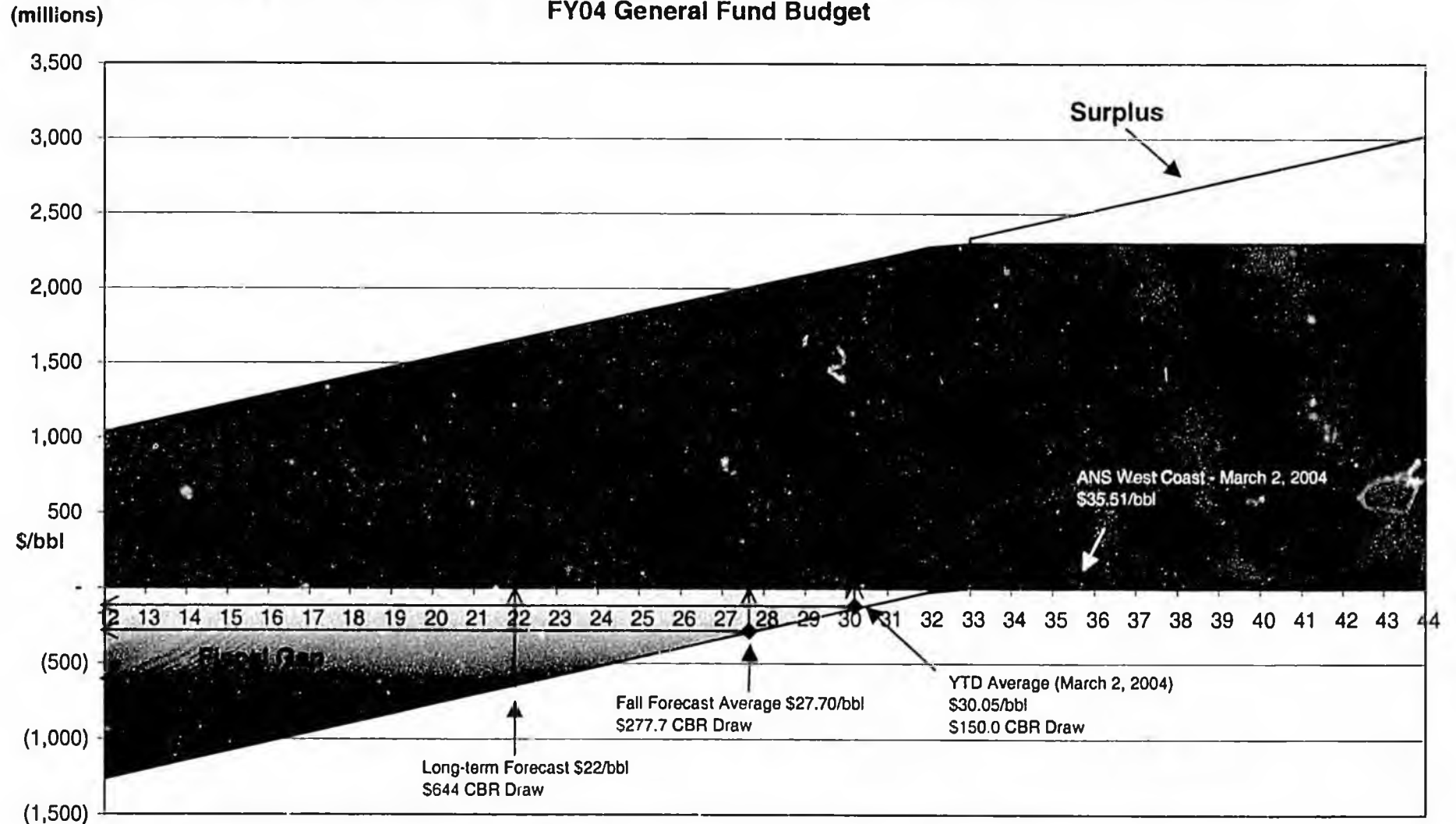
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- Is it consistent with the intent of the resolutions adopted by the Conference of Alaskans?
 - Is it basically fair to all Alaskans?
 - Will it unreasonably impact Alaskans' current, reasonable expectation for the amount of a Permanent Fund dividend?
 - Will the Permanent Fund and the dividend be protected?
 - How will it affect Alaska's economy?
 - Is it good for Alaska? Not only today, but in the future?
 - Does it provide Alaskans the opportunity to have their say, to vote on the matter?
- I know that members of the Legislature have a number of good ideas on how best to proceed. I look forward to working with you reviewing the package that you develop to build a consensus which meets these criteria.
 - Each step in this year-long process to secure Alaska's future is of critical importance. The first step was the Conference of Alaskans in Fairbanks last month.
 - The 55 men and women from across the state did well. Now it is the Legislature's turn to get our state on sound fiscal footing.
 - In his simple life philosophy, Yogi Berra explains that tragedy lies in paralysis – not in choice.
 - Doing nothing is not a solution!

Governor's Statement—Senate Finance

March 15, 2004

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- I will now turn this over to Cheryl Frasca and others from our administration who will provide the context explaining why the state needs to resolve its fiscal gap this year.
 - I look forward to working with you to meet the expectation of Alaska that we resolve the issue and bridge the gap this year.

**Projected Fiscal Gap/Surplus at Various Year-End Average ANS Crude Prices Given \$2.3 Billion
FY04 General Fund Budget**



*Includes revenues not directly affected by fluctuations in oil prices
 *Assumes DOR Fall 2004 Production Projection of .996 million barrels per day

Distributed by Senator Wilken 3/15/04



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

MEMORANDUM

TO: Senate Colleagues

FROM: Gary Wilken, Co-chair
Senate Finance Committee

DATE: March 12, 2004

RE: Week of March 15

On Monday, March 15, 2004 the Senate Finance Committee begins work on legislation encompassing recommendations forwarded by the 55-member Conference of Alaskans that met in Fairbanks last month. I invite you to join the Senate Finance Committee to listen to the discussion on legislation to implement an appropriation limit, to constitutionally guarantee the dividend, and to allow for some limited use of surplus earnings of the permanent fund. The committee will also consider proposals to switch to a percent of market value management approach for the permanent fund. (Please see the attached schedule.)

On Wednesday, March 17 you are welcomed to offer comments or a presentation on the Conference of Alaskans four resolutions submitted to the legislature. Please contact my office at 465-3709 and let me know of your interest. Based on the number of senators who wish to address the Senate Finance Committee, I will schedule the various talks.

I hope that your office schedule will allow you to join the Senate Finance Committee next week. The committee room will be arranged to accommodate you and other senators. I look forward to discussing the issues brought to the legislature by the Conference of Alaskans in the hope that we can help lay a good foundation for a long-term fiscal plan.

See you on Monday.

A handwritten signature in cursive script, appearing to read "Gary Wilken".

State Senate

Conference of Alaskans Resolutions

Time	Mon., March 15	Tues., March 16	Wed., March 17	Thurs., March 18	Fri., March 19	Sat., March 20
Morning 9:00 – 11:00	State's Fiscal Picture – Looking Forward Presentation by Ms. Cheryl Frsaca Conference of Alaskans Presentation by Mr. Mike Burns Comments by Sens. Stevens/Elton	SJR 19 – Const. Amend: Permanent Fund Income (By Sen. Lincoln) SJR 32 – Const. Amend: Permanent Fund Income for Dividends (By Sen. Elton)	Additional Legislative Proposals Presentations offered by Senators	Committee Discussion/ Action (If Necessary)	Committee Discussion/Action (If Necessary)	Committee Discussion/Action (If Necessary)
Afternoon 1:50 – 4:00	SJR 18 – Const. Amend: PF Appropriation/Inflation Proofing (By Mr. Bob Storer, Director, Perm Fund Corporation)	SJR 24 – Const. Amend: Guarantee Permanent Fund Dividend (By Sen. Ogan) CBR Presentation by Mr. William Corbus, DOR SJR 3 – Const. AM: Appropriation/Spending Limit (By Sen. Dyson)	Statewide Public Testimony	Committee Discussion/Action (If Necessary)		
Evening 6:00 – 9:00		Continuation of the afternoon hearing (If Necessary)	Statewide Public Testimony			



OFFICIAL BUSINESS

Alaska State Legislature

Senate

STATE CAPITOL ROOM 213
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX 465-2832
EMAIL: senate_secretary@legis.state.ak.us

February 18, 2004

MEMORANDUM

TO: Senator Green, Cochair
Senator Wilken, Cochair
Senate Finance Committee

FROM: Kirsten Waid *KW*
Secretary of the Senate

SUBJECT: Resolutions and Letter from the Conference of Alaskans

President Therriault has referred the following to your committee for review:

Letter dated February 17 from Michael John Burns, Chair of the Conference of Alaskans and Resolutions adopted by the Conference of Alaskans February 14, 2004

KW:lc
attachmen.s



FEB 17 2004

FRANK H. MURKOWSKI
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 17, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear President Therriault and Speaker Kott:

Enclosed for your consideration are copies of the four resolutions as presented to me, which were passed by the 55 delegates to the Conference of Alaskans, held February 10-12 in Fairbanks. I am also forwarding a letter adopted by the delegates.

In my view, the conference was a success and provided for broad public involvement. The delegates substantively debated before a statewide audience the four issues I had presented them. The conference served to elevate these crucial questions for the public by the tone and content of their debate. The conference should be seen by us all as an indication from the people to get us to resolution of our fiscal situation this year. I truly appreciate the sacrifice of time and effort made by each of the participants in the conference.

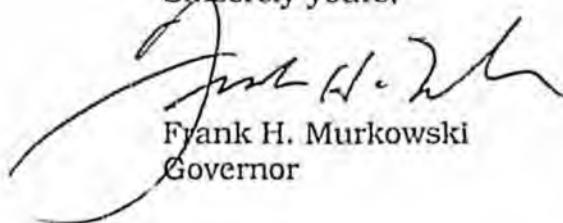
As you know, I asked the conference to provide responses to four questions related to the percent of market value approach to management of the Permanent Fund, use of a portion of Permanent Fund income to pay for essential public services, the dividend, and maintaining a minimum balance in the Constitutional Budget Reserve (CBR).

On the first and fourth questions, the conference was clear that it prefers the percent of market value approach to current management of the fund, and that a prudent balance should be maintained in the CBR.

On the second and third questions, the majority of the members of the conference agreed that a portion of the income should be used to support essential public services, and that the dividend should be protected in the Constitution. However, the specific details as to how those solutions should be crafted were appropriately left to the Legislature and the administration to work out.

I look forward to working with you and all members of the Legislature on those details, and crafting legislative approaches acceptable to the people of Alaska. Thank you for your cooperation.

Sincerely yours,



Frank H. Murkowski
Governor

MICHAEL JOHN BURNS

February 17, 2004

The Honorable Governor Frank H. Murkowski
P.O. Box 110001
Juneau, AK 99811

Dear Governor Murkowski,

In your State of the State Address on January 13, 2004, you issued a call for a "Conference of Alaskans" to consider four questions of vital importance to Alaska's fiscal future. In that same address, you named me as chair of that Conference and directed me to place those questions before 55 delegates and to deliver their answers to you.

Those questions were:

- Should the use of income from the Permanent Fund be limited by the Constitution to 5% of the Fund's value, as the Permanent Fund Trustees have proposed?
- Should a portion of the income of the Permanent Fund be used for essential state services, such as education?
- Should the use of the income of the Permanent Fund for dividends and possibly for other purposes be determined annually by the Legislature, as is currently the case? Or should it be dedicated in the Constitution?
- Should the state maintain a minimum balance in the Constitutional Budget Reserve to stabilize state finances against fluctuation in oil production or prices?

I am pleased to report that we convened at the University of Alaska's Fairbanks campus, and I am honored to convey to you herewith the four resolutions adopted by the delegates.

As adopted by the Conference of Alaskans Feb. 12, 2004

A RESOLUTION

Expressing the sense of the conference that the state should maintain a prudent balance in the constitutional budget reserve fund.

BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

WHEREAS the constitutional budget reserve fund was established by an amendment to the Alaska Constitution after a vote of the people held at the 1990 general election;

WHEREAS the constitutional budget reserve not only provides a contingency fund for the operations of the State of Alaska, it is also an integral component of maintaining the state's credit rating and that of the local communities throughout the state; and

WHEREAS the state relies on the balance of the constitutional budget reserve fund to meet its financial needs from time to time.

NOW THEREFORE LET IT BE RESOLVED that the state should maintain a prudent balance in the constitutional budget reserve fund.

As adopted by the Conference of Alaskans Feb. 12, 2004

A RESOLUTION

Expressing the sense of the conference that a part of the income of the Alaska permanent fund should be used for essential state services, such as education, public protection and other necessary public services.

BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

WHEREAS the earnings of the Alaska Permanent Fund exceed the amount of revenue realized by the state from oil and gas taxation and royalties;

WHEREAS the fiscal crisis facing Alaska is a clear and present danger to the adequate provision of necessary public services;

WHEREAS Alaska must not impose self-inflicted harm; and

WHEREAS Alaska's state spending is inadequate to meet current needs for public education, public protection, and many other necessary state services; and

WHEREAS the conference believes that after the dividend is protected a permanent fund dividend distributed, and any remaining funds available for distribution are used for essential government services, additional revenues will be needed to fully fund and protect those essential government services.

NOW THEREFORE LET IT BE RESOLVED: A portion of the distribution of the percent of market value (POMV) of the Alaska Permanent Fund should be used for essential state services, such as education, public protection and other necessary state services. However this recommendation is subject to the following conditions:

- (1) Dividends must be paid out first from the amount available under the percent of market value (POMV) distribution method, as recommended by the board of trustees of the Alaska Permanent Fund, with the remainder available to fund essential state services; and
- (2) The governor and legislature must take action to balance the state's revenues and expenditures, including but not limited to consideration of a personal income tax, other broad-based taxes and other alternative sources of income.

As adopted by the Conference of Alaskans Feb. 12, 2004

A RESOLUTION

Expressing the sense of the conference that distributions from the Alaska Permanent Fund for permanent fund dividends be dedicated in the constitution and that distributions from the Alaska Permanent Fund for other public purposes should be determined annually by the legislature.

BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

WHEREAS the Alaska Permanent Fund was established as an exception to the dedicated fund prohibition so that enough revenue could be segregated and protected to provide a source of money to benefit present and future generations of Alaskans;

WHEREAS dedication of a part of the distributions from the Alaska Permanent Fund provides a predictable and stable means to finance the permanent fund dividend for the foreseeable future;

NOW THEREFORE LET IT BE RESOLVED: The Legislature should pass a resolution proposing a constitutional amendment and present it to the voters for ratification at the 2004 general election that would protect the permanent fund dividend and ensure that the dividend would continue to be paid to state residents.

As adopted by the Conference of Alaskans Feb. 12, 2004

A RESOLUTION

Expressing the sense of the conference whether use of distributions from the Alaska Permanent Fund should be limited to five percent of the market value of the fund (POMV) as the Permanent Fund trustees have proposed.

BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

WHEREAS the Conference of Alaskans believes that a Permanent Fund dividend should be annually distributed to Alaskans;

WHEREAS the percent of market value (POMV) distribution formula would limit the amount that can be annually withdrawn from the Alaska Permanent Fund to no more than five percent of the market value of the fund (POMV);

WHEREAS the board of trustees of the Alaska Permanent Fund believes that the Permanent Fund is not adequately protected for the future;

WHEREAS the percent of market value (POMV) distribution formula is expected to maintain the purchasing power of the entire Permanent Fund by retaining in the fund enough of the increase in value to protect against inflation; and

WHEREAS the percent of market value distribution formula is expected to allow future generations to benefit equally from the Alaska Permanent Fund.

NOW THEREFORE LET IT BE RESOLVED: The Legislature should pass a resolution proposing a constitutional amendment addressing percent of market value (POMV), as recommended by the Permanent Fund trustees and present it to the voters for ratification at the 2004 general election that would change the method of distributing amounts from the Alaska permanent fund so that distributions are limited to five percent of the market value (POMV) of the fund.

STATE'S
FISCAL
PICTURE

The Fiscal Gap & State Spending

Senate Finance Committee

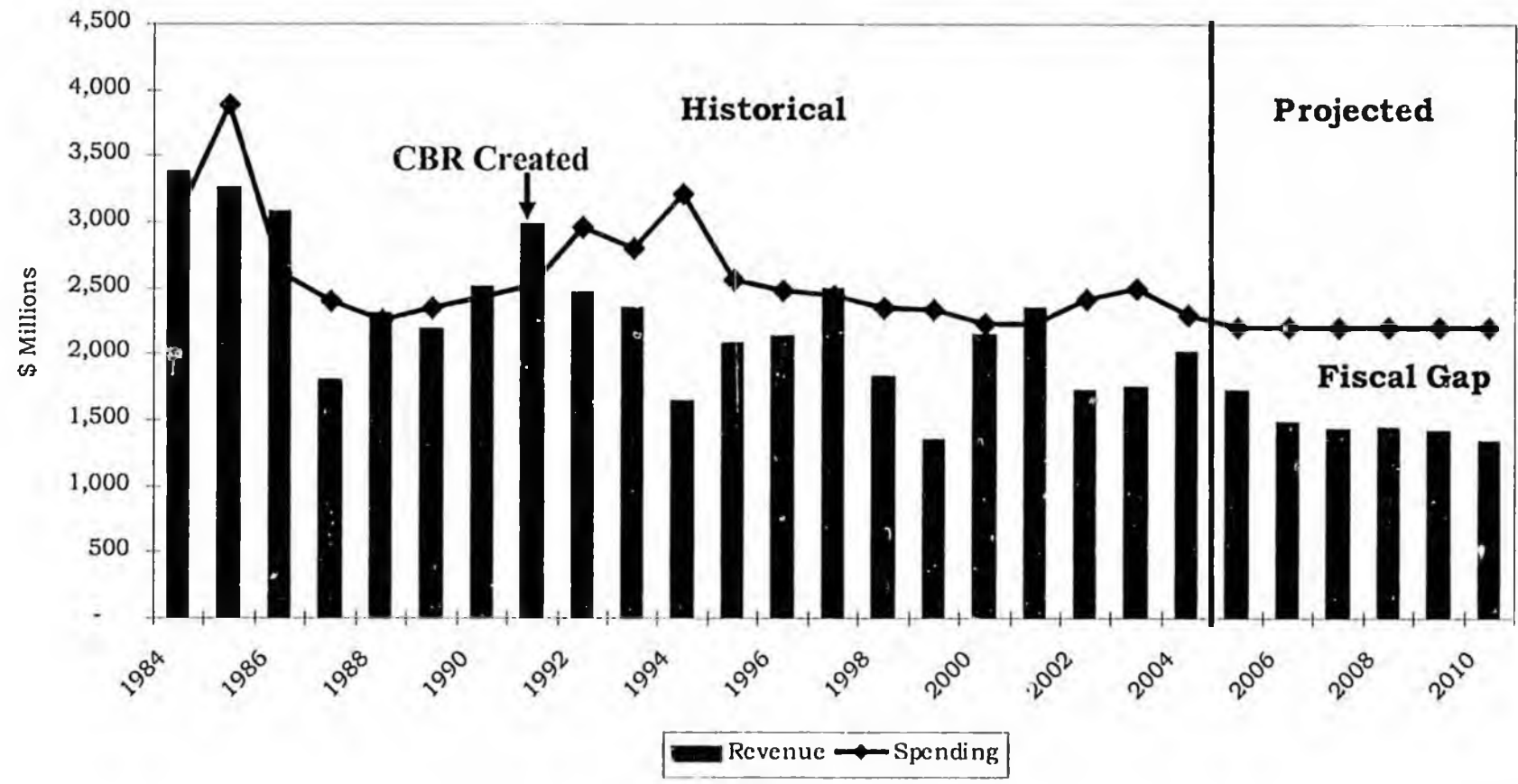
March 15, 2004

Cheryl Frasca, Director

Governor's Office of Management and Budget

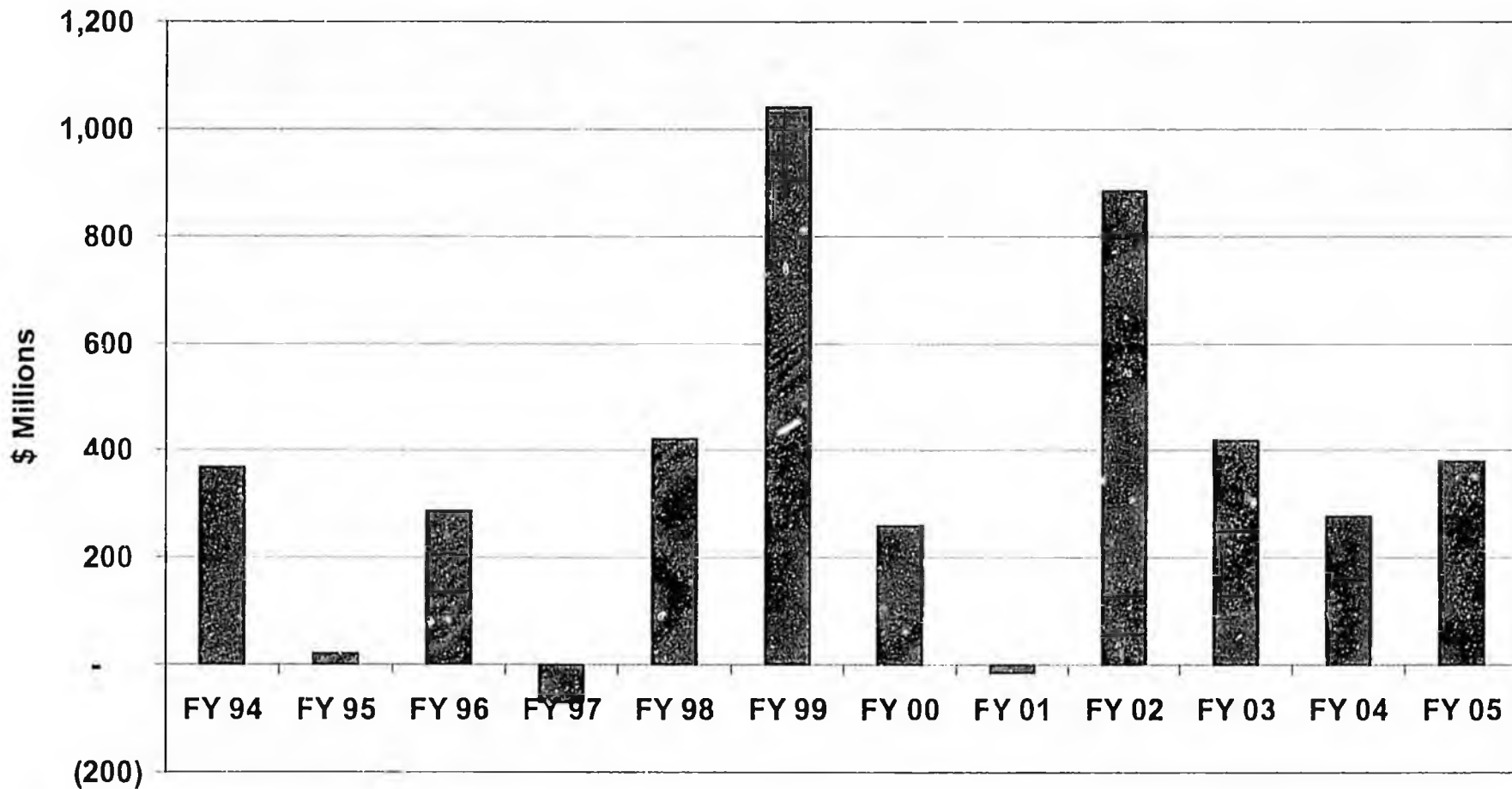
The Gap: Looking Forward

Historical and Projected General Fund Revenues vs. Expenditures: FY 1984 - FY 2010



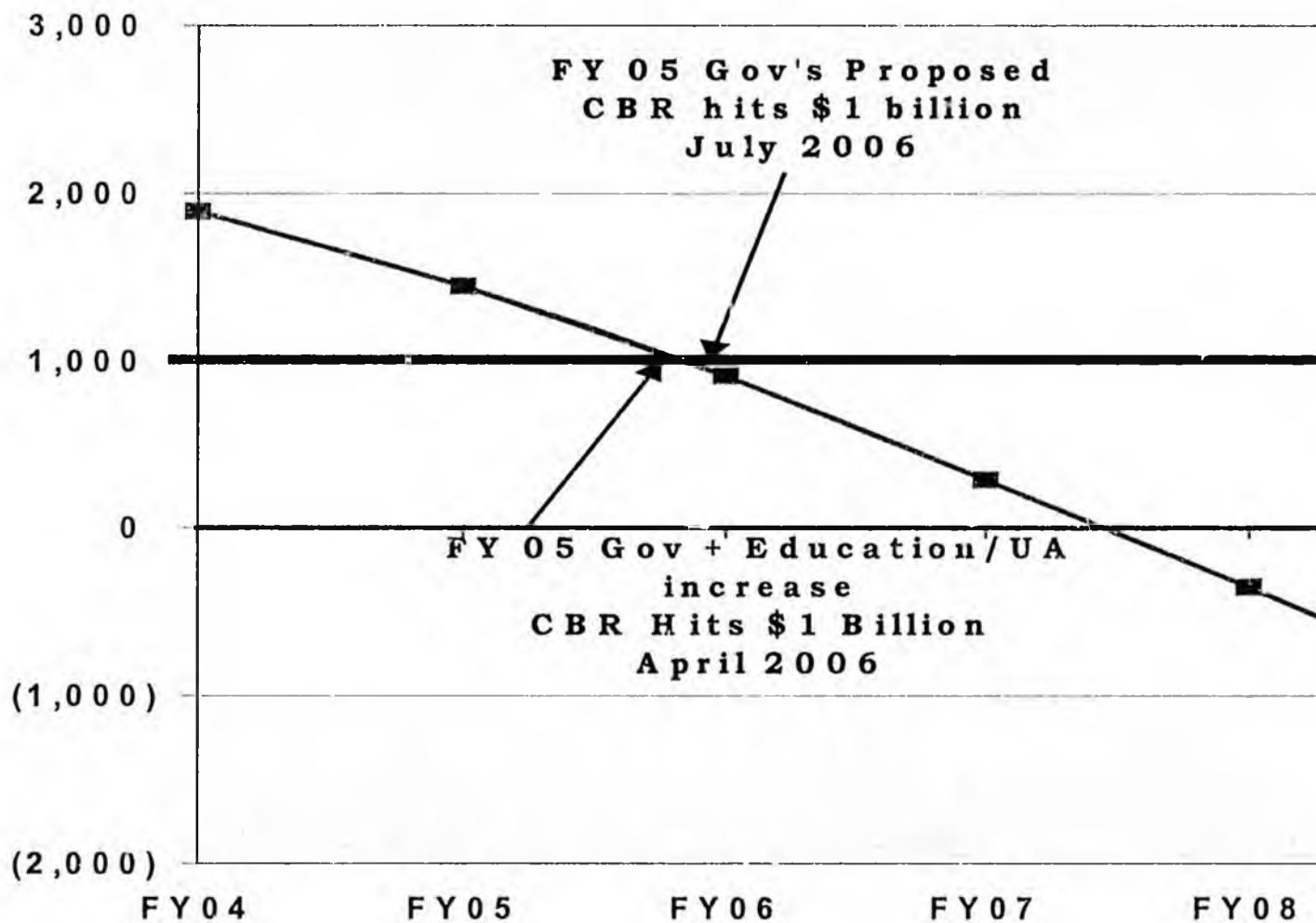
CBR Has Propped Up Spending

FY 94 - 05*: Spent \$5.4 Billion of \$7 Billion



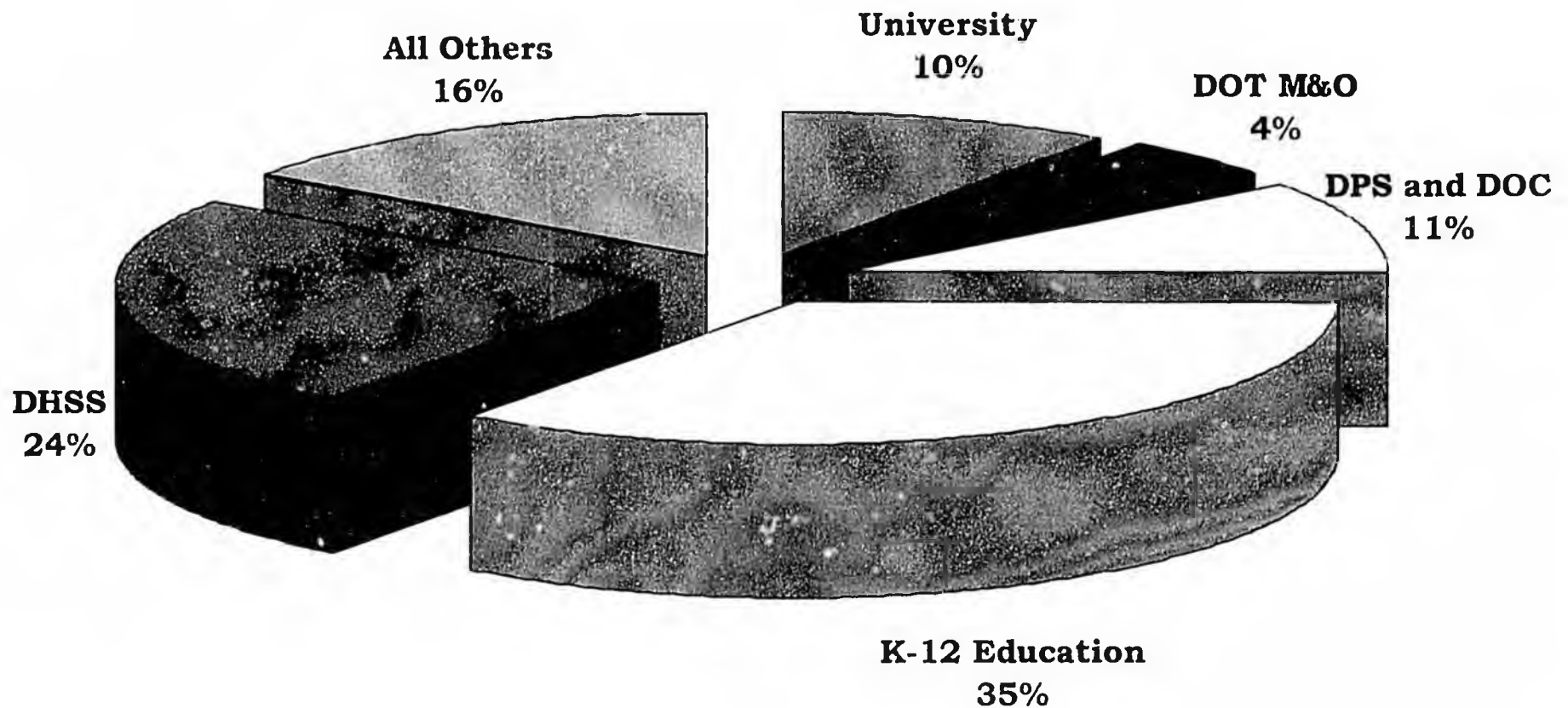
*FY 05 based on Fall 2003 forecast and Governor's proposed spending

Impact on CBR Balance



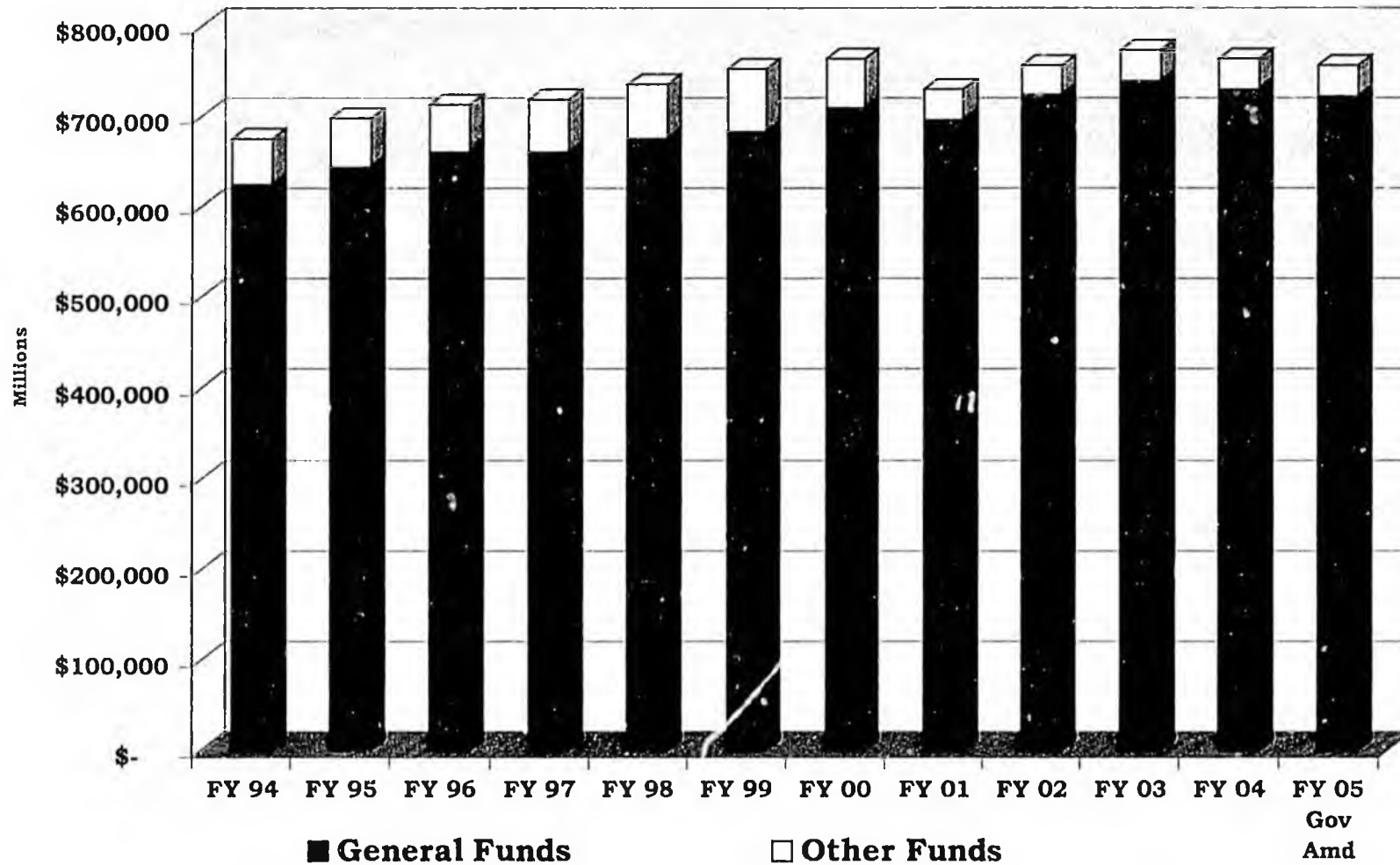
FY2005 Governor's Proposed Operating Budget

General Fund - \$2.1 Billion



K-12 Funding* FY94-05 Gov. Amended

All Fund Sources

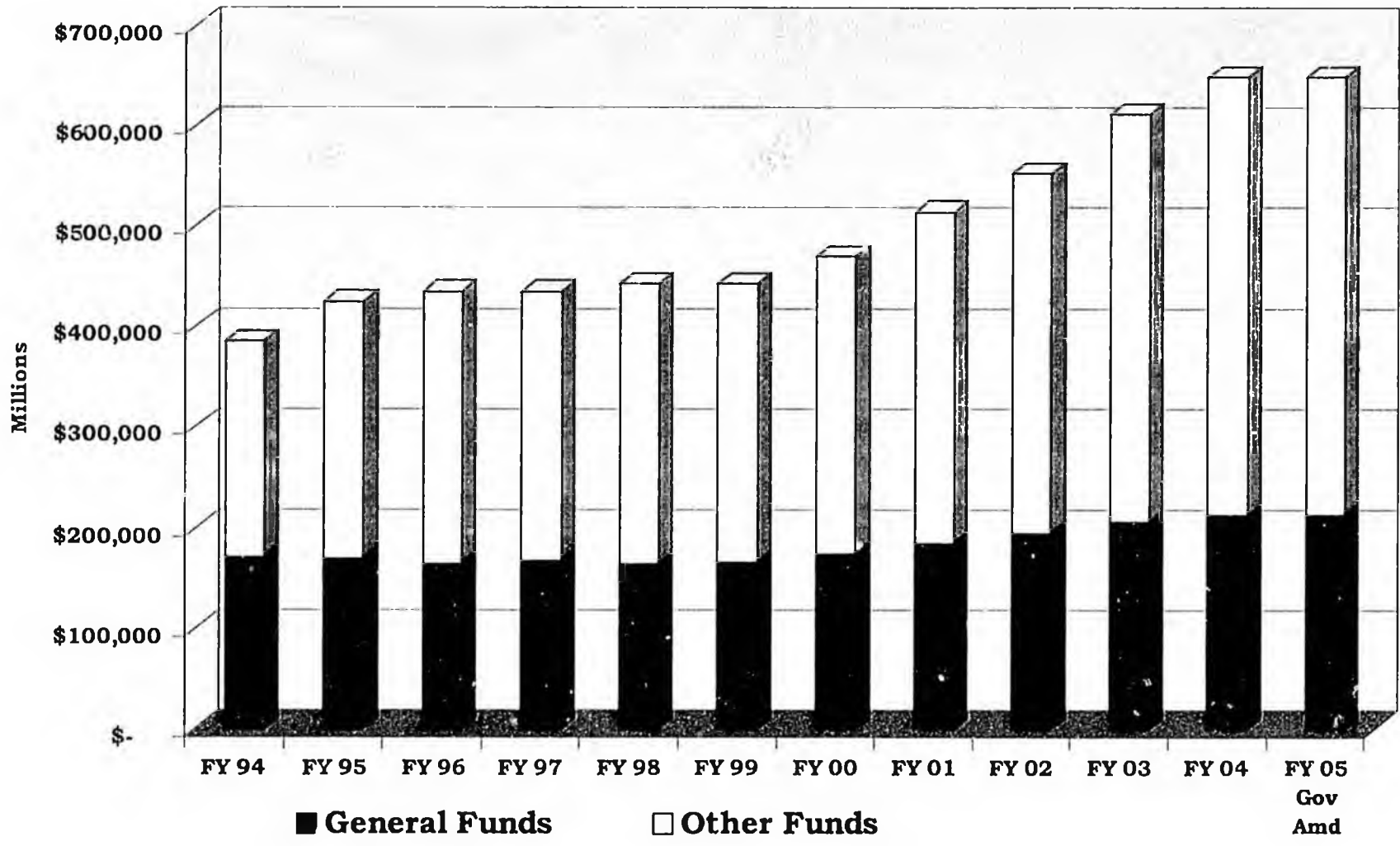


FY 05 v. 94: General funds = +16%
All funds = +12%

*Includes pupil transportation

University Funding FY94-05 Gov. Amended

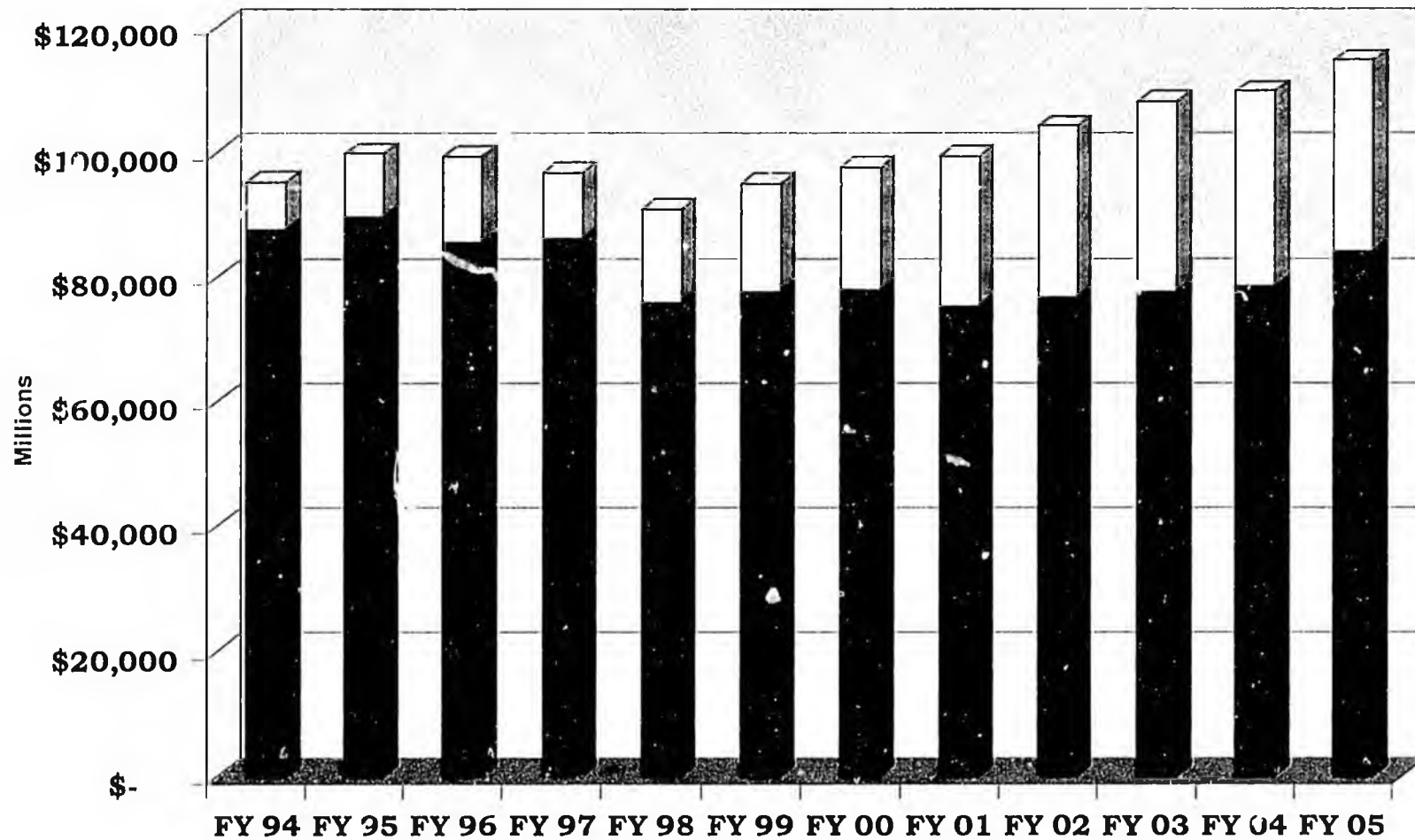
All Fund Sources



FY 05 v. 94: General funds = +24%
All funds = +68%

Public Safety Funding FY94-05 Gov. Amended

All Fund Sources



■ General Funds

□ Other Funds

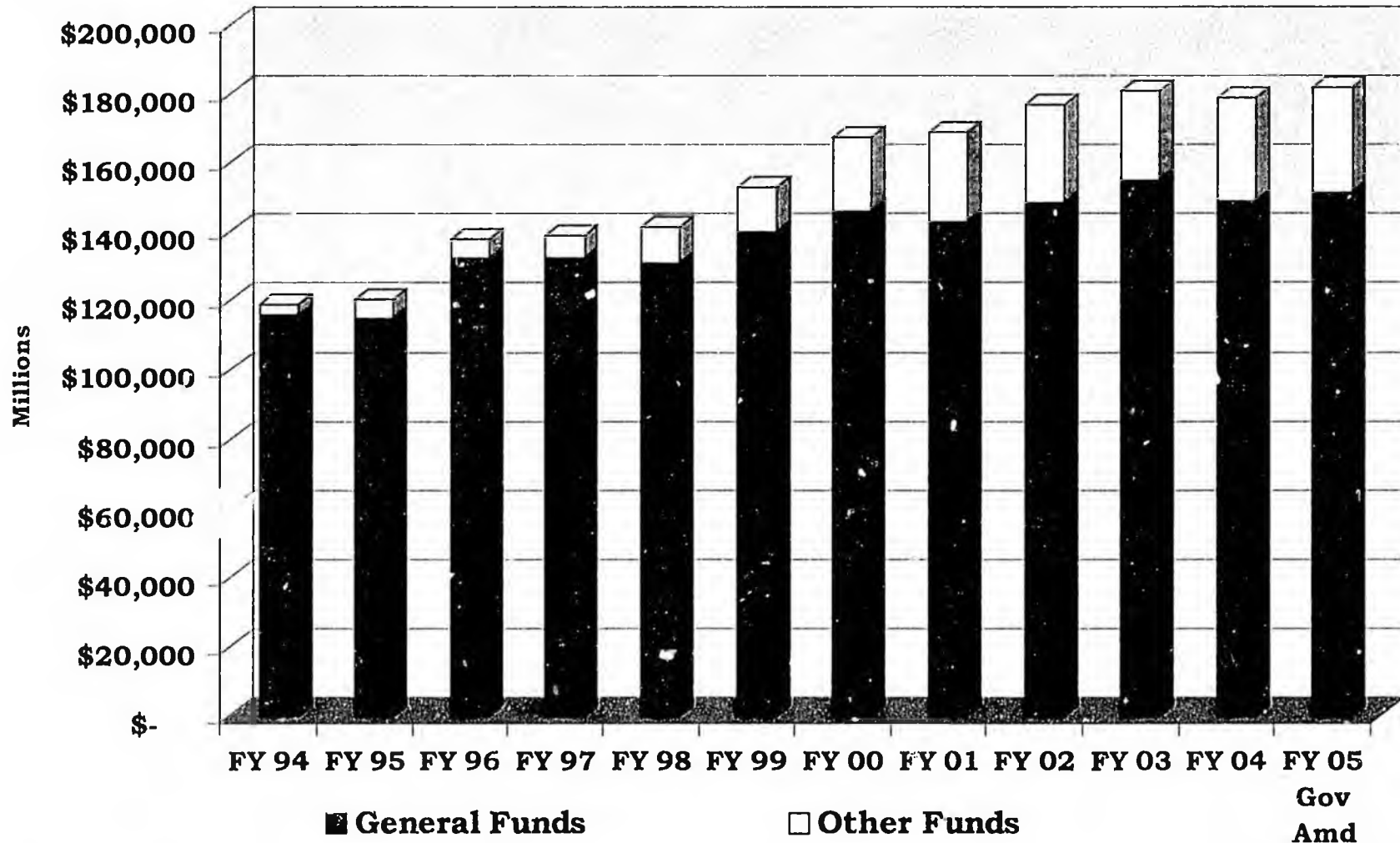
Gov
Amd

FY 05 v. 94: General funds = -0.04%

All funds = +21%

Corrections Funding FY94-05 Gov. Amended

All Fund Sources

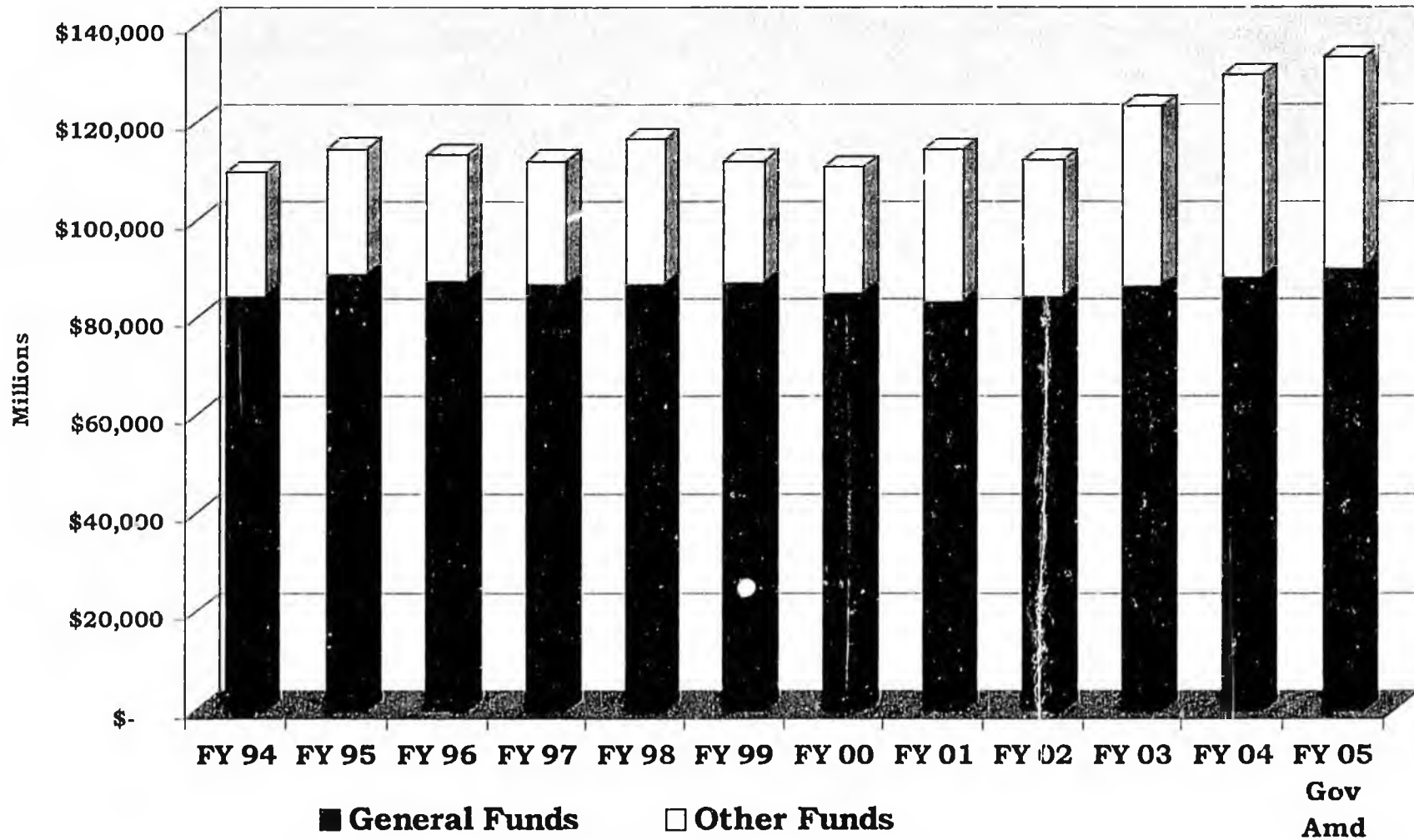


FY 05 v. 94: General funds = +31%

All funds = +53%

DOT M&O Funding FY94-05 Gov. Amended

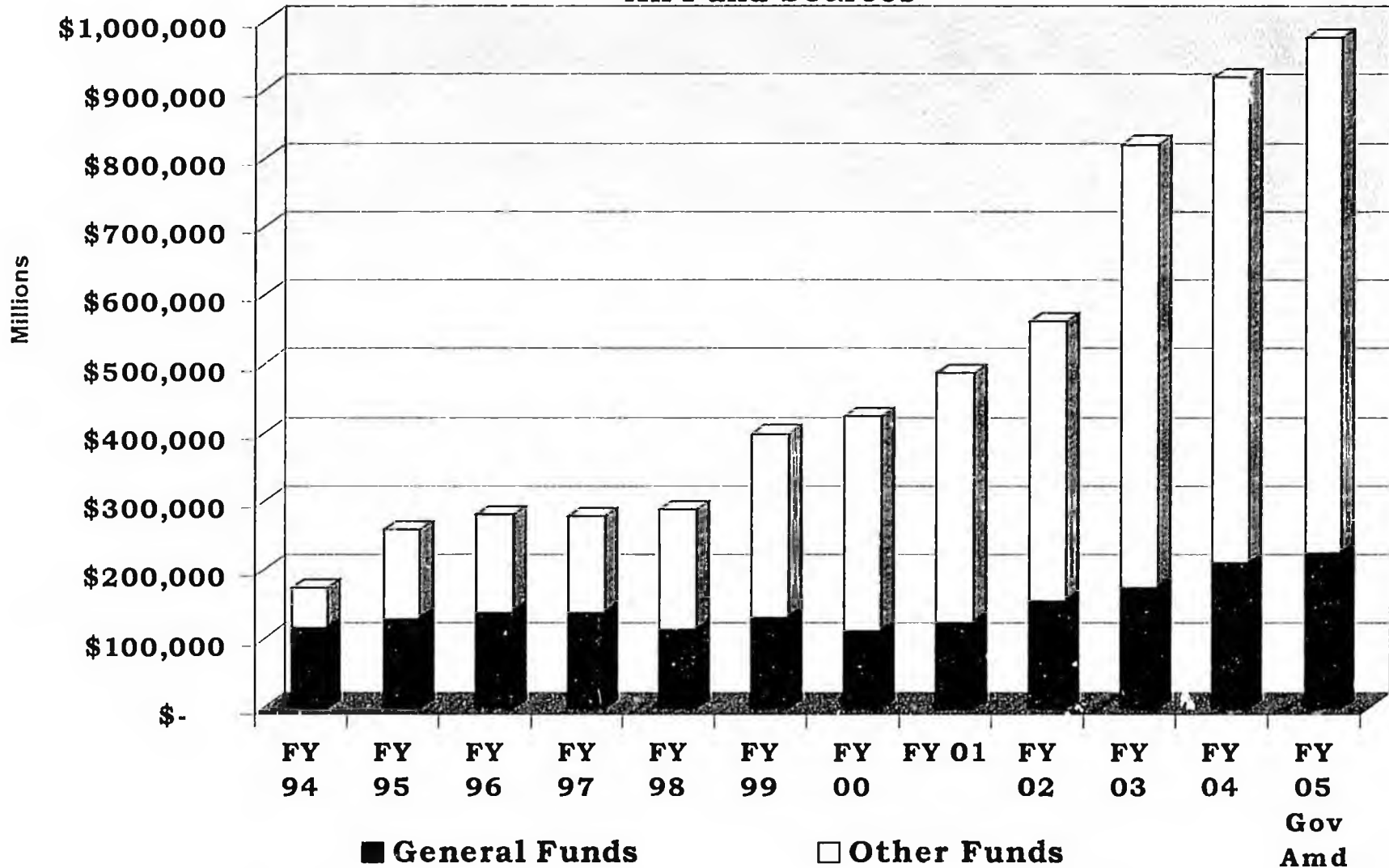
All Fund Sources



FY 05 v. 94: General funds = +7%
All funds = +21%

Medicaid Funding FY94-05 Gov. Amended

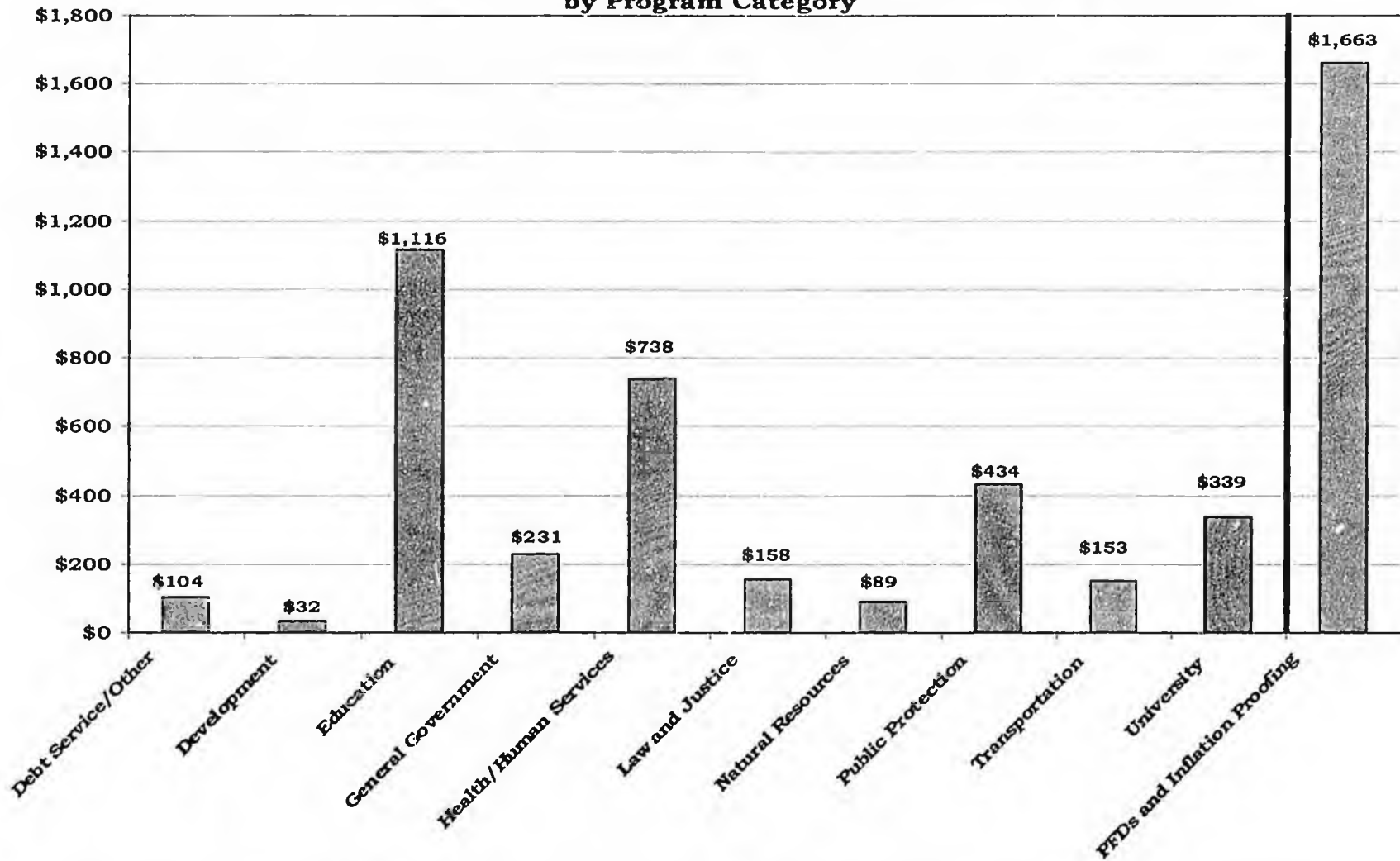
All Fund Sources



FY 05 v. 94: General funds = +95%
All funds = +461%

FY 05 Spending: \$5,058.00 Per Capita*

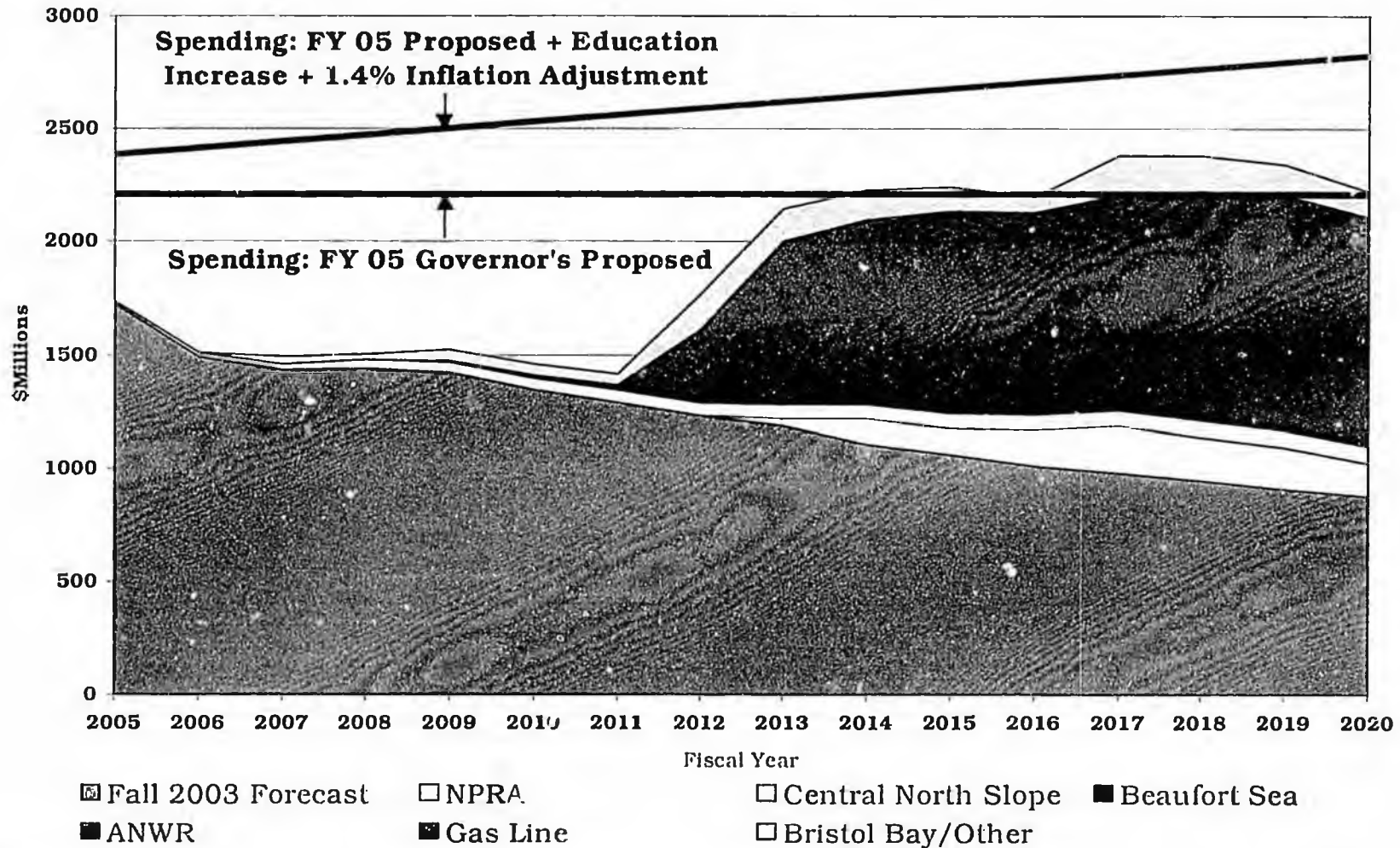
by Program Category



*Includes all general fund spending of \$2.25 billion and \$1.1 billion in Permanent Fund earnings for dividends (\$490 million) and inflation-proofing (\$613 million)

Building a Fiscal Bridge to New Resource Revenues

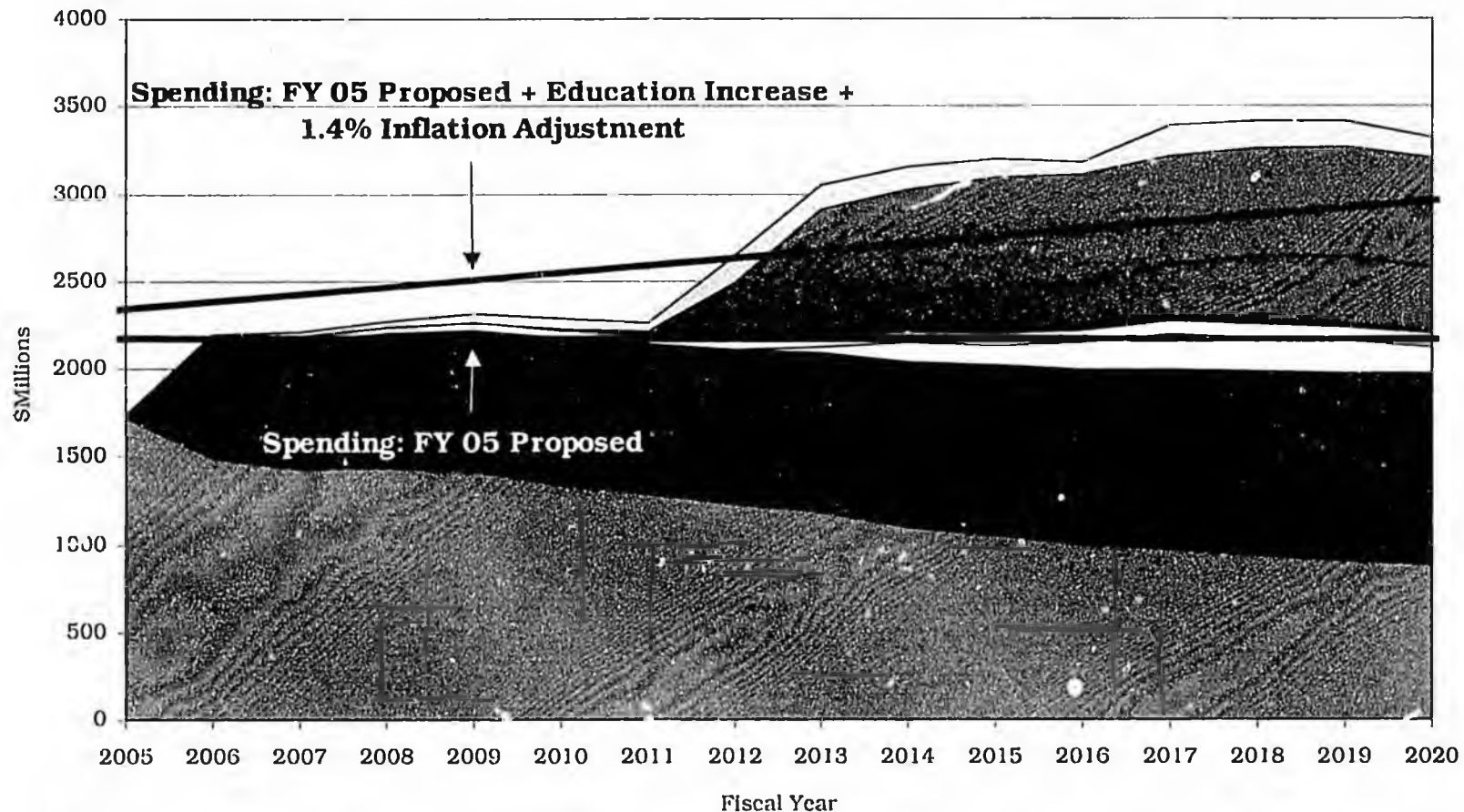
Scenario: No Use of PF Earnings to Support Essential Services



Assumptions: Fall 2003 Revenue forecast, Governor's Proposed FY 05 General fund spending. Education increase of \$90.3 million for K-12 and UA (CSSB283 (Fin) am H, and inflation adjustment per CSSJR 3 (Jud) spending limit

Building a Fiscal Bridge to New Resource Revenues

Scenario: 50% PF Earnings to Dividends; 50% to Fund Essential Services



- | | | | |
|----------------------|---------------------|------------|-----------------------|
| ▨ Fall 2003 Forecast | ■ POMV 50/50 PFD/GF | □ NPRA | □ Central North Slope |
| ■ Beaufort Sea | ■ ANWR | ■ Gas Line | □ Bristol Bay/Other |

Assumptions: Fall 2003 Revenue forecast, Governor's Proposed FY 05 General fund spending. Education increase of \$90.3 million for K-12 and UA (CSSB283 (Fin) am H, and inflation adjustment per CSSJR 3 (Jud) spending limit

CONFERENCE

OF

ALASKANS



FEB 17 2004

FRANK H. MURKOWSKI
GOVERNOR

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 17, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

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Speaker of the House
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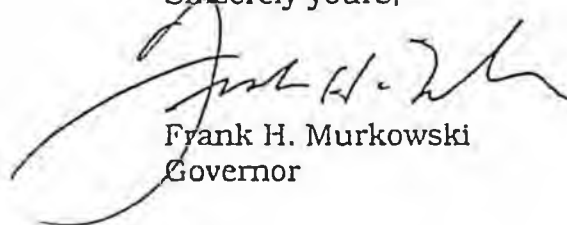
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On the first and fourth questions, the conference was clear that it prefers the percent of market value approach to current management of the fund, and that a prudent balance should be maintained in the CBR.

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I look forward to working with you and all members of the Legislature on those details, and crafting legislative approaches acceptable to the people of Alaska. Thank you for your cooperation.

Sincerely yours,



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Governor

MICHAEL JOHN BURNS

February 17, 2004

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P.O. Box 110001
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- Should a portion of the income of the Permanent Fund be used for essential state services, such as education?
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As adopted by the Conference of Alaskans Feb. 12, 2004

A RESOLUTION

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BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

WHEREAS the Conference of Alaskans believes that a Permanent Fund dividend should be annually distributed to Alaskans;

WHEREAS the percent of market value (POMV) distribution formula would limit the amount that can be annually withdrawn from the Alaska Permanent Fund to no more than five percent of the market value of the fund (POMV);

WHEREAS the board of trustees of the Alaska Permanent Fund believes that the Permanent Fund is not adequately protected for the future;

WHEREAS the percent of market value (POMV) distribution formula is expected to maintain the purchasing power of the entire Permanent Fund by retaining in the fund enough of the increase in value to protect against inflation; and

WHEREAS the percent of market value distribution formula is expected to allow future generations to benefit equally from the Alaska Permanent Fund.

NOW THEREFORE LET IT BE RESOLVED: The Legislature should pass a resolution proposing a constitutional amendment addressing percent of market value (POMV), as recommended by the Permanent Fund trustees and present it to the voters for ratification at the 2004 general election that would change the method of distributing amounts from the Alaska permanent fund so that distributions are limited to five percent of the market value (POMV) of the fund.

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WHEREAS Alaska must not impose self-inflicted harm; and

WHEREAS Alaska's state spending is inadequate to meet current needs for public education, public protection, and many other necessary state services; and

WHEREAS the conference believes that after the dividend is protected a permanent fund dividend distributed, and any remaining funds available for distribution are used for essential government services, additional revenues will be needed to fully fund and protect those essential government services.

NOW THEREFORE LET IT BE RESOLVED: A portion of the distribution of the percent of market value (POMV) of the Alaska Permanent Fund should be used for essential state services, such as education, public protection and other necessary state services. However this recommendation is subject to the following conditions:

- (1) Dividends must be paid out first from the amount available under the percent of market value (POMV) distribution method, as recommended by the board of trustees of the Alaska Permanent Fund, with the remainder available to fund essential state services; and
- (2) The governor and legislature must take action to balance the state's revenues and expenditures, including but not limited to consideration of a personal income tax, other broad-based taxes and other alternative sources of income.

As adopted by the Conference of Alaskans Feb. 12, 2004

A RESOLUTION

Expressing the sense of the conference that distributions from the Alaska Permanent Fund for permanent fund dividends be dedicated in the constitution and that distributions from the Alaska Permanent Fund for other public purposes should be determined annually by the legislature.

BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

WHEREAS the Alaska Permanent Fund was established as an exception to the dedicated fund prohibition so that enough revenue could be segregated and protected to provide a source of money to benefit present and future generations of Alaskans;

WHEREAS dedication of a part of the distributions from the Alaska Permanent Fund provides a predictable and stable means to finance the permanent fund dividend for the foreseeable future;

NOW THEREFORE LET IT BE RESOLVED: The Legislature should pass a resolution proposing a constitutional amendment and present it to the voters for ratification at the 2004 general election that would protect the permanent fund dividend and ensure that the dividend would continue to be paid to state residents.

As adopted by the Conference of Alaskans Feb. 12, 2004

A RESOLUTION

Expressing the sense of the conference that the state should maintain a prudent balance in the constitutional budget reserve fund.

BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

WHEREAS the constitutional budget reserve fund was established by an amendment to the Alaska Constitution after a vote of the people held at the 1990 general election;

WHEREAS the constitutional budget reserve not only provides a contingency fund for the operations of the State of Alaska, it is also an integral component of maintaining the state's credit rating and that of the local communities throughout the state; and

WHEREAS the state relies on the balance of the constitutional budget reserve fund to meet its financial needs from time to time.

NOW THEREFORE LET IT BE RESOLVED that the state should maintain a prudent balance in the constitutional budget reserve fund.

February 12, 2004

Fellow Alaskans,

The 55 of us have spent the past three days in Fairbanks at the Conference of Alaskans called by Governor Murkowski to consider the fiscal future of our state and the proper role of the Permanent Fund in that future. We believe there are five basic facts that Alaskans must and do acknowledge.

- The Permanent Fund must remain precisely that – permanent – and must be protected.
- Permanent Fund Dividends provide the crucial link between the Permanent Fund and its true owners, the People of Alaska, and so they too must continue.
- The fiscal crisis facing Alaska is a clear and present danger to the adequate protection of necessary public services.
- Alaska must not impose self-inflicted harm. The delegates now believe that Alaska's state spending is inadequate to meet current needs for public education, public protection, and many other necessary state services. Too many communities around Alaska, large and small, are already facing desperate decisions.
- Alaska needs some kind of standby cash reserve so state and local government services won't have to come to a catastrophic halt if oil prices crash.

With these facts in mind, we have considered and discussed the four questions that Governor Murkowski specifically asked us, and here are what we believe are the best answers to them.

1. Should the use of income from the Permanent Fund be limited by the Constitution to 5% of the Fund's value, as the Permanent Fund Trustees have proposed?

Yes. We must inflation-proof the Permanent Fund in order to keep it and the Permanent Fund Dividends (PFDs) from evaporating away in the future. The "percent of market value" (POMV), as suggested by the trustees will put inflation-proofing into the Constitution, instead of leaving it to the Legislature's discretion. POMV is a technical change in determining how much money from the Fund is available, but it has nothing directly to do with the choice of using it for Dividends or spending it on anything else. That's the next question.

2. Should a portion of the income of the Permanent Fund be used for essential state services, such as education?

Our answer here is "yes, but..." There are two conditions to our endorsement. One, dividends must be paid out first under POMV. Only what's left over could be used for essential state services. Two, the delegates to the Conference of Alaskans recommend that the governor and legislature take action to balance the state's revenues and

expenditures, including but not limited to, consideration of a personal income tax, other broad-based taxes and other alternative sources of income.

3. *Should the use of the income of the Permanent Fund for dividends and possibly for other purposes be determined annually by the Legislature, as is currently the case? Or should it be dedicated in the Constitution?*

A reasonable percentage of the Permanent Fund money available under POMV should be constitutionally dedicated to PFDs in order to make them "permanent" like the Fund itself. All other uses of the remaining Permanent Fund money should be left for the Legislature to appropriate, since it is impossible for this generation to predict what the needs will be for the next.

4. *Should the state maintain a minimum balance in the Constitutional Budget Reserve to stabilize state finances against fluctuations in oil production or prices?*

Yes, a prudent amount should be in reserve at all times, for two reasons. We can't afford to send home all the police, firefighters, teachers or other critical personnel because the state treasury is empty; due to something unforeseen. It is critical that a prudent amount be retained in a Constitutional Budget Reserve (CBR) to stabilize state finances against fluctuations in oil production or prices. This is necessary to maintain the state's very good credit-rating which will save millions of dollars in the future. Therefore, if oil production is interrupted or prices fall, so that we need to draw the CBR below the prudent balance, the state needs a plan to refill it back to that level as soon as possible.

We have been honored by the presence and words of former Governor Jay Hammond during the Conference of Alaskans, and we applaud his continuing passionate dedication to protecting the Alaska Permanent Fund and building a strong fiscal future for Alaska. We have been honored by hearing from hundreds of Alaskans during the course of the Conference of Alaskans, and we thank them for their contributions.

It has been an honor to answer the call of Governor Murkowski in his quest to address issues critical to Alaska. We commend his willingness to bring together this diverse group of Alaskans and join him as we look toward the future of Alaska together. We acknowledge the tremendous staff time put in by both the Administration and the different departments within the Administration, and by the University of Alaska and its staff.

These were challenging discussions with no easy answers. We sincerely believe they are the best answers available for all Alaskans as a whole, and we know they are superior to the "easy" answers. We have tried our best to represent the interests of all Alaskans, and we hope each of you will take up where we have had to leave off. It is time to act. Thank you for the honor of representing you.

Al Adams
Al Adams

Jeri Baker
Jeri Baker

Robert Bell
Robert Bell

Carl Brady
Carl Brady

Kelly Brown
Kelly Brown

Mike Burns, Chair
Mike Burns, Chair

Lupe Chavez
Lupe Chavez

Carol Compeau
Carol Compeau

Craig Compeau
Craig Compeau

Charlie Curtis
Charlie Curtis

Steve Frank, Convenor
Steve Frank, Convenor

Sharon Gagnon
Sharon Gagnon

Richard Glenn
Richard Glenn

CHH Groh Jr.
CHH Groh Jr.

Clark Gruening, Convenor
Clark Gruening, Convenor

Gleam Hackney
Gleam Hackney

Jim Hayes
Jim Hayes

Lindsey Holmes
Lindsey Holmes

Sue Hull
Sue Hull

Theresa Johnson
Theresa Johnson

Wynn Johnson
Wynn Johnson

Jewel Jones
Jewel Jones

Anne Kilkenny
Anne Kilkenny

Mare Langland, Convenor
Mare Langland, Convenor

Kristie Leaf
Kristie Leaf

Martha Malavansky
Martha Malavansky

Byron Mallon
Byron Mallon

Desmond Mave
Desmond Mave

Dennis McMillan
Dennis McMillan

Jason Metrokin
Jason Metrokin

Mike Navarre
Mike Navarre

Mark Neuman
Mark Neuman

Victor Nicholas
Victor Nicholas

Kris Norasz
Kris Norasz

Vicki Otte
Vicki Otte

Tadd Owens
Tadd Owens

Lisa Parker
Lisa Parker

Gene Peltola
Gene Peltola

John Pharr
John Pharr

Jay Quakenbush
Jay Quakenbush

Ed Randal
Ed Randal

Steve Rieger
Steve Rieger

Margaret Russell
Margaret Russell

Helvi Sandvik, Convenor
Helvi Sandvik, Convenor

Sarah Sherry
Sarah Sherry

Stan Stephens
Stan Stephens

Artiss Stungilewski, Convenor
Artiss Stungilewski, Convenor

Peg Tileston
Peg Tileston

Clem Tillien
Clem Tillien

Tim Towarak
Tim Towarak

Barbara Huff Tuckness
Barbara Huff Tuckness

Kathleen Wasserman
Kathleen Wasserman

Bob Weinstein
Bob Weinstein

Tom Williams
Tom Williams

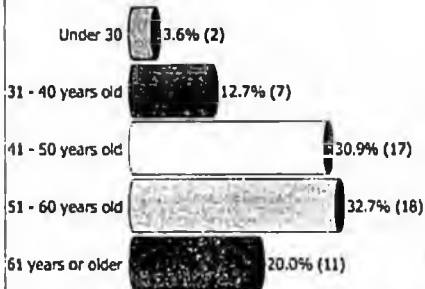
Eric Wohlforth, Convenor
Eric Wohlforth, Convenor

Brian Rogers
Attested by Brian Rogers, Facilitator

straw votes
 provided by
 Gary Wilken

How old are you?

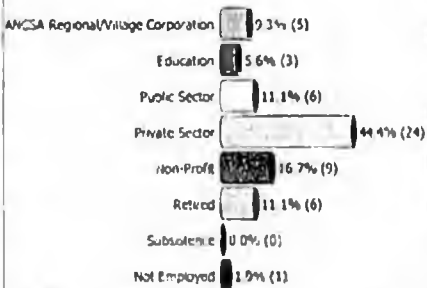
1. Under 30
2. 31 - 40 years old
3. 41 - 50 years old
4. 51 - 60 years old
5. 61 years or older



D: How long in Alaska? Total: 55 Slide: 4

What is your primary economic activity?

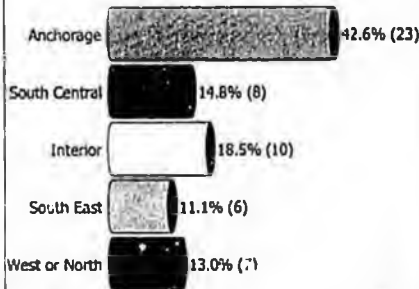
1. ANCSA Regional/Village Corporation
2. Education
3. Public Sector
4. Private Sector
5. Non-Profit
6. Retired
7. Subsistence
8. Not Employed



D: Prim Econ Activity Total: 54 Slide: 7

In what region of Alaska do you reside?

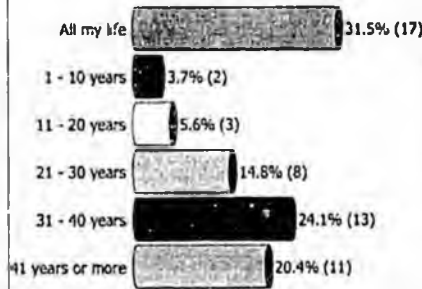
1. Anchorage
2. South Central (excl. Anchorage)
3. Interior
4. South East
5. West or North



D: Region of Alaska Total: 54 Slide: 2

How long have you lived in Alaska?

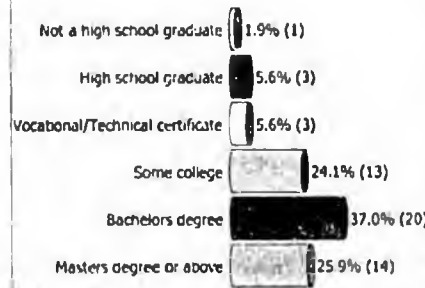
1. All my life
2. 1 - 10 years
3. 11 - 20 years
4. 21 - 30 years
5. 31 - 40 years
6. 41 years or more



D: How long in Alaska? Total: 54 Slide: 5

What is your highest level of education completed?

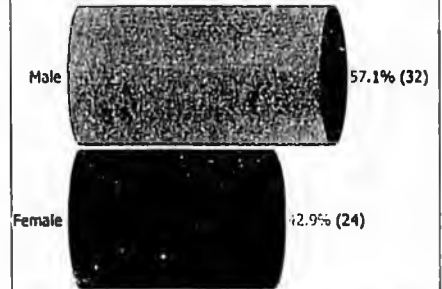
1. Not a high school graduate
2. High school graduate
3. Vocational/Technical certificate
4. Some college
5. Bachelors degree
6. Masters degree or above



D: Education Total: 54 Slide: 8

What is your gender?

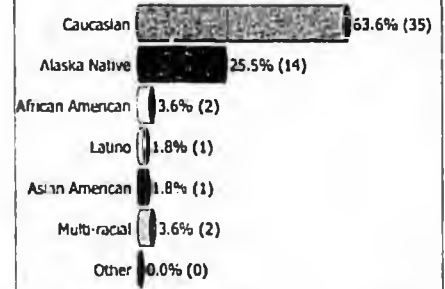
1. Male
2. Female



D: Gender Total: 56 Slide: 3

What is your ethnicity?

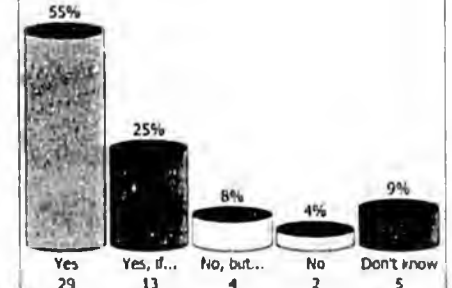
1. Caucasian
2. Alaska Native
3. African American
4. Latino
5. Asian American
6. Multi-racial
7. Other



D: Ethnicity Total: 55 Slide: 6

Should the use of income from the permanent fund be limited by the constitution to five percent (5%) of the fund's value, as the permanent fund trustees have proposed?

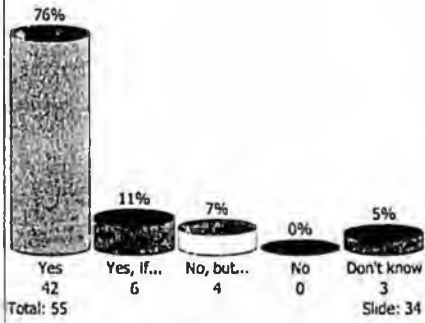
1. Yes
2. Yes, if... [tied to other issues]
3. No, but... [would consider under certain circumstance]
4. No
5. I don't know



Total: 53 Slide: 12

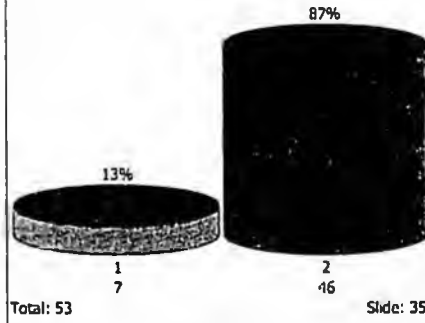
Should the use of income from the permanent fund be limited by the constitution to five percent (5%) of the fund's value, as the permanent fund trustees have proposed?

1. Yes
2. Yes, if... [bed to other issues]
3. No, but... [would consider under certain circumstance]
4. No
5. I don't know



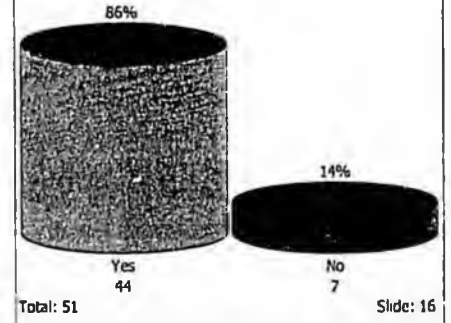
What do the Conference delegates want to do next?

1. Continue to discuss POMV
2. Ask staff to draft a proposed resolution in support of POMV and move to the discussion of question 2 on CBR



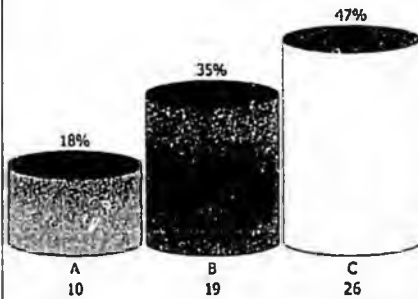
Should the state maintain a minimum balance in the Constitutional Budget Reserve to stabilize state finances against fluctuation in oil production or prices?

1. Yes
2. No



Is the State of Alaska's overall spending...

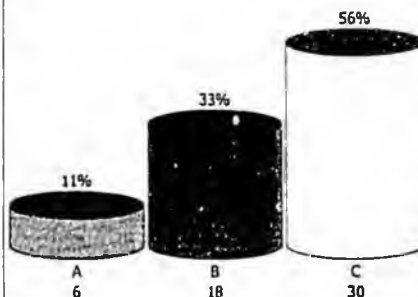
- A. Too much
- B. About right
- C. Not enough



Total: 55 Slide: 39

Is the State of Alaska's spending on public protection... (\$134 per capita)

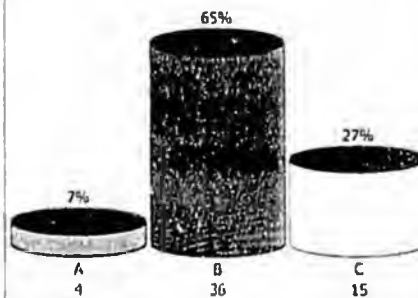
- A. Too much
- B. About right
- C. Not enough



Total: 54 Slide: 42

Is the State of Alaska's spending on law and justice... (\$158 per capita)

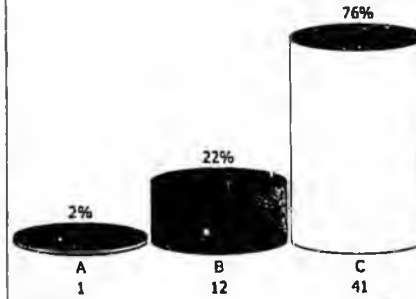
- A. Too much
- B. About right
- C. Not enough



Total: 55 Slide: 45

Is the State of Alaska's spending on education... (\$1,116 per capita)

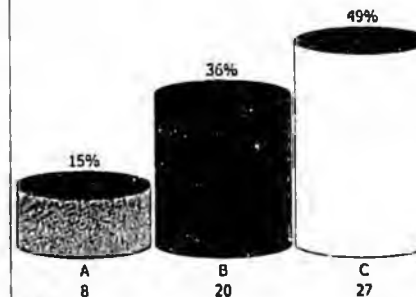
- A. Too much
- B. About right
- C. Not enough



Total: 54 Slide: 40

Is the State of Alaska's spending on the University of Alaska... (\$339 per capita)

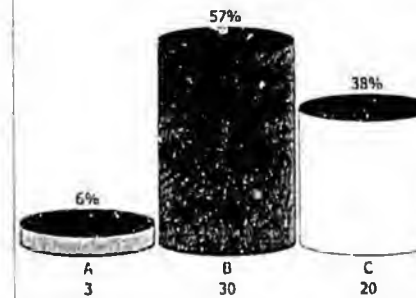
- A. Too much
- B. About right
- C. Not enough



Total: 55 Slide: 43

Is the State of Alaska's spending on transportation... (\$153 per capita)

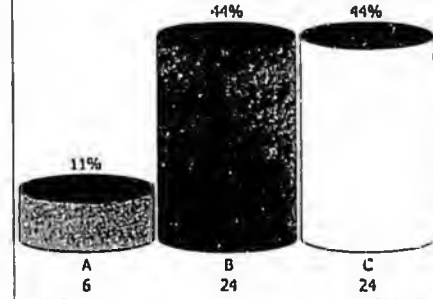
- A. Too much
- B. About right
- C. Not enough



Total: 53 Slide: 46

Is the State of Alaska's spending on health and human services... (\$738 per capita)

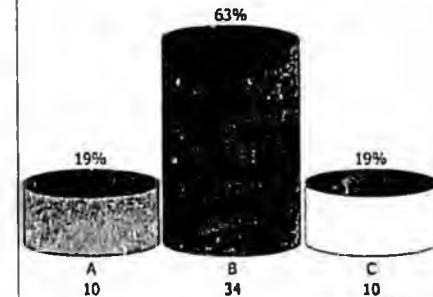
- A. Too much
- B. About right
- C. Not enough



Total: 54 Slide: 41

Is the State of Alaska's spending on general government... (\$231 per capita)

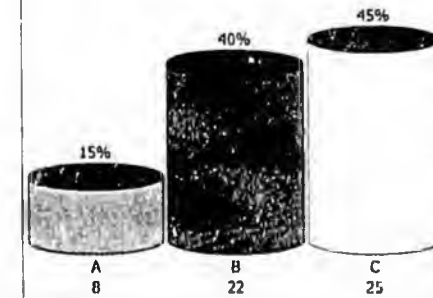
- A. Too much
- B. About right
- C. Not enough



Total: 54 Slide: 44

Is the State of Alaska's spending on natural resources... (\$89 per capita)

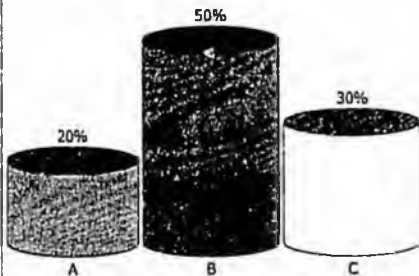
- A. Too much
- B. About right
- C. Not enough



Total: 55 Slide: 47

Is the State of Alaska's spending on development...
(\$32 per capita)

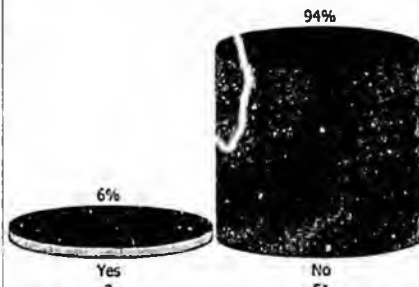
- A. Too much
- B. About right
- C. Not enough



Total: 54 Slide: 48

Should the Permanent Fund Dividend program be terminated?

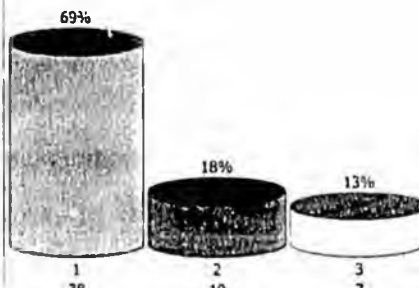
- 1. Yes
- 2. No



Total: 54 Slide: 51

Do you support an income tax?

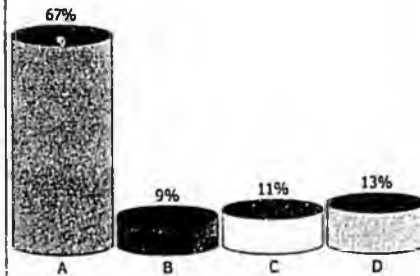
- 1. Yes
- 2. No
- 3. Maybe



Total: 55 Slide: 56

If broad-based taxes are adopted, should the mechanism be...

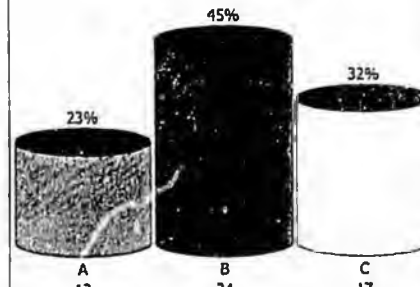
- A. Income tax
- B. Sales tax
- C. Both
- D. I oppose broad-based taxes



Total: 54 Slide: 49

Should the dividend be enshrined in the Constitution?

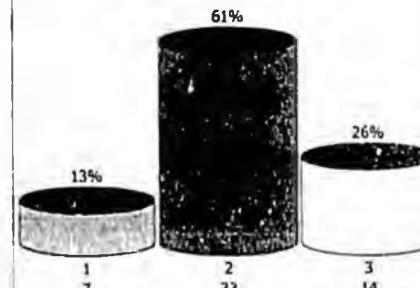
- A. Yes
- B. Yes, if a portion of permanent fund earnings is available to support state services
- C. No



Total: 53 Slide: 52

Should the cap on the amount of the income tax be the amount of the PFD check?

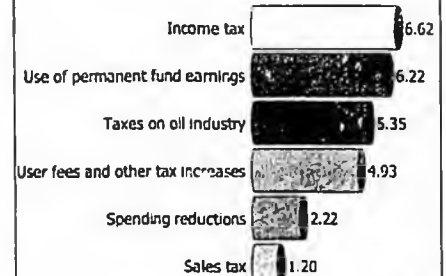
- 1. Yes
- 2. No
- 3. Maybe



Total: 54 Slide: 57

What would be your first, second, and third choices of fiscal tools to fill the fiscal gap?

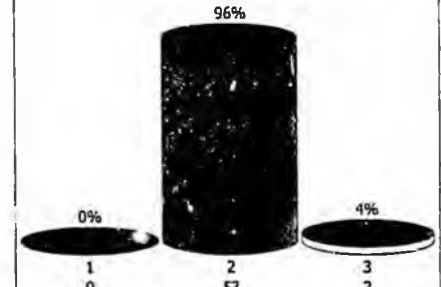
- 1. Spending reductions
- 2. Use of permanent fund earnings
- 3. Income tax
- 4. Sales tax
- 5. Taxes on oil industry
- 6. User fees and other tax increases



Fiscal gap priority Slide: 50

Should the permanent fund dividend program be terminated?

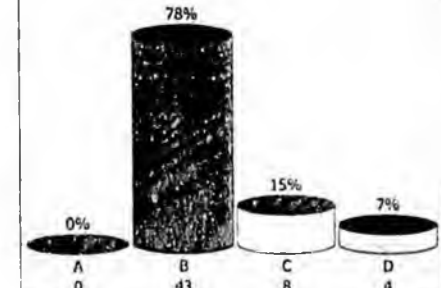
- 1. Yes
- 2. No
- 3. Maybe



Total: 55 Slide: 55

Which payout limit on POMV do you prefer?

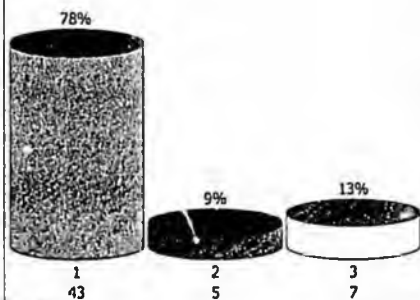
- A. 6%
- B. 5%
- C. 4.5%
- D. 4%



Total: 55 Slide: 58

Should a portion of the income of the Permanent Fund, in excess of dividend payments, be used for essential state services, such as education?

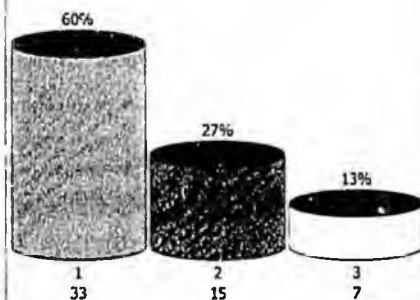
1. Yes
2. No
3. Maybe



Slide: 61

Should the use of the income of the Permanent Fund for dividends, and possibly for other purposes

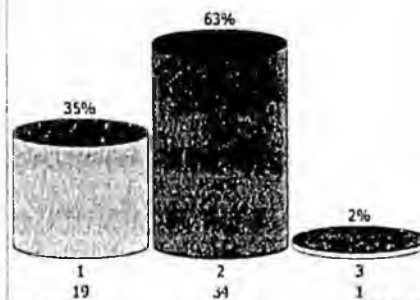
- A. Be determined annually by the Legislature, as is currently the case?
- B. Be dedicated in the Constitution?
- C. I don't know



Slide: 64

Should the use of the income of the Permanent Fund for dividends

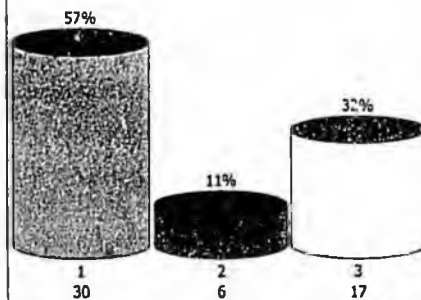
- A. Be determined by the statute, as is currently the case?
- B. Be dedicated in the Constitution?
- C. I don't know



Slide: 74

Should a portion of the income of the Permanent Fund be used for essential state services, such as education?

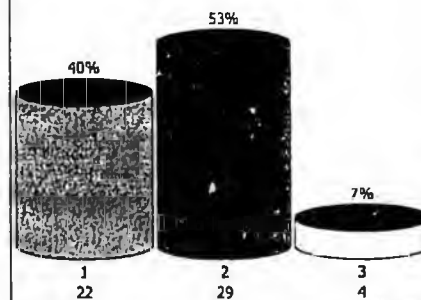
1. Yes
2. No
3. Maybe



Slide: 62

Should the use of the income of the Permanent Fund for dividends

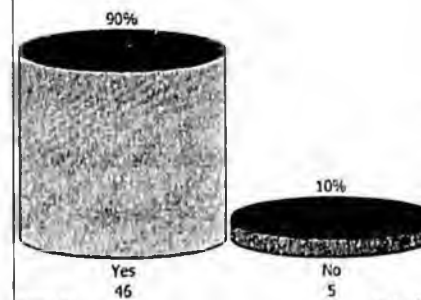
- A. Be determined by the statute, as is currently the case?
- B. Be dedicated in the Constitution?
- C. I don't know



Slide: 69

Adjourn?

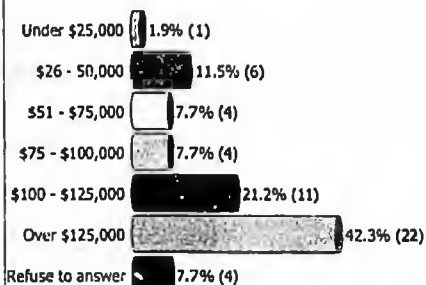
- Yes
- No



Slide: 75

What is your annual household income?

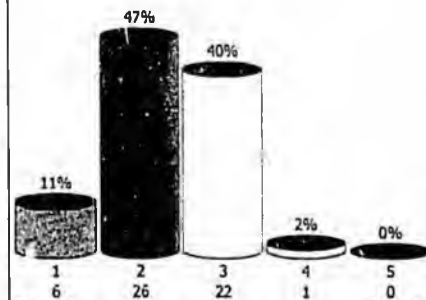
1. Under \$25,000
2. \$26 - 50,000
3. \$51 - 75,000
4. \$75 - 100,000
5. \$100 - 125,000
6. Over \$125,000
7. Refuse to answer



Slide: 63

Should we give our report

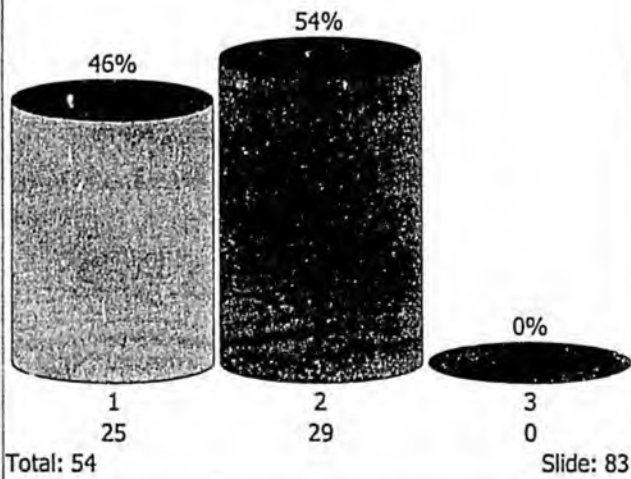
1. Resolution(s)
2. Letter
3. Both
4. Neither
5. Maybe



Slide: 73

Shall the group specify a minimum percentage for dividends?

- 1. Yes
- 2. No



SJR 18

PF APPROP/

INFLATION

PROOFING

CS FOR SENATE JOINT RESOLUTION NO. 18(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 5/7/03
Referred: Judiciary, Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND
AUDIT COMMITTEE BY REQUEST

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to and limiting
2 appropriations from the Alaska permanent fund based on an averaged percent of the
3 fund market value to protect the fund from inflation and assure that the real value of
4 the fund will be preserved over the long term.

5 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. Article IX, sec. 15, Constitution of the State of Alaska, is amended to read:

7 Section 15. Alaska Permanent Fund. (a) At least twenty-five per cent of all
8 mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing
9 payments and bonuses received by the State shall be placed in a permanent fund.
10 Except as appropriated under (b) of this section, money in the permanent fund [,
11 THE PRINCIPAL OF WHICH] shall be used only for those income-producing
12 investments specifically designated by law as eligible for permanent fund investments.
13 [ALL INCOME FROM THE PERMANENT FUND SHALL BE DEPOSITED IN
14 THE GENERAL FUND UNLESS OTHERWISE PROVIDED BY LAW.]

15 * Sec. 2. Article IX, sec. 15, Constitution of the State of Alaska, is amended by adding a

1 new subsection to read:

2 (b) To protect the permanent fund from the effects of inflation and thereby
3 assure that the real value of the permanent fund will be preserved over the long term,
4 appropriations from the permanent fund for a fiscal year may not exceed five percent
5 of the average of the market values of the fund on June 30 for the first five of the six
6 fiscal years immediately preceding that fiscal year.

7 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new
8 section to read:

9 **Section 30. Transition.** On the effective date of the 2004 amendment relating
10 to the Alaska Permanent Fund (art. IX, sec. 15), the unencumbered, unappropriated
11 balance of the earnings reserve account established under AS 37.13.145(a) is added to
12 the balance in the Alaska Permanent Fund.

13 * Sec. 4. The amendments proposed by this resolution shall be placed before the voters of
14 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
15 State of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 18

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND AUDIT
COMMITTEE BY REQUEST

Introduced: 4/17/03

Referred: State Affairs, Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to limiting
2 appropriations from and inflation-proofing the Alaska permanent fund by establishing a
3 percent of market value spending limit.

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

5 * Section 1. Article IX, sec. 15, Constitution of the State of Alaska, is amended to read:

6 Section 15. Alaska Permanent Fund. (a) At least twenty-five per cent of all
7 mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing
8 payments and bonuses received by the State shall be placed in a permanent fund.
9 Except as provided in (b) of this section, money in the permanent fund [, THE
10 PRINCIPAL OF WHICH] shall be used only for those income-producing investments
11 specifically designated by law as eligible for permanent fund investments. [ALL
12 INCOME FROM THE PERMANENT FUND SHALL BE DEPOSITED IN THE
13 GENERAL FUND UNLESS OTHERWISE PROVIDED BY LAW.]

14 * Sec. 2. Article IX, sec. 15, Constitution of the State of Alaska, is amended by adding a
15 new subsection to read:

1 (b) Money may not be appropriated from the permanent fund unless the
2 annual amount appropriated is predictable and limited so that the real value of the
3 permanent fund is preserved over time. Appropriations from the permanent fund for a
4 fiscal year may not exceed five percent of the average of the fiscal year-end market
5 values of the fund for the first five of the preceding six fiscal years.

6 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new
7 section to read:

8 **Section 30. Transition.** On the effective date of the 2004 amendment relating
9 to the Alaska Permanent Fund (art. IX, sec. 15), the balance of the earnings reserve
10 account established under AS 37.13.145(a) becomes money in the Alaska Permanent
11 Fund.

12 * Sec. 4. The amendments proposed by this resolution shall be placed before the voters of
13 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
14 State of Alaska, and the election laws of the state.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSJF18(STA)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Constitutional Amendment RDU Permanent Fund Corporation
Permanent Fund Appropriations Component Permanent Fund Corporation
Sponsor Senate Rules
Requester Senate Finance Component No. 109

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual			0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	700.0					
TOTAL OPERATING	700.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1105 PF Receipts	700.0		0.0	0.0	0.0	0.0
TOTAL	700.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SJR 18 would ask voters in the next general election whether to approve a constitutional amendment that would limit annual appropriations to no more than 5% of the average year-end market value of the Fund for the preceeding five years.

If SJR 18 passes, APFC will need to conduct a public education program on how the Fund is structured and how it would change under POMV.

See the attached schedule for financial projections of the Fund comparing the "Status Quo" to a 5% POMV spending limit.

Prepared by: Robert D. Storer Phone 465-2047
Division Alaska Permanent Fund Corporation Date/Time 3/16/04 9:18 AM
Approved by: William Corbus, Commissioner Date 3/16/2004
Agency Department of Revenue



Alaska Permanent Fund Corporation
 SJR 18 - Financial projection comparison of the Alaska Permanent
 Fund under status quo versus POMV spending limit beginning in
 \$ millions

Status Quo	-----projected-----											
	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15
Total Return	15.25%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%
Contributions & appropriations (after payouts)	23,300	24,179	25,042	25,922	26,824	27,748	28,688	29,652	30,628	31,623	32,668	33,725
Unrealized appreciation/depreciation on invested assets	3,451	3,898	4,284	4,634	4,958	5,262	5,546	5,824	6,100	6,371	6,638	6,901
Realized earnings account (after payouts)	850	1,341	1,943	2,516	3,041	3,591	4,180	4,809	5,480	6,200	6,969	7,787
Total market value end of year (after payouts)	<u>27,601</u>	<u>29,417</u>	<u>31,268</u>	<u>33,072</u>	<u>34,823</u>	<u>36,600</u>	<u>38,414</u>	<u>40,245</u>	<u>42,133</u>	<u>44,084</u>	<u>46,087</u>	<u>48,165</u>
Annual realized income	1,311	1,602	1,796	1,969	2,129	2,280	2,430	2,586	2,743	2,901	3,061	3,222
Dividend (lump sum) - status quo	561	499	560	739	925	1,027	1,113	1,226	1,297	1,367	1,477	1,542
Transfer status quo Inflation-proofing (ER to principal)	0	613	635	657	680	703	727	751	776	801	828	855

POMV - 5% (beginning in FY05)	-----projected 5% POMV beginning in FY05-----											
	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15
Total Return		7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%
Total Market Value End of Year (after payouts)	<u>27,601</u>	<u>28,605</u>	<u>29,621</u>	<u>30,654</u>	<u>31,686</u>	<u>32,710</u>	<u>33,739</u>	<u>34,782</u>	<u>35,840</u>	<u>36,912</u>	<u>38,025</u>	<u>39,153</u>
5 year average market value lagged one year		26,224	26,669	27,674	29,191	30,843	32,061	33,146	34,243	35,346	36,453	37,572
POMV Payout available for appropriation in lump sum		1,311	1,333	1,384	1,460	1,542	1,603	1,657	1,712	1,767	1,823	1,879

Assumptions:

- Both scenarios show payouts net of inflation.
- POMV payout assumes calculation methodology is 5% of the ending market value (pre payout) for the first five of the last six fiscal years.
- Callan Associates 2003 Capital Market Assumptions, APFC 2003 asset allocation, Fall 2003 revenue forecast, financial statements through 12/31/03. All payouts are assumed to happen at fiscal year end, all dollar values in millions.
- Per SB 100, currently there is no FY04 inflation-proofing appropriation, and \$354 million of FY04's projected inflation-proofing of \$523 was pre-funded in FY03.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSSJR 18(STA)
(S) Publish Date: 3/01/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
Title Constitutional amendment relating to limiting RDU Elections
appropriations from State of AK and inflation-proofing the APF Component Elections
Sponsor Rules
Requester Senate Judiciary Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Leonard G. Jones Phone 465-3051
Division: Division of Elections Date/Time 1/16/04 10:36 AM
Approved by: Laura A. Glaiser, Director Date 1/16/2004
Agency: Office of the Lt. Governor, Division of Elections

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSSJR 18(STA)
(S) Publish Date: 3/1/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title: Constitutional Amendment RDU: AK Permanent Fund Corporation
Permanent Fund Appropriations Component: AK Permanent Fund Corporation
Sponsor: Senate Rules Committee
Requester: Senate Judiciary Committee Component No. 109

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SJR18 would ask the voters at the next general election whether to approve an amendment to the Constitution of the State of Alaska that would limit appropriations from the Permanent Fund to no more than 5% of the average year-end market values of the fund for the preceding five years.

SJR18 would not affect the budgeted costs to manage and invest the Permanent Fund, nor would it change the amount of income earned by Permanent Fund investments.

See the attached schedules for financial projections and analysis of the Fund comparing the "Status Quo" to a 5% percent-of-market-value (POMV) spending limit.

Prepared by: Robert D. Storer, Executive Director Phone (907) 465-2047
Division: Alaska Permanent Fund Corporation Date/Time 1/18/04 8:51 AM
Approved by: Steve Porter, Deputy Commissioner Date 1/18/2004
Agency: Department of Revenue



Alaska Permanent Fund Corporation FN #3 Page 2 of 2 CSSJR 18(STA)
 SJR 18 - Financial projection comparison of the Alaska Permanent
 Fund under status quo versus POMV spending limit beginning in
 \$ millions

Status Quo	-----projected-----											
	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15
Total Return	15.25%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%
Contributions & appropriations (after payouts)	23,300	24,179	25,042	25,922	26,824	27,748	28,688	29,652	30,628	31,623	32,668	33,725
Unrealized appreciation/depreciation on invested assets	3,451	3,898	4,284	4,634	4,958	5,262	5,546	5,824	6,065	6,270	6,445	6,598
Realized earnings account (after payouts)	850	1,341	1,943	2,516	3,041	3,591	4,180	4,809	5,480	6,200	6,969	7,792
Total market value end of year (after payouts)	<u>27,601</u>	<u>29,417</u>	<u>31,268</u>	<u>33,072</u>	<u>34,823</u>	<u>36,600</u>	<u>38,414</u>	<u>40,245</u>	<u>42,133</u>	<u>44,084</u>	<u>46,087</u>	<u>48,165</u>
Annual realized income	1,311	1,602	1,796	1,969	2,129	2,280	2,430	2,586	2,743	2,909	3,079	3,254
Dividend (lump sum) - status quo	561	499	560	739	925	1,027	1,113	1,226	1,297	1,367	1,477	1,542
Transfer status quo Inflation-proofing (ER to principal)	0	613	635	657	680	703	727	751	776	801	828	855

POMV - 5% (beginning in FY05)	-----projected 5% POMV beginning in FY05-----											
	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15
Total Return		7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%
Total Market Value End of Year (after payouts)	<u>27,601</u>	<u>28,605</u>	<u>29,621</u>	<u>30,654</u>	<u>31,686</u>	<u>32,710</u>	<u>33,739</u>	<u>34,782</u>	<u>35,840</u>	<u>36,912</u>	<u>38,005</u>	<u>39,153</u>
5 year average market value lagged one year		26,224	26,669	27,674	29,191	30,843	32,061	33,146	34,243	35,346	36,453	37,572
POMV Payout available for appropriation in lump sum		1,311	1,333	1,384	1,460	1,542	1,603	1,657	1,712	1,767	1,823	1,879

Assumptions:

- Both scenarios show payouts net of inflation.
- POMV payout assumes calculation methodology is 5% of the ending market value (pre payout) for the first five of the last six fiscal years.
- Callan Associates 2003 Capital Market Assumptions, APFC 2003 asset allocation, Fall 2003 revenue forecast, financial statements through 12/31/03. All payouts are assumed to happen at fiscal year end, all dollar values in millions.
- Per SB 100, currently there is no FY04 inflation-proofing appropriation, and \$354 million of FY04's projected inflation-proofing of \$523 was pre-funded in FY03.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SJR 18
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title: Constitutional Amendment: BRU Permanent Fund Corp
Permanent Fund Appropriations Component Permanent Fund Corp
Sponsor: Senate Rules
Requester: Senate State Affairs Component No. 109

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SJR 18 would ask voters in the next general election whether to approve a constitutional amendment that would limit annual appropriations to no more than 5% of the average year-end market value of the Fund for the preceding five years.

SJR 18 would not affect the budgeted costs to manage and invest the Permanent Fund, nor would it change the amount of income earned by Permanent Fund investments.

See the attached schedule for financial projections of the Fund comparing the "Status Quo" to a 5% POMV spending limit.

Prepared by: Robert D. Storer, Executive Director Phone (907)465-2047
Division: Alaska Permanent Fund Corporation Date/Time 4/25/03 5:00 PM
Approved by: William Corbus, Commissioner Date 4/29/2003
Agency: Department of Revenue



Alaska Permanent Fund Corporation

SJR 18 FN #2 Pg 2 of 2 - Financial projection comparison of the Alaska Permanent Fund under status quo versus POMV spending limit, beginning in FY05.

\$ millions

Status Quo	-----projected-----										
	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13
Total Return	-3.42%	7.38%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%
Principal - end of year (after payouts)	22,348	23,268	24,149	25,057	25,988	26,937	27,910	28,899	29,899	30,918	31,956
Realized earnings reserve (after payouts)	633	398	648	1,102	1,581	2,028	2,446	2,886	3,358	3,865	4,487
Unrealized earnings reserve	(632)	118	610	960	1,232	1,468	1,708	1,929	2,135	2,332	2,434
Total earnings reserve - end of year (after payouts)	0	516	1,258	2,062	2,813	3,496	4,154	4,816	5,493	6,197	6,921
Total Market Value End of Year (after payouts)	<u>22,349</u>	<u>23,784</u>	<u>25,407</u>	<u>27,118</u>	<u>28,801</u>	<u>30,433</u>	<u>32,065</u>	<u>33,715</u>	<u>35,392</u>	<u>37,115</u>	<u>38,876</u>
Annual net income	(851)	1,620	1,775	1,897	2,026	2,152	2,275	2,397	2,521	2,647	2,776
Dividend (lump sum) - Status Quo	686 *	510	409	442	597	766	887	979	1,059	1,131	1,209
Transfer status quo Inflation-proofing (ER to principal)	102	590	612	635	659	683	707	732	758	783	810

* The APFC FY03 projected dividend, paid to Alaska citizens in October, 2003 is subject to available earnings reserve. The volatility in the stock market has taken earnings reserve to zero or below several times this fiscal year. If the earnings reserve balance is zero or negative on 6/30/03, no dividend distribution will be paid to the Department of Revenue.

POMV - 5% (beginning in FY05)	-----projected 5% POMV beginning in FY05-----										
	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13
Total Return			7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%
Total Market Value End of Year (after payouts)		<u>23,784</u>	<u>24,581</u>	<u>25,429</u>	<u>26,307</u>	<u>27,186</u>	<u>28,078</u>	<u>28,978</u>	<u>29,881</u>	<u>30,795</u>	<u>31,717</u>
Annual net income			1,775	1,834	1,898	1,963	2,028	2,094	2,161	2,228	2,295
POMV Payout available for appropriation in lump sum			1,235	1,243	1,274	1,329	1,380	1,426	1,473	1,520	1,568
5 year average market value			24,706	24,854	25,480	26,576	27,608	28,526	29,463	30,409	31,363

Assumptions: Callan Associates 2003 Capital Market Assumptions, APFC 2003 asset allocation, Spring 2003 revenue forecast, financial statements through 3/31/03. All payouts are assumed to happen at fiscal year end, all dollar values in millions.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SJR 18
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Office of the Governor
Title Constitutional Amendment relating to BRU Elections
limiting appropriations from and inflation-proofing the APF... Component Elections
Sponsor Senate Rules Committee
Requester Senate State Affairs Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	1.5	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	1.5	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Lauri Allred Phone 465-5347
Division: Division of Elections Date/Time 4/28/03 1:33 PM
Approved by: Laura A. Glaiser, Director Date 4/28/2003
Agency: Office of the Lt. Governor, Division of Elections



**Alaska Permanent Fund Corporation
Analysis of Senate Joint Resolution (SJR) 18
March 2004**

OVERVIEW

The Resolution proposes changes to the Alaska Constitution Article IX, Section 15, which governs the Alaska Permanent Fund. The latest version of the Resolution is CSSJR 18 (STA).

SUMMARY OF CHANGES

- 1) Page 1, line 10. Adds a reference to the new subparagraph (b) being added to the constitution.
- 2) Page 1, line 11. Removes the words "the principal of which" from the constitution. This change removes the distinction between the principal and the earnings reserve. The Fund becomes one pool of money versus two.
- 3) Page 1, lines 13 & 14. Deletes the guidance for where income of the Fund should be deposited. The intent is for all income to remain in the Fund until appropriated by the Legislature.
- 4) Page 2, lines 2 – 6. Adds a new subparagraph (b) that establishes an annual payout limit of 5% of the total market value of the Fund. The market value will be based on a five-year average. This is to protect the Fund from inflation and preserve the real value over the long term. Additionally, this provision allows the legislature and the administration to know one year in advance the amount available for appropriation.
- 5) Page 2, line 9 – 12. Adds a transitional provision that makes clear the balance in the Fund's earnings reserve remains in the Permanent Fund. Some have argued that the earnings reserve belongs in the General Fund.
- 6) Page 2, lines 13 – 15. States that the amendments will be placed before the voters at the next general election.



Alaska Permanent Fund

Senate Finance Committee

A Fund overview and discussion of POMV

ACCOUNTABILITY

TO ALASKANS FOR ALASKANS



"To benefit all generations..."

AS 37.13.020 (1)

...the Fund should provide
a means of conserving a portion
of the state's revenue from mineral resources
to benefit all generations of Alaskans.

ACCOUNTABILITY

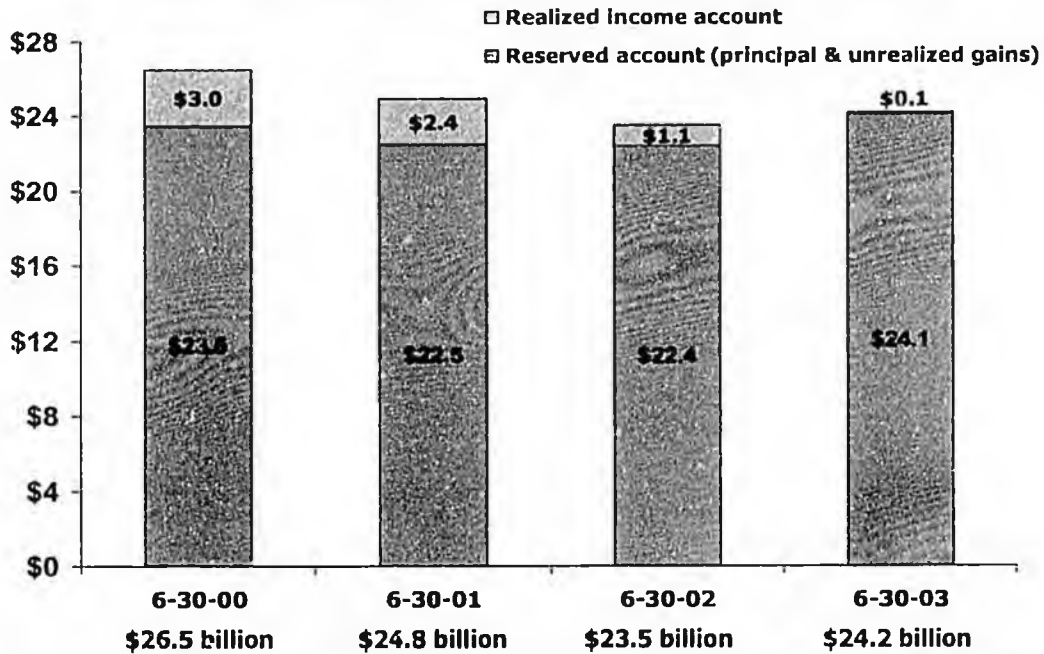
2

TO ALASKANS FOR ALASKANS



Permanent Fund market value

Four-year change in realized and reserved accounts

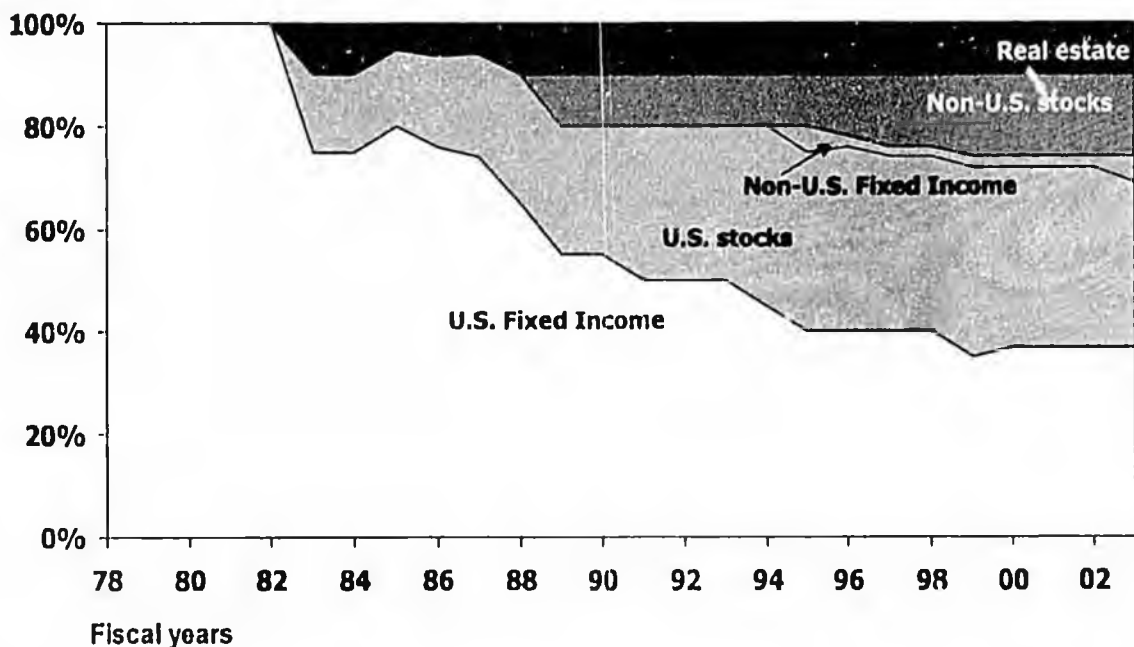


ACCOUNTABILITY

TO ALASKANS, FOR ALASKANS



Fund's historical asset allocation



ACCOUNTABILITY

TO ALASKANS, FOR ALASKANS



Trustees' proposal

The APFC Board of Trustees propose
a constitutional amendment
to limit annual fund spending
to five percent
of the Fund's total market value.

POMV

ACCOUNTABILITY

TO ALASKANS. FOR ALASKANS.



What is POMV?

POMV, or "Percent of Market Value," is a formula that limits spending to a set percent of a fund's total market value.

The set percent is based on the expected difference between total annual return on investments and the rate of inflation.

8% projected average annual return

-3% projected average annual inflation

5% maximum annual sustainable payout

retained in the Fund for inflation proofing

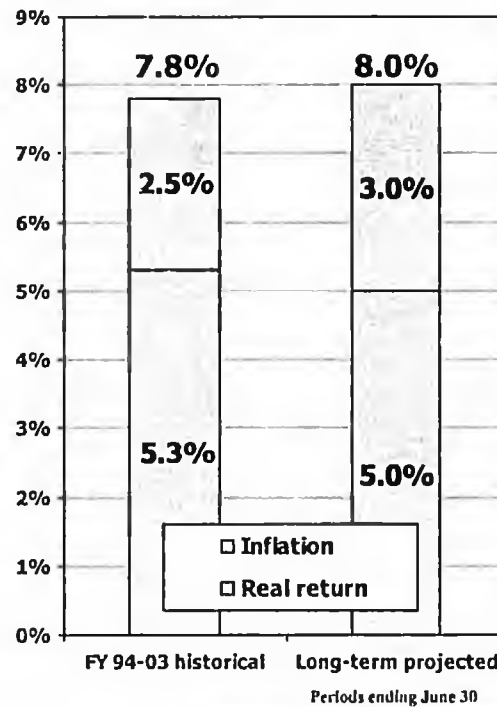
ACCOUNTABILITY

TO ALASKANS. FOR ALASKANS.



Fund performance

- Historically, Fund returns would have hit their long-term real rate of return target.
- Fund returns going forward, after adjusting for inflation, are expected to meet the target payout rate over time.



ACCOUNTABILITY

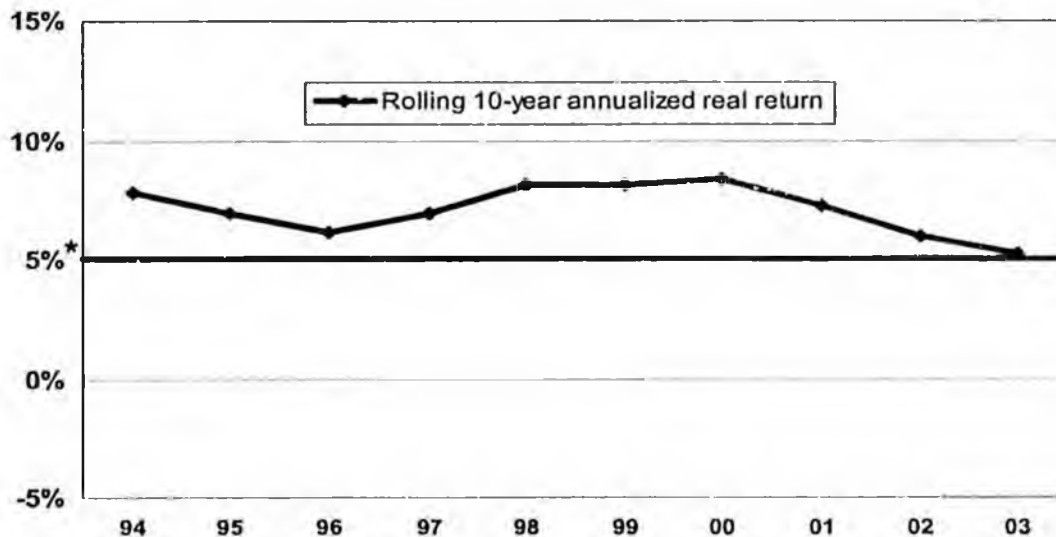
8

TO ALASKANS, FOR ALASKANS



Rolling 10-year real return

For periods ending June 30



ACCOUNTABILITY

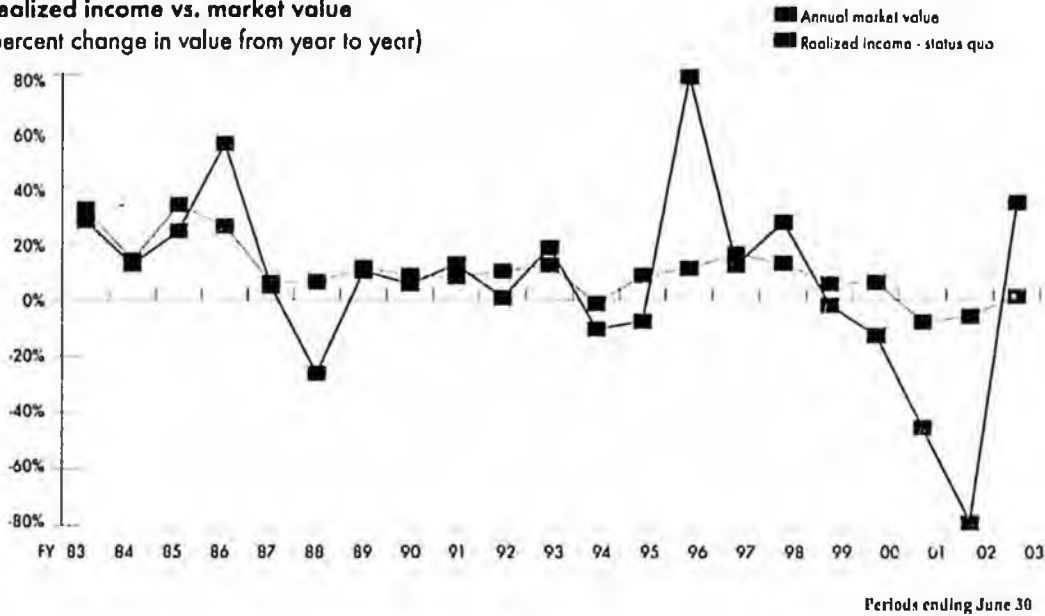
TO ALASKANS, FOR ALASKANS



Realized income v. market value

Volatility

Realized income vs. market value
(percent change in value from year to year)



ACCOUNTABILITY

TO ALASKANS, FOR ALASKANS



Why do we need POMV?

For the present

- Ensure the option of an annual payout
- Make payout amounts more stable from year to year
- Make payout method compatible with investment strategy

For the future

- Prevent overspending in the good years
- Maintain purchasing power for the entire Fund

ACCOUNTABILITY

TO ALASKANS, FOR ALASKANS



What are Alaskans asking?

- **Will this change leave the principal unprotected?**
- **How will POMV affect my dividend?**
- **Is POMV a raid on the Permanent Fund?**
- **Why fix the Permanent Fund if it isn't broken?**

ACCOUNTABILITY

TO ALASKANS. FOR ALASKANS

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 4/17/03

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 4/24/03
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 5/7/03

State Affairs Committee considered SENATE JOINT RESOLUTION NO. 18

SJR 18 CONST. AM: PF APPROPS/INFLATION-PROOFING

Proposing amendments to the Constitution of the State of Alaska relating to limiting appropriations from and inflation-proofing the Alaska permanent fund by establishing a percent of market value spending limit.

and recommends:

- be replaced with _____ CS SJR 18 (STA)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

- further referral to _____ Committee

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
<u>OOB</u>	<u>4/28/03</u>	<input checked="" type="checkbox"/>		<u>1</u>
<u>DOR</u>	<u>4/29/03</u>		<input checked="" type="checkbox"/>	<u>2</u>

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

- APPROPRIATION - no fiscal note

Dyson
Guess
Cowdery

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<u>[Signature]</u>			<input checked="" type="checkbox"/>	
<u>[Signature]</u>			<input checked="" type="checkbox"/>	
<u>[Signature]</u>	<input checked="" type="checkbox"/>			
CHAIR: <u>[Signature]</u>			<input checked="" type="checkbox"/>	

J. Stevens

SENATE COMMITTEE REPORT

DATE: 5/7/03

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 2/27/04

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 18

SJR 18 CONST. AM: PF APPROPS/INFLATION-PROOFING

Proposing amendments to the Constitution of the State of Alaska relating to limiting appropriations from and inflation-proofing the Alaska permanent fund by establishing a percent of market value spending limit.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS SJR 18 (STA)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
REV	1/18		✓	3
GOV	1/16	✓		4

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Ellis	<i>[Signature]</i>			X	
French	<i>[Signature]</i>			X	
Therriault	<i>[Signature]</i> PROTECTS THE FUND	X			
Ogan	<i>[Signature]</i>			X	
CHAIR:	<i>[Signature]</i>	X			

Ellis
French
Therriault
Ogan
Seelins

SJR 19

PERMANENT

FUND

INCOME

CS FOR SENATE JOINT RESOLUTION NO. 19(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/1/04
Referred: Finance

Sponsor(s): SENATORS LINCOLN, Ellis

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to the Alaska
2 permanent fund.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article IX, sec. 15, Constitution of the State of Alaska, is amended to read:

5 Section 15. Alaska Permanent Fund. (a) At least twenty-five per cent of all
6 mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing
7 payments and bonuses received by the State shall be placed in a permanent fund, the
8 principal of which shall be used only for those income-producing investments
9 specifically designated by law as eligible for permanent fund investments. All income
10 from the permanent fund shall be deposited in the earnings reserve account and
11 distributed as provided for under AS 37.13.140, 37.13.145, and AS 43.23.025. as
12 those statutes read on July 1, 2002 [GENERAL FUND UNLESS OTHERWISE
13 PROVIDED BY LAW].

14 * Sec. 2. Article IX, sec. 15, Constitution of the State of Alaska, is amended by adding a
15 new subsection to read:

16 (b) Notwithstanding other provisions of this constitution,

1 (1) AS 37.13.140, 37.13.145, AS 43.23.025, and any provisions of law
2 referred to in those sections, remain in effect as they read on July 1, 2002, unless they
3 are amended or repealed and the amendment or repeal is ratified by affirmative vote of
4 a majority of the voters of the State voting on the question; and

5 (2) money may be appropriated from the earnings reserve account only
6 as authorized under AS 37.13.145(b) and (c) as those subsections read on July 1, 2002,
7 unless the appropriation is ratified by affirmative vote of a majority of the voters of the
8 State voting on the question.

9 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new
10 section to read:

11 **Section 30. Conditional Effect; Suspension and Repeal of Amendments.**

12 (a) The 2004 amendments to the Alaska permanent fund (art. IX, sec. 15) take effect
13 only if, in 2004, the voters approve an amendment relating to an appropriation limit
14 (art. IX, sec. 16).

15 (b) Notwithstanding Section 1 of Article XIII, the 2004 amendments to
16 Section 15 of Article IX are suspended on the date of an initial determination by the
17 Internal Revenue Service that all or a portion of the permanent fund is subject to
18 federal taxation. The suspension is terminated on the date the amendments are
19 repealed under (b) of this section or one hundred eighty days after the date of a final,
20 nonappealable judgment or order by a federal court deciding that no portion of the
21 permanent fund would be subject to federal taxation as a result of the amendments.
22 During the period of suspension under this subsection, Section 15 of Article IX shall
23 apply as it read on January 1, 2003.

24 (c) Notwithstanding Section 1 of Article XIII, the 2004 amendments to
25 Section 15 of Article IX are repealed one hundred eighty days after the date of a final,
26 nonappealable judgment or order by a federal court deciding that all or a portion of the
27 permanent fund is subject to federal taxation. Upon repeal of the 2004 amendments
28 under this subsection, Section 15 of Article IX is amended to read as it read on
29 January 1, 2003.

30 * Sec. 4. The amendments proposed by this resolution shall be placed before the voters of
31 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the

1 State of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 19
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATORS LINCOLN, Ellis

Introduced: 5/1/03

Referred: State Affairs, Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to the Alaska
 2 permanent fund.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article IX, sec. 15, Constitution of the State of Alaska, is amended to read:

5 Section 15. Alaska Permanent Fund. (a) At least twenty-five per cent of all
 6 mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing
 7 payments and bonuses received by the State shall be placed in a permanent fund, the
 8 principal of which shall be used only for those income-producing investments
 9 specifically designated by law as eligible for permanent fund investments. All income
 10 from the permanent fund shall be deposited in the earnings reserve account and
 11 distributed as provided for under AS 37.13.140, 37.13.145, and AS 43.23.025, as
 12 those statutes read on July 1, 2002 [GENERAL FUND UNLESS OTHERWISE
 13 PROVIDED BY LAW].

14 * Sec. 2. Article IX, sec. 15, Constitution of the State of Alaska, is amended by adding a
 15 new subsection to read:

16 (b) Notwithstanding other provisions of this constitution.

1 (1) AS 37.13.140, 37.13.145, AS 43.23.025, and any provisions of law
2 referred to in those sections, remain in effect as they read on July 1, 2002, unless they
3 are amended or repealed and the amendment or repeal is ratified by affirmative vote of
4 a majority of the voters of the State voting on the question; and

5 (2) money may be appropriated from the earnings reserve account only
6 as authorized under AS 37.13.145(b) and (c) as those subsections read on July 1, 2002,
7 unless the appropriation is ratified by affirmative vote of a majority of the voters of the
8 State voting on the question.

9 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new
10 section to read:

11 Section 30. Suspension and Repeal of amendments. (a) Notwithstanding
12 Section 1 of Article XIII, the 2004 amendments to Section 15 of Article IX are
13 suspended on the date of an initial determination by the Internal Revenue Service that
14 all or a portion of the permanent fund is subject to federal taxation. The suspension is
15 terminated on the date the amendments are repealed under (b) of this section or one
16 hundred eighty days after the date of a final, nonappealable judgment or order by a
17 federal court deciding that no portion of the permanent fund would be subject to
18 federal taxation as a result of the amendments. During the period of suspension under
19 this subsection, Section 15 of Article IX shall apply as it read on January 1, 2003.

20 (b) Notwithstanding Section 1 of Article XIII, the 2004 amendments to
21 Section 15 of Article IX are repealed one hundred eighty days after the date of a final,
22 nonappealable judgment or order by a federal court deciding that all or a portion of the
23 permanent fund is subject to federal taxation. Upon repeal of the 2004 amendments
24 under this subsection, Section 15 of Article IX is amended to read as it read on
25 January 1, 2003.

26 * Sec. 4. The amendments proposed by this resolution shall be placed before the voters of
27 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
28 State of Alaska, and the election laws of the state.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSSJR 19(JUD)
(S) Publish Date: 3/1/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Constitutional Amendment BRU Permanent Fund Corporation
Permanent Fund Income Component Permanent Fund Corporation
Sponsor Senator Lincoln
Requester Senate Judiciary Component No. 109

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
SJR 19 would ask voters in the next election whether to memorialize in the Constitution the current statutory dividend calculation formula.

SJR19 would not affect the budgeted costs to manage and invest the Permanent Fund, nor would it change the amount of income earned by Permanent Fund investments.

Prepared by: Robert D. Storer, Executive Director Phone (907) 465-2047
Division Alaska Permanent Fund Corporation Date/Time 1/18/04 9:12 AM
Approved by: Steve Porter, Deputy Commissioner Date 1/18/2004
Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSSJR 19(JUD)
(S) Publish Date: 3/1/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
Title Constitutional amendment relating to the RDU Elections
to the Alaska permanent fund. Component Elections
Sponsor Senator Lincoln
Requester Senate Judiciary Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Leonard G. Jones Phone 465-3051
Division: Division of Elections Date/Time 1/16/04 10:39 AM
Approved by: Laura A. Glaiser, Director Date 1/16/2004
Agency: Office of the Lt. Governor, Division of Elections

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SJR 19
(S) Publish Date: 5/14/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Office of the Governor
Title Constitutional Amendment relating to BRU Elections
the Alaska permanent fund Component Elections
Sponsor Senator Lincoln
Requester Senate State Affairs Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	1.5	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	1.5	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Lauri Allred Phone 465-5347
Division Division of Elections Date/Time 5/12/03 10:10 AM
Approved by: Laura A. Glaiser, Director Date 5/12/2003
Agency Office of the Lt. Governor, Division of Elections

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SJR 19
(S) Publish Date: 5/14/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Constitutional Amendment: BRU Permanent Fund Corp
Permanent Fund Income Component Permanent Fund Corp
Sponsor Senator Lincoln
Requester Senate State Affairs Component No. 109

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SJR19 would ask voters in the next general election whether to approve a constitutional amendment that would require distributions from the Permanent Fund earnings reserve be as provided in the existing statutes for determining the annual amount available for appropriation and the amount of the dividend.

SJR19 would not affect the budgeted costs to manage and invest the Permanent Fund, nor would it change the amount of income earned by Permanent Fund investments.

Prepared by: Robert D. Storer, Executive Director Phone (907)465-2047
Division Alaska Permanent Fund Corporation Date/Time 5/12/03 3:00 PM
Approved by: Larry Persily, Deputy Commissioner Date mm/dd/yr
Agency Department of Revenue



Senator Georgianna Lincoln

Alaska State Legislature, District C
State Capitol • Juneau, Alaska 99801-1182 • (907) 465-3737 • Fax (907) 465-2652
E-mail: Senator_Georgianna_Lincoln@legis.state.ak.us

SPONSOR STATEMENT SJR 19

Permanent Fund Dividend Protection Act

SJR 19 proposes a constitutional amendment that would give constitutional protection to the dividend program of the Alaska Permanent Fund. It ensures the Permanent Fund Dividend will endure.

This resolution is a reiteration of the popular initiative proposed by former Governor Jay Hammond late last year. SJR 19 would require a majority vote by Alaskans before the Legislature could spend any of the Permanent Fund earnings that currently go to the dividend or to inflation proof the fund.

The Resolution would also maintain the distribution formulas used to calculate the dividend that were in place on July 1, 2002. This will further guarantee the Permanent Fund Dividend Program will remain intact.

It has been said that permanently protecting the dividend program might make the fund susceptible to federal taxation. Section 3 of SJR 19 will immediately repeal Sections 1 and 2 if the IRS determines the fund is taxable.

The Permanent Fund dividend represents approximately one-eighth of Alaska's economy, and is the most direct link between the people of Alaska and the resources they own. With the ongoing budget deficit, it is in the interest of Alaskans to constitutionally protect our dividend on which many people depend and with which they contribute to a healthy economy.

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

March 2, 2004

SUBJECT: Contingent effect in a proposed constitutional amendment
(CSSJR 19(JUD)) (Work Order No. 23-LS1076D)

TO: Representative Eric Croft
Attn: Mark Gnadt

FROM: Tamara Brandt Cook
Director *TBC*

CSSJR 19(JUD) proposes amendments to Art. IX, sec. 15 of the state constitution relating to the permanent fund. It also contains an amendment to Art. XV making the effect of the amendments to Art. IX, sec. 15 contingent upon approval by the voters of a separate proposed constitution amendment to Art. IX, sec. 16 relating to an appropriation limit. You ask if the contingency itself creates a constitutional problem.

The contingency itself adds a complicating element to CSSJR 19(JUD). It is possible that a court would find that, as a result of the contingency, an amendment dealing with the appropriation limit has been, in effect, added to the amendments already proposed under CSSJR 19(JUD). This will make the proposal more vulnerable to a challenge under Bess v. Ulmer, 985 P.2d 979 (Alaska 1999). The court in that case held that the legislature could propose amendments to the constitution that involve only one subject and that are "few, simple, independent, and of comparatively small importance." (Bess, at 987) While the court might accept the proposition that amendments dealing with the permanent fund and with a spending limit both fall within the single broad subject of state finances, it is less likely that the court will find the combination to constitute a proposal with amendments that are "few, simple, independent, and of comparatively small importance." Consequently, the addition of the contingency in CSSJR 19(JUD) increases the risk that the court will find the proposal to be so extensive as to amount to a revision of the state constitution, and, therefore, beyond the power of the legislature to propose.

TBC:mdr
04-081.mdr



GREGG D. RENKES
ATTORNEY GENERAL OF ALASKA

October 6, 2003

Board of Trustees
Alaska Permanent Fund Corporation
P.O. Box 25500
Juneau, Alaska 99802-5500

Gentlemen:

I have the pleasure of transmitting to you a tax opinion prepared by Steptoe & Johnson LLP, a Washington, D.C.-based law firm ("Steptoe"). In its opinion Steptoe addressed three questions posed by us and reached the following conclusions:

1. The Alaska Permanent Fund (the "Fund"), as currently constituted, should not be subject to federal income tax under the doctrine of implied statutory tax immunity (a) because it is an asset of the State of Alaska and its income is earned directly by the State of Alaska or (b) in the alternative, because it is an integral part of the State of Alaska.
2. The Alaska Permanent Fund Corporation (the "Corporation"), as currently constituted, should not be subject to federal income tax (a) under the doctrine of implied statutory tax immunity because it is an integral part of the State of Alaska or (b) in the alternative, because its income, if any, is excluded from federal income tax under Section 115(1) of the Internal Revenue Code (the "Code").
3. The adoption of constitutional amendments incorporating into the Constitution a requirement for payment of the permanent fund dividend and a requirement that a portion of Fund earnings be used to defray the State's obligations to fund public education should not change the above conclusions.

Steptoe's opinion is more favorable than tax opinions on the federal income tax status of the Fund and the Corporation that we obtained from outside counsel in 1988. This change is attributable primarily to two factors.

1. When the earlier opinion was obtained in 1988, there was a lack of clarity regarding ownership of Fund assets. Specifically, certain language in the Alaska Statutes and the Corporation's Annual Reports raised questions as to whether the Fund's assets were held by the State of Alaska or by the Corporation. In the


intervening years, amendments to the Alaska Statutes and changes in the format of the Corporation's Annual Reports have clarified that the Fund is the property of the State and that the purpose of the Corporation is to manage the Fund. In 1988, there also was a lack of clarity concerning the independence of the Corporation. The Corporation had made statements emphasizing its independence. It is now clear that the Corporation operates independent of political considerations in making investment decisions but it is subject to state control in all respects, as outlined in Steptoe's opinion. These changes have strengthened the position that the Fund and the Corporation are not subject to tax.

2. The earlier opinion expressed some concern that the permanent fund dividend might be viewed as a private benefit and that such a view could cause the Fund to be taxable. Perhaps due to the benefit of another 15 years of Internal Revenue Service rulings, Steptoe concluded that private benefit is not a concern. First, Steptoe found no express requirement for a public purpose or lack of private benefit under the integral part test. Second, although there are some rulings that hold a particular fund is not an integral part of a state because it results in private benefit, Steptoe concluded that this result was unlikely where two critical factors are present -- state financial commitment and state control. Both of these factors are clearly satisfied by the Fund. Third, Steptoe found that many rulings held that funds making payments to private individuals were integral parts of a state where the aforementioned critical factors were present. Like the earlier tax opinion, Steptoe also noted the stated public purposes for the payment of the permanent fund dividend and that it was paid to all residents in their capacity as residents of the State of Alaska and not in their private capacities.

We had not previously requested an opinion from outside counsel on the impact of a constitutional amendment requiring payment of the permanent fund dividend. However, based on the concerns about the permanent fund dividend raised in the earlier tax opinion, we questioned whether requiring payment of the dividend by a constitutional amendment would exacerbate these concerns. As noted above, in Steptoe's opinion, payment of the permanent fund dividend is not a concern under the existing statute, and the adoption of a constitutional amendment requiring payment of the dividend should not change this result.

I would be happy to answer any questions you have about the opinion.

Sincerely,


Gregg D. Renkes
Attorney General

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September 22, 2003

The Honorable Gregg D. Renkes
Attorney General
State of Alaska
Department of Law
123 4th Street, 5th Floor
Juneau, AK 99801-1141

Re: Federal Income Tax Status of Alaska Permanent Fund
and Alaska Permanent Fund Corporation

Dear Mr. Renkes:

You have requested our opinion concerning the application of the federal income tax laws to the Alaska Permanent Fund ("APF" or "Fund") and the Alaska Permanent Fund Corporation ("APFC" or "Corporation"). Specifically, you have asked:

1. Whether the Fund or the Corporation, as currently constituted, is subject to federal income tax;
2. Whether incorporating into the Alaska Constitution (the "Alaska Constitution" or "Constitution") a requirement for a payment of a dividend to residents of Alaska from the Fund, generally known as the permanent fund dividend, would affect the federal income tax status of the Fund or the Corporation; and
3. Whether providing in the Constitution that a portion of earnings from the Fund must be used to defray the State's obligations to fund public education would affect the federal income tax status of the Fund or the Corporation.

As more fully explained below, in our opinion, the Fund, as currently constituted, should not be subject to federal income tax because it is an asset of the State of Alaska and its income is earned directly by the State of Alaska or, in the alternative, because it is an integral part of the State of Alaska. We further conclude that the Corporation, as currently constituted, should not be subject to federal income tax because it is an integral part of the State of Alaska or, in the alternative, because its income, if any, is excluded from federal income tax under Section 115(1) of the Internal Revenue Code (the "Code").

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Further, and as more fully explained below, in our opinion, the adoption of constitutional amendments incorporating into the Constitution a requirement for payment of the permanent fund dividend and a requirement that a portion of Fund earnings be used to defray the State's obligations to fund public education should not change this result.

In preparing our opinion, we have reviewed prior tax opinions regarding the federal income tax status of APF and APFC that you provided to us, the pertinent provisions of the Alaska Constitution, the Alaska Statutes,¹ and relevant interpretations of federal income tax law. The opinions and conclusions expressed herein are based on our understanding of the facts set forth below and are subject to any limitations or conditions expressed herein. Further, our opinions and conclusions are based on the law as of the date of this letter, and we assume no obligation or responsibility to update them in the event of a change in law, regulation, or administrative or judicial interpretation, regardless of whether such change applies retroactively.

I. Statement of Facts

A. Alaska Permanent Fund ("APF")

1. Establishment and Purpose of APF

APF was established in 1976 by a voter-approved amendment to the Alaska Constitution. Alaska Const. art IX, § 15 (effective Feb. 21, 1977). Article IX, Section 15 of the Alaska Constitution provides:

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

According to the legislative findings set forth in Section 37.13.020 of the Alaska Statutes, the purposes of the Fund are to "provide a means of conserving a portion of the state's revenue from mineral resources to benefit all generations of Alaskans; . . . to maintain safety of principal while maximizing total returns; [and to be] a savings device managed

¹ For interpretations of state law, we have relied on opinions of the Alaska Attorney General and interpretations of such opinions by Alaska courts. Courts in Alaska have given "great weight" to the Attorney General's opinions on matters of statutory interpretation. See *Myers v. AHFC*, 68 P.3d 386, 392 n.2 (Alaska 2003).

to allow the maximum use of disposable income from the fund for purposes designated by law.”

The Alaska Constitution does not specify the organizational form of the Fund. The Fund is treated as a segregated permanent fund on the State’s books without its own legal identity. The Fund’s annual reports and the legislative history of the Fund, as compiled by the Rural Research Agency in 1986 on request from the Alaska legislature, refer to the fund as a “trust.”² The Permanent Fund Dividend Division, a division of the Department of Revenue that is responsible for dividend distributions from the Fund, characterizes the Fund on its website as a “savings trust.”³ The Fund also has been characterized as a “savings account.”⁴

APF is managed by the Alaska Permanent Fund Corporation (“APFC”), which is described in the Alaska Statutes as a “public corporation and government instrumentality in the Department of Revenue.” Alaska Stat. § 37.13.040. The Fund is exempt from all state taxes and assessments. Alaska Stat. § 37.13.180.

2. Funding

As provided in the Alaska Constitution, Article IX, Section 15 and Section 37.13.010(a) of the Alaska Statutes,⁵ APF derives revenues from the following sources:

1. 25% of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares, bonuses and federal mineral revenue sharing payments; and
2. any other money appropriated to or otherwise allocated by law to APF.

² See APF 2002 Annual Report, *available at* <http://www.apfc.org/library/AnRptArch.cfm?s=5>; Alaska’s Permanent Fund, Legislative History, Intent and Operations, Rural Research Agency Report (Jan. 1986), *abridged for The Trustee’s Papers Vol. 5*, *available at* <http://www.apfc.org/library/tp5.cfm?s=5>.

³ See *Division Overview*, *available at* <http://www.pfd.state.ak.us/OVERVIEW.HTM>.

⁴ See *History of the Fund and of Alaska*, *available at* <http://www.apfc.org/library/pfhistory.cfm?s=5>; APF 2002 Annual Report (Preamble), *available at* <http://www.apfc.org/library/AnRptArch.cfm?s=5>.

⁵ *As amended by* 2003 Alaska Sess. Laws ch. 22, § 3.

APF received its first deposit of dedicated oil revenues in the amount of \$734,000 on February 28, 1977.⁶ Since then, a percentage of mineral revenues has been paid monthly to APF as required by the Alaska Constitution and Section 37.13.010 of the Alaska Statutes. In 1980, the legislature made a special appropriation of \$900 million from surplus oil revenues to APF.⁷ In the same year, the legislature raised APF's share of oil royalties for fields leased after 1979 from 25% to 50%.⁸ From 1981 to 1985, the legislature made special appropriations from the general fund to the APF totalling \$2.7 billion.⁹ In 1987, the legislature transferred, by special appropriation, \$1.26 billion of undistributed APF income back to the principal of APF.¹⁰ In 1996, the legislature appropriated \$1.84 billion of APF income to APF's principal. In 1997, the legislature appropriated another \$803 million of APF income to APF's principal.¹¹ In 2000, the legislature appropriated another \$250 million to APF principal. In 2003, the legislature appropriated all but \$100 million of the remaining balance in the earnings reserve, an amount totaling \$354 million, to APF's principal. See 2003 Alaska Sess. Laws ch. 82, § 67(2).

In 1982, the Alaska legislature, at the request of the APFC board of trustees, enacted a statute to protect the principal of the Fund from erosion through inflation. Alaska Stat. § 37.13.145(c). Annually since 1983, a portion of APF income has been transferred to principal to offset the effect of inflation.

⁶ See *Landmarks in Permanent Fund History*, available at <http://www.apfc.org/library/FundHistoryB.cfm?s=5> (1976-1983).

⁷ See *Landmarks in Permanent Fund History*, available at <http://www.apfc.org/library/FundHistoryB.cfm?s=5> (1976-1983).

⁸ In 2003, this percentage was rolled back to 25%, but can return to 50% if the impact on the permanent fund dividend exceeds \$20. See Alaska Stat. § 37.13.010(a), as amended by, 2003 Alaska Sess. Laws ch. 22, § 3. See also *Landmarks in Permanent Fund History*, available at <http://www.apfc.org/library/FundHistoryB.cfm?s=5> (1976-1983).

⁹ See *Landmarks in Permanent Fund History*, available at <http://www.apfc.org/library/FundHistoryB.cfm?s=5> (1976-1983); <http://www.apfc.org/library/FundHistoryC.cfm?s=5> (1984-1988).

¹⁰ See *Landmarks in Permanent Fund History*, available at <http://www.apfc.org/library/FundHistoryC.cfm?s=5> (1984-1988).

¹¹ See *Landmarks in Permanent Fund History*, available at <http://www.apfc.org/library/FundHistoryD.cfm?s=5> (1989-2003).

APF's assets reached \$5 billion by 1984.¹² In 1986, the Fund's annual net income exceeded \$1 billion for the first time.¹³ As of June 30, 2003, APF's market value was \$24.2 billion.

The Division of Finance of the State of Alaska reports the assets and earnings of APF in the State's annual financial statements.¹⁴ APF and its income are considered by Moody's and Standard & Poor's for purposes of establishing the state's bond ratings.¹⁵

3. Disposition of Income

The Alaska Constitution requires that the income of APF be deposited in the general fund of the State of Alaska, unless otherwise provided by law. *See* Alaska Const. art. IX, § 15. Thus, the legislature determines how the income from the Fund will be spent. As discussed below, the legislature has enacted several provisions that provide for income to be deposited in funds other than the general fund.

Income from the Fund is deposited as earned into an earnings reserve account that is established as a separate account in the Fund. Alaska Stat. § 37.13.145(a). Net income of the Fund is computed annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains and losses. Alaska Stat. § 37.13.140.

At the end of each fiscal year, the income of the Fund is disposed of as follows. A portion of the income, specified by statute, is transferred from the earnings reserve account to a separate dividend fund (the "Dividend Fund") to be distributed to residents of Alaska. Alaska Stat. § 37.13.145(b). After the transfer to the Dividend Fund, an amount sufficient to offset the effect of inflation on the principal of the Fund during that fiscal year is transferred from the earnings reserve account to the principal of the Fund. Alaska Stat. § 37.13.145(c). Any balance remaining after transfers to the Dividend Fund and to the principal of the Fund to offset inflation is retained in the earnings reserve account and is available for legislative appropriation. *See* Alaska Stat. § 37.13.145. No portion of the balance can be disbursed without legislative action. *Hickel v. Cowper*, 874

¹² *See Landmarks in Permanent Fund History, available at* <http://www.apfc.org/library/FundHistoryC.cfm?s=5> (1984-1988).

¹³ *See Landmarks in Permanent Fund History, available at* <http://www.apfc.org/library/FundHistoryD.cfm?s=5> (1989-2003).

¹⁴ *See, e.g.,* State of Alaska Department of Administration, Division of Finance, Comprehensive Annual Financial Report, FY 2002 at p. 22.

¹⁵ Memorandum from Debt Manager, Treasury Division to Alaska Permanent Fund Corporation (Sept. 18, 2003).

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P.2d 922, 934 (Alaska 1994); 1983 Inf. Op. Att'y Gen. File No. 366-484-83 (March 10, 1983).

The Dividend Fund program was enacted by the Alaska legislature in April 1980. The purposes of the program are (1) to provide equitable distribution of a portion of the State's energy wealth to Alaskans; (2) to encourage people to remain Alaska residents, thereby reducing population turnover in the state; and (3) to encourage awareness and interest in the management of the Fund. 1980 Alaska Sess. Laws ch. 21, § 1(b). Pursuant to this program, 50% of the income of APF that is "available for distribution" is transferred to the Dividend Fund. Alaska Stat. § 43.23.045; Alaska Stat. § 37.13.145(b). Income "available for distribution" equals 21% of the net income of the Fund for the last five fiscal years, including the fiscal year just ended, up to the amount of net income of the Fund for the fiscal year just ended, plus the balance in the earnings reserve account. Alaska Stat. § 37.13.140. The Dividend Fund is a separate fund in the State Treasury administered by the Commissioner of Revenue. Alaska Stat. § 43.23.045(a). The Commissioner of Revenue, through the Permanent Fund Dividend Division in the Department of Revenue, annually pays dividends from the Dividend Fund to eligible recipients. Alaska Stat. § 43.23.025. The size of each year's dividend is calculated using a formula that takes into account the amount in the Dividend Fund available for dividend payments and the number of individuals eligible to receive a dividend in that year. *Id.* The first dividend, in the amount of \$1,000 per person, was distributed in 1982.¹⁶

Under Section 43.23.005(a) of the Alaska Statutes, an individual qualifies for a Fund dividend if he or she applies to the Department of Revenue and --

1. is a citizen or lawful permanent resident of the United States;
2. is a state resident on the date of application;
3. was a state resident during the entire qualifying year;
4. has been physically present in the state for at least 72 consecutive hours at some time during the two years before the current dividend year;
5. was, at all times during the qualifying year, physically present in the state, or if absent, was absent only as allowed [in this chapter]; and

¹⁶ See *Permanent Fund Dividend Program*, available at <http://www.apfc.org/alaska/dividendprgrm.cfm?s=4>.

6. has not been disqualified by reason of felony conviction.

B. Alaska Permanent Fund Corporation ("APFC")

1. Establishment of APFC

The Alaska Constitution does not specify how APF should be managed. When APF was first established, it was managed by the Alaska Commissioner of Revenue. Alaska Stat. § 37.10.065, *repealed by* 1980 Alaska Sess. Laws ch. 18, § 10. In 1980, APFC was created for the purpose of "provid[ing] a mechanism for the management and investment of [APF] assets . . ." Alaska Stat. § 37.13.030.¹⁷

The statute established APFC as "a public corporation and government instrumentality in the Department of Revenue managed by the board of trustees." Alaska Stat. § 37.13.040. APFC is treated as a state agency. 1987-1 Op. (Inf.) Att'y Gen. Alas. 473, File No. 66-87-0420 (June 22, 1987); 1982 Op. (Inf.) Att'y Gen. Alas., File No. 366-269-83 (Dec. 2, 1982). As a state agency, APFC is subject to the Alaska Administrative Procedure Act; the Executive Budget Act; statutes regarding public records, public meetings, conflicts of interest, and adoption of regulations; multiple provisions of the Alaska Statutes relating to public officers and employees; and various contracting and procurement requirements applicable to state agencies. *See* 1993 Op. Att'y Gen. Alas., File No. 663-93-0250 (Jan. 26, 1993); Op. Att'y Gen. No. 366-269-83 (citing *ASHA v. Dixon*, 496 P.2d 649 (Alaska 1972)).

APFC is exempt from all state taxes and assessments. Alaska Stat. § 37.13.180. APFC is immune from suit except to the extent that legislation has been enacted into law consenting to suits against the State. Op. Att'y Gen. 366-269-83. APFC uses the same fiscal year as the state.¹⁸ The enabling statute did not specify the term of existence of APFC. Thus, the legislature can abolish APFC at will and transfer its functions back to the Department of Revenue or to another state agency.

¹⁷ In addition to managing the Fund, APFC has managed the assets of certain other funds designated by law. Alaska Stat. § 37.13.050. It is our understanding that the only other fund that APFC is currently managing is a portion of the Alaska mental health trust fund. *See* Alaska Stat. § 37.13.300.

¹⁸ *See* APF 2002 Annual Report, p 32. We also understand, based on discussions with staff of APFC, that APF, APFC and the State of Alaska use the same taxpayer identification number.

2. Board of Trustees

The affairs of APFC are managed by the board of trustees. Alaska Stat. § 37.13.040. Board members of APFC are appointed by the Governor of Alaska. Alaska Stat. § 37.13.050(a). The board consists of six members. *Id.* Two members must be heads of principal departments of state government, one of whom must be the Commissioner of Revenue. *Id.* The other four members are appointed by the Governor from the public and may not hold any other state or federal office, position or employment, except as a member of the armed forces. *Id.* Public members must have recognized competence and wide experience in finance, investments, or other business management-related fields. Alaska Stat. § 37.13.050(b). They are appointed for staggered four-year terms. Alaska Stat. § 37.13.060. The Governor may remove a member of the board. Alaska Stat. § 37.13.070. "A removal . . . must be in writing and must state the [cause] for the removal." *Id.* Four members of the board constitute a quorum for the transaction of business and the exercise of the powers and duties of the board. Alaska Stat. § 37.13.080. Action may be taken only upon affirmative vote of a majority of the full membership of the board. *Id.*

Pursuant to the board's authority to manage the affairs of APFC under Alaska law,¹⁹ on September 12, 1980, the board of trustees adopted bylaws of APFC. The bylaws set forth the rules for internal governance of APFC. The board of trustees may adopt regulations to interpret Title 37, Chapter 13 of the Alaska Statutes (the statutes dealing with APF and APFC). Alaska Stat. § 37.13.205; APFC Bylaws art. III, § 11. In the past, APFC promulgated regulations covering accounting practices.²⁰ No regulations are currently in effect.²¹

3. Employees

The board employs and determines the salary of an executive director. Alaska Stat. § 37.13.100. The executive director, with the approval of the board, selects and employs additional staff as necessary. *Id.* APFC employees are exempt from the State Personnel Act, which provides standard procedures for classification of positions, a pay plan establishing salaries, recruitment, hiring, evaluation of performance, hearing of grievances, transfer, layoff, termination, hours of work, disciplinary procedures and similar matters. See Alaska Stat. §§ 39.25.010-39.25.995; Alaska Stat. § 37.13.100;

¹⁹ Alaska Stat. § 37.13.040.

²⁰ See former Alaska Admin. Code tit. 15, § 137.060 (effective May 31, 1981, Register 78; repealed July 12, 1992, Register 123).

²¹ See Alaska Admin. Code tit. 15, ch. 137 (showing all APFC regulations repealed).

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Alaska Stat. § 39.25.110 (11)(B); Op. Att'y Gen. No. 366-269-83.²² Instead, APFC employees are subject to APFC's own position classification plan and salary schedules. The salaries of APFC employees are established by the board based on the recommendation of the compensation committee (consisting of at least three members of the board of trustees of APFC who are appointed by the Chairman of the board. Alaska Stat. § 37.13.100; APFC Bylaws art. II, § 5(a)(2)). However, provisions generally applicable to state employees, such as those related to travel expenses, leaves of absence, insurance and supplemental benefits in lieu of social security, retirement benefits and deferred compensation, apply to APFC employees. Op. Att'y Gen. No. 366-269-83. The trustees and employees of APFC are covered under the state's combined casualty insurance policy, the state's performance bond, and the state's self-insurance risk management plan. *Id.* The trustees and employees of APFC are protected from personal liability to the same extent as other state employees and are entitled to indemnity from the state. *Id.*

Legal advice is provided to APFC by the Alaska Attorney General. Op. Att'y Gen. No. 366-269-83.

4. Operating Budget

The source of APFC's operating budget is the revenue generated by APFC's investments. Alaska Stat. § 37.13.150. APFC submits an annual budget to the state legislature pursuant to the Executive Budget Act. Alaska Stat. § 37.13.150; Op. Att'y Gen. No. 366-269-83. APFC's budget is included in the State's operating budget.²³ Pursuant to its budget authorization, APFC pays its expenses out of the revenues generated by the Fund's investments.²⁴ Salaries and benefits of APFC employees are paid via the State of Alaska payroll system. APFC reimburses the State for the cost of its payroll.²⁵ Any unused budget authorization lapses and is treated as income of the Fund.²⁶ See Alaska Stat. § 37.13.150. All operating funds of APFC are public funds subject to the constitutional requirement that they be used only for a public purpose, and may not be

²² Employees who are exempt from the State Personnel Act are referred to as being in "the exempt service" of the State. See Alaska Stat. § 39.25.110. The exempt service contains 38 classes of employees, including investment officers in the Department of Revenue, who are exempt from the State Personnel Act. See *id.*; Alaska Stat. § 39.25.110(26). Employees of the legislature, the court system, the Governor's office, and several boards, commissions and authorities are also exempt.

²³ See Alaska Stat. § 37.13.150; Alaska Sess. Laws ch. 83, § 1 (2003) (Department of Revenue).

²⁴ See Alaska Stat. § 37.13.150

²⁵ Dept. of Revenue/APFC Reimbursable Services Agreement, No. 0430053.

²⁶ Alaska Stat. § 37.13.150.

expended in a manner inconsistent with the government-approved budget. 1993 Op. Att'y Gen. Alas. No. 663-93-0397 (July 6, 1993).

5. Investment Authority

Investment authority over APF's assets is vested in the board of APFC. The exercise of this authority by the board is subject to the prudent investor rule and the requirement set forth in Article IX, Section 15, of the Alaska Constitution that the principal of APF "be used only for those income-producing investments specifically designated by law. . . ." Alaska Const. art. IX, § 15; Alaska Stat. § 37.13.120(a).

The types of investments that the board may make are restricted by law. Alaska Stat. § 37.13.120(g). The board is required to maintain a reasonable diversification among investments. Alaska Stat. § 37.13.120(c). Generally, APFC may not borrow money or guarantee obligations of others from principal of the APF. Alaska Stat. § 37.13.120(e). With respect to real property investments of the Fund, APFC may, through an entity in which the investment is made, borrow money if the borrowing is without recourse to APFC and APF. *Id.*

The Bank of New York ("BNY") is the Custodian for APF and APFC. All securities are shown on BNY's books as held by the "Alaska Permanent Fund."

Real property investments of APF typically are held by APFC, acting for and on behalf of APF. In each of the documents governing the acquisition, ownership or disposition of APF's real estate investments, APFC is identified as acting for APF, much as an agent is sometimes identified as acting for a principal (e.g., "John Doe, as attorney-in-fact for Jane Smith"). The reason the owner is not simply listed as the "Alaska Permanent Fund" is that the Fund has no clear and separately recognized legal status.

Neither APF nor APFC directly owns any real property assets. In order to insulate the other assets of the Fund (and the State of Alaska generally) from property-related liabilities, and in many cases to provide a vehicle for collective investment by multiple equity investors, all of APF's real property investments are made through separate LLCs, partnerships or corporations that in turn own fee title to the real estate. Investments held solely by APFC are almost always held through separate corporations that have been recognized as tax-exempt by the Internal Revenue Service (the "Service" or the "IRS") under Code Section 501(c)(25). Investments in which other co-investors

also participate are typically held through limited liability companies, although a few older real estate interests are still held by general partnerships or limited partnerships.²⁷

6. Accounting and Oversight

The board publishes an annual report for distribution to the Governor, the State legislature and the public. Alaska Stat. § 37.13.170. The report contains audited financial statements, a statement of the amount of money received by the Fund from each investment during the period covered, a list of investments with their fair market values, a description of Fund investment activity, an evaluation of the Fund's performance in light of the goals in Section 37.13.020 of the Alaska Statutes, an evaluation of investment criteria utilized by the board and any other relevant information. Alaska Stat. § 37.13.170. In addition to the annual report, the board is required to submit long-range and quarterly investment reports to the Legislative Budget and Audit Committee. Alaska Stat. § 37.13.120(d). The Legislative Budget and Audit Committee has oversight responsibility over APFC's operations. Alaska Stat. § 37.13.160. Policies for the day-to-day management of APFC, however, are set by the board. Alaska Stat. § 37.13.120.

Meetings of the board are subject to the Alaska Open Meetings Act. 1985 Op. Att'y Gen. Alas. 193, File No. 366-364-85 (Feb. 21, 1985); Op. Att'y Gen. No. 663-93-0397. Alaska statutes regarding public records, conflicts of interest, and adoption of regulations apply to APFC. Op. Att'y Gen. No. 366-269-83. All books and records of APFC, unless confidential, are available for public inspection. Alaska Stat. § 37.13.200; APFC Bylaws, art. IV, § 2.

C. Constitutional Amendments

Amendments to the Alaska Constitution that would require specific disbursements from the Fund are currently under consideration. Specifically, there is under consideration a constitutional amendment that would require payment of the permanent fund dividend to residents of Alaska. Proposals to amend Article IX, section 15 of the Alaska Constitution by incorporating into the Constitution current statutory provisions regarding payment of the permanent fund dividend are currently pending in both the House and the Senate of the Alaska state legislature.²⁸ It is understood, however, that the objective of these proposals -- placing a requirement to pay the permanent fund dividend in the Constitution -- may ultimately be achieved through different language.

²⁷ Memorandum from Donald E. Percival, Heller Ehrman White & McAuliffe, to Alaska Department of Law (Sept. 17, 2003).

²⁸ See Sponsor Substitute for House Jt. Res. 3, 23rd Alaska Legislature (2003); Senate Jt. Res. 19, 23rd Alaska Legislature (2003).

We also have been asked to consider whether an amendment to the Constitution that would dedicate a portion of the Fund's income to public education would have an impact on the federal income tax status of the Fund or the Corporation. It is our understanding that the purpose of this amendment would be to use income from the Fund to defray a portion of the State's obligation to fund public education under Chapter 14.17 of the Alaska Statutes.

II. Law

A. Legal Framework

1. Doctrine of Implied Statutory Immunity for States

The Internal Revenue Code neither expressly imposes a tax on the income of states and their political subdivisions nor expressly exempts such income from tax. As a matter of statutory construction, the Service has long adhered to the position that Congress did not intend to tax the income of states, their political subdivisions, and integral parts of states or their political subdivisions, and the Service has not sought to tax their income, in the absence of an express statutory provision imposing tax.²⁹ GCM 14407, XIV-1 C.B. 103 (1935), *superseded by* Rev. Rul. 71-131, 1971-1 C.B. 28 (incorporating the rationale of GCM 14407, XIV-1 C.B. 103 (1935)); Rev. Rul. 71-132, 1971-1 C.B. 29 (incorporating the reasoning of GCM 13745, XIII-2 C.B. 67 (1934)); Rev. Rul. 87-2, 1987-1 C.B. 18; *Michigan Educ. Trust v. United States*, 40 F.3d 817 (6th Cir. 1994) (recognizing the continued vitality of the principle expressed in GCM 14407).³⁰

²⁹ An example of a provision expressly imposing a tax on governmental entities is Section 511(a)(2)(B) of the Code, which imposes an income tax on the unrelated business income of state colleges and universities.

³⁰ The doctrine of implied statutory tax immunity is to be distinguished from the doctrine of constitutional intergovernmental tax immunity. Although the constitution contains no express limitation on the power of either a state or the federal government to tax the other, early cases concluded that the nature of our government as a federation of states gave rise to an implied doctrine of constitutional intergovernmental tax immunity. See *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *Collector v. Day*, 78 U.S. (11 Wall.) 113 (1870). In subsequent cases, the Court has attempted to define the scope of state constitutional immunity from federal taxation. See, e.g., *Allen v. Regents of the Univ. Sys. of Georgia*, 304 U.S. 439 (1938); *State of New York v. United States*, 326 U.S. 572 (1946). And, in recent years, the Court has narrowed the doctrine considerably. See *South Carolina v. Baker*, 485 U.S. 505 (1988); *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985). While there is probably some state income that cannot be

2. Integral Parts of States

Similarly, the Service takes the position that income earned by an integral part of a state or a political subdivision is not subject to federal income tax. An organization operated without any independent organizational form and controlled by government officers is generally treated as an integral part of a state. *See* Rev. Rul. 87-2, 1987-1 C.B. 18; GCM 39601 (Jan. 25, 1985). If an organization has a separate organizational form, the entity may nevertheless be treated as an integral part of the state. *See* GCM 34164 (July 14, 1969); GCM 39601 (Jan. 25, 1985); Treas. Reg. § 301.7701-1(a)(3). As more fully discussed below, whether a separate entity is treated as an integral part of a state depends upon a number of factors, the most important of which are governmental control and governmental funding.

3. Code Section 115(1)

If the separate form of an entity is not disregarded and the organization is treated as an entity separate from the state, then the income earned by the entity will be subject to tax unless its income is excluded from tax under Code Section 115(1) or another provision of the Code such as Section 501(a). Code Section 115(1) excludes from tax income that (a) is derived from the exercise of any essential governmental function and (b) accrues to a state or political subdivision.

4. Legal Authorities

Because the doctrine of implied statutory tax immunity is a product of the Service's interpretation of the internal revenue laws and its long-standing administrative practice, there are no statutory provisions or regulations relating to this doctrine. The primary sources of authority are the Service's revenue rulings that are published in the Internal Revenue Bulletin. Taxpayers may rely on published revenue rulings and it is the policy of the Service to adhere to its published positions in administering the tax laws and in litigation. *See* IRS Chief Counsel Notice CC-2002-043 (Oct. 17, 2002).³¹

constitutionally taxed, *e.g.*, tax revenues, the scope of the doctrine of constitutional intergovernmental tax immunity is uncertain. *See South Carolina v. Baker*, 485 U.S. 505; *Michigan Educ. Trust v. United States*, 40 F.3d 817 (6th Cir. 1994). Because of the uncertain scope of any constitutional immunity, as well as the Service's longstanding reliance on statutory construction rather than constitutional doctrine, we do not think it is necessary or helpful to consider the doctrine of constitutional immunity in this opinion.

³¹ IRS Chief Counsel Notice CC-2002-043 was issued in response to negative publicity surrounding the Service's litigating position in *Rauerhorst v. Commissioner*, 119 T.C. 157 (2002), in which the Service took a position that was inconsistent with a

The Service also issues private letter rulings (PLRs) to individual taxpayers seeking guidance on specific transactions; Field Service Advisories (FSAs);³² and General Counsel Memoranda (GCMs).³³ These documents are available to the public under the Freedom of Information Act but have no precedential value. Code § 6110(k)(3). Despite the absence of technical precedential value, PLRs and the Service's internal documents are useful as an indication of the Service's thinking on specific factual situations. *See, e.g., Rowan Cos. v. United States*, 452 U.S. 247, 262 n.17 (1981) (stating that private letter rulings, while not precedential, are evidence of the Service's position); *ABC Rentals of San Antonio, Inc. v. United States*, 142 F.3d 1200, 1207 (10th Cir. 1998) (stating that private letter rulings, while not authoritative, may be cited "as evidence of administrative interpretation"), *supplemented by*, 77 T.C.M. (CCH) 1229 (7th Cir. 1999); *United States v. Wisconsin Power & Light Co.*, 38 F.3d 329, 335 (1994) (stating that technical advice memoranda may be considered "as evidence of administrative practice"). GCMs are useful because they contain detailed legal analysis on important issues. *See, e.g., Morganbesser v. United States*, 984 F.2d 560, 563 (2d Cir. 1993) (holding that GCMs are "helpful in interpreting the Tax Code when 'faced with an almost total absence of case law'"), *nonacq.*, 1996-1 I.R.B. 6 (1995).

published Revenue Ruling. The court issued a strong rebuke to the Service for disregarding its own ruling, characterizing its action as an "intolerable" and "capricious application of the law." *Rauerhorst*, 119 T.C. 157 (quoting *Estate of McLendon*, 135 F.3d 1017 (5th Cir. 1998); *Phillips v. Commissioner*, 88 T.C. 529 (1987)). The court held that IRS counsel "may not choose to litigate against the officially published rulings of the Commissioner without first withdrawing or modifying those rulings." *Rauerhorst*, 119 T.C. 157 (quoting *Phillips v. Commissioner*, 88 T.C. 529 (1987)).

³² Field Service Advisories are case-specific memoranda issued by the IRS National Office to IRS field agents for the following purposes: (1) to provide guidance as to the interpretation or application of the internal revenue laws; (2) to provide advice concerning the development of factual information that will be necessary to determine the proper application of the law to the facts of a particular case; or (3) to provide an assessment of litigating hazards or strategies. *See* Internal Revenue Manual § 35.2.7.4.1 (amended 7-24-1996) ("IRM").

³³ General Counsel Memoranda are formal written legal opinions prepared by a division of the IRS Chief Counsel's Office on substantive and procedural tax issues within its jurisdiction. A GCM contains the analysis and conclusion of the Chief Counsel division preparing the legal opinion on the particular issues and facts addressed at the time of issuance and is to be subsequently utilized as an important research source by Chief Counsel personnel. IRM § 30.7.2.2 (amended 3-26-1985).

B. Doctrine of Implied Statutory Immunity

1. Income of a State vs. Income of an Integral Part of a State

As noted above, both income derived directly by a state and income derived by an integral part of a state are exempt from tax under the doctrine of implied statutory immunity. In theory, if income is earned directly by a state, then it is not taxed and no further analysis is necessary. If income is not earned directly by a state, then a determination must be made as to whether the income has been earned by a separate independent entity or by an integral part of the state. In practice, however, when funds are dedicated to a specific purpose and set aside on a state's books, the Service frequently analyzes the federal tax issues in terms of whether such funds are an integral part of a state and not in terms of whether they are a direct activity of a state.

For example, in PLR 8216088 (Jan. 22, 1982), at issue was a retirement trust fund ("Retirement Fund") created to provide retirement benefits to public school employees of the state. Retirement Fund consisted of several separate accounts held by the state treasury to be used for the benefit of members of the state's public employees' retirement system. Retirement Fund was governed by a board which the relevant statute characterized as an independent administrative board of the state. The statute provided for appropriations for operating expenses of the board from the state treasury. The state treasurer was the custodian of Retirement Fund and all payments from Retirement Fund were made by the state treasurer in accordance with requisitions signed by the secretary of the board and ratified by resolution of the board. Despite the fact that Retirement Fund consisted only of accounts in the state treasury, the Service ruled that both the board and Retirement Fund were integral parts of the state.

In PLR 199722029 (Feb. 28, 1997), the Service characterized a bank account belonging to a governmental entity as an integral part of the entity rather than simply an asset of the entity. PLR 199722029 dealt with a fund created to provide a means of equalizing telephone rates charged to customers of smaller telecommunications companies in a state ("Equalization Fund"). Equalization Fund was created by the state's public utility commission ("PUC"), itself an integral part of the state, and funded through a surcharge on the end-users of telephone services. Equalization Fund was referred to in PUC proceedings as a "program." PUC had the right to terminate Equalization Fund. Equalization Fund and the income therefrom were the property of PUC. PUC delegated the administration of Equalization Fund, including the investment authority over Equalization Fund, to Y, a private provider of telecommunications services in the state. Y functioned as an agent of PUC. To fulfill its duties, Y placed Equalization Fund in a separate bank account to avoid any possible commingling of Equalization Fund with the property of Y. PUC retained the powers of control and supervision over Equalization Fund and the bank account. PUC retained the right to terminate Y's appointment as

administrator of Equalization Fund and the authority to approve or disapprove the persons selected by Y to manage Equalization Fund. By a written order of PUC, Y was obligated to make regular reports to PUC with respect to Equalization Fund. PUC determined the amounts and recipients of disbursements from Equalization Fund's balance in the bank account according to PUC's own guidelines. The Service found that Equalization Fund was not a legal person for purposes of state law and that the bank account was similar to a segregated asset account or sinking fund that PUC had set aside to achieve the purpose of Equalization Fund. Despite PUC's legal ownership of the assets of Equalization Fund and Equalization Fund's lack of standing as a separate legal entity, the Service ruled that Equalization Fund was an integral part of PUC rather than simply property of PUC. *See also* PLR 199840032 (July 1, 1998).

2. Integral Part of a State

a. Rev. Rul. 87-2

The only published ruling on the integral part test is Revenue Ruling 87-2, 1987-1 C.B. 18. In that ruling, the Supreme Court of State A established a trust fund ("Lawyer's Trust Fund") to receive and invest interest on client funds held by lawyers. In concluding that Lawyer's Trust Fund was not an independent entity but was an integral part of the state government, the Service cited the following factors.

i. Supreme Court Control over Governance of Trust

Lawyer's Trust Fund was governed by six lawyers and three public members. Three of the lawyers and the public members were appointed directly by the State Supreme Court. Although the state bar association nominated three of the lawyers, the Supreme Court was not bound to appoint the lawyers from the nominees. The Supreme Court had the power to remove any or all of the governors with or without cause and exercised an active supervisory role over Lawyer's Trust Fund.

ii. Reports to Supreme Court

One of the Supreme Court judges attended each meeting of Lawyer's Trust Fund's governors and reported to the State Supreme Court on Lawyer's Trust Fund. Lawyer's Trust Fund was required to maintain adequate books and records and to make formal quarterly reports to the Supreme Court.

iii. Disbursement of Funds for Public Purpose

The monies in Lawyer's Trust Fund were disbursed by Lawyer's Trust Fund's governors for public purposes as determined by the governors of Lawyer's Trust Fund.

The Supreme Court had the right to override the governors' decisions regarding distributions. The Supreme Court had the right to abolish Lawyer's Trust Fund by court order. In that event, any balance then on hand would be transferred, at the Court's discretion, either to another state agency, an organization described in Section 501(c)(3) of the Code, or State A's general fund.

b. Other Authorities

The Service has issued hundreds of private letter rulings, General Counsel Memoranda and other guidance which, as noted above, do not have the precedential effect of a published Revenue Ruling. These authorities are not always entirely consistent with one another and typically do not contain detailed analyses. Consequently, they engender some confusion as to what factors are determinative of integral part status. Nevertheless, to the extent that the Service consistently cites the same factors in its analyses on the integral part test, the rulings are an indication of the Service's current approach to the integral part test.

i. Critical Factors

In general, the determination of whether an enterprise is an integral part of the state is based on all the facts and circumstances of the case, but with particular emphasis placed upon two factors: (a) the state's degree of control over the enterprise; and (b) the state's financial commitment to the enterprise. *See, e.g.*, PLR 199809013 (Nov. 7, 1997); FSA 001794 (Apr. 29, 1996).³⁴ In evaluating these two factors, the Service may examine: (1) the extent of the state's involvement in the enterprise's administration and activities; (2) the use of state employees, acting in their governmental capacities, to conduct the business of the enterprise; (3) the extent of the state's control over the

³⁴ The two factors that are critical in the Service's integral part analysis, state control and state financial commitment, have different origins. The state control requirement is derived from Revenue Ruling 87-2, which is discussed above. The state financial commitment requirement is derived from the decision in *Maryland Savings-Share Insurance Corp. v. United States*, 308 F. Supp. 761 (D. Md.), *rev'd on other grounds*, 400 U.S. 4 (1970). At issue in *Maryland Savings-Share Insurance Corp.* was the entity's qualification under Section 115 of the Code rather than under the integral part test. Despite the fact that the requirement of state financial commitment was developed in the context of Section 115 analysis, the Service began applying this requirement under the integral part test. There are no published rulings that define the integral part test as the product of state control and state financial commitment. In numerous private letter rulings and FSAs, however, including the two rulings cited above, the Service identified state control and state financial commitment as the critical factors in its integral part analysis.

disbursement of the proceeds or earnings of the enterprise; (4) the extent of the state's control over the assets of the enterprise upon dissolution of the enterprise; and (5) the extent of the state's financial commitment to the enterprise. FSA 001794 (Apr. 29, 1996).

ii. State Control

State control over an enterprise has been shown where:

- The document creating the enterprise provides that the enterprise was intended to be an integral part of the state. PLR 200243040 (July 29, 2002).
- The enterprise is established by a special statute or by an executive order of the governor of the state rather than under the general corporation law. PLR 199923029 (Mar. 11, 1999); PLR 199852018 (Sept. 25, 1998); PLR 200307065 (Nov. 5, 2002).
- The enterprise is placed under a department of a state. PLR 199627016 (Apr. 5, 1996).
- The governing board of the enterprise is made up of government officials or persons appointed or nominated by government officials. GCM 39601 (Jan. 25, 1985); PLR 199627016 (Apr. 5, 1996); PLR 200116017 (Jan. 12, 2001); PLR 199923029 (Mar. 11, 1999).
- Persons serving on the governing board of the enterprise can be removed by officials of a state or political subdivision or agency. GCM 39601 (Jan. 25, 1985); PLR 199722029 (Feb. 28, 1997).
- The duties of the governing board of the enterprise are set forth in a state statute. PLR 200243040 (July 29, 2002).
- The powers and duties of the enterprise are prescribed by statute. PLR 200116017 (Jan. 12, 2001); PLR 199923029 (Mar. 11, 1999).
- Meetings of the board of the entity are public. PLR 199706006 (Nov. 8, 1996); PLR 200222007 (Feb. 20, 2002).
- The enterprise has no employees and is staffed by employees of the state or employees of a political subdivision, agency or agent of the state. GCM 39601 (Jan. 25, 1985); PLR 199722029 (Feb. 28, 1997); PLR 199627016 (Apr. 5, 1996); PLR 200243040 (July 29, 2002); PLR 199952073 (Sept. 27, 1999).
- The legislature sets the salaries of the entity's employees. PLR 200126032 (Sept. 14, 2000).
- The salaries paid to the employees of the enterprise are comparable to the salaries paid to other state employees. PLR 200126032 (Sept. 14, 2000).
- The state or its political subdivision or agency controls the amounts and recipients of disbursements from the enterprise. Rev. Rul. 87-2, 1987-2 C.B. 18; GCM 39601 (Jan. 25, 1985); PLR 199722029 (Feb. 28, 1997).

- The state or its political subdivision or agency determines the ultimate disposition of the assets of the enterprise. Rev. Rul. 87-2, 1987-2 C.B. 18; PLR 199923029 (Mar. 11, 1999).
- The state or its political subdivision or agency supervises the management of the enterprise. PLR 200243040 (July 29, 2002).
- The enterprise reports periodically to state officials or the state legislature. Rev. Rul. 87-2, 1987-2 C.B. 18; GCM 39601 (Jan. 25, 1985); PLR 199627016 (Apr. 5, 1996).
- The enterprise is subject to periodic audits by the state, its political subdivision or agency. PLR 200116017 (Jan. 12, 2001); PLR 199923029 (Mar. 11, 1999).
- The enterprise and/or its board members are subject to state statutes governing other governmental entities of the state. PLR 200243040 (July 29, 2002); PLR 199923029 (Mar. 11, 1999).
- The enterprise has no capacity to sue and be sued in its own name. See PLR 199722029 (Feb. 28, 1997).
- The state or its political subdivision or agency has the authority to terminate the enterprise. Rev. Rul. 87-2, 1987-2 C.B. 18; PLR 199923029 (Mar. 11, 1999).
- The state or its political subdivision or agency has control over the daily operations of the enterprise by its power to fund the operations of the enterprise. PLR 200031045 (May 9, 2000).
- The enterprise's financial results are consolidated into the financial statements of the state or its political subdivision or agency. PLR 199952073 (Sept. 27, 1999).

Not all of these factors need to be present for an enterprise to be considered an integral part of a state. Moreover, none of these factors by itself is dispositive. For example, in GCM 39315 (Dec. 21, 1984), the fact that the entity was empowered to sue and be sued in its own name was not considered inconsistent with integral part status. In GCM 39315, the Service did not need to determine whether the entity was an integral part of the government because the entity's income would have been excluded from tax either under the integral part test or under Code Section 115. It is significant, however, that the Service clearly thought that the entity could qualify as an integral part of the state even though it could sue and be sued in its own name. Similarly, in PLR 200126032 (Sept. 14, 2000), not all of the entity's employees were treated as state employees. Notwithstanding that fact, the Service determined from the balance of the factors that the entity was an integral part of the state.

iii. Separate Organizational Structures: Importance of Law of Formation

An important factor relevant to the determination of state control is whether the corporation was formed under general state law relating to corporations or under a special

statute. In GCM 34164, the Service suggested that this factor is dispositive on the issue of state control. Specifically, the Service stated that "whenever a corporation is formed under general state law it will be a corporation in the technical sense of the word since it must comply with the same requirements imposed upon all other corporations formed under the same statute. As such, the corporation will be . . . subject to Federal income tax regardless of the fact that it may be wholly-owned by a state or one of its political subdivisions."³⁵ Notwithstanding the forthright statement in GCM 34164, in a number of rulings, the Service has treated an entity as an integral part of the state even though the entity was organized under the state's general corporation statutes rather than by a special act of the state legislature. *See, e.g.*, PLR 200031045 (May 9, 2000) (ruling that the entity qualified as an integral part of the state even though the entity was incorporated under the state's general nonprofit corporation law); PLR 199952073 (Sept. 27, 1999) (same).

iv. State's Financial Commitment

Historically, the degree of state control was the primary factor for determining whether an enterprise qualified as an integral part of a state. In recent years, the Service has added to the integral part analysis the requirement of financial commitment from the state or political subdivision. As a result, the Service is likely to deny integral part status to an entity that derives its funds primarily from private sources. *See, e.g.*, PLR 199906036 (Oct. 13, 1998). In PLR 199906036, the State A legislature created Association to provide windstorm and hail damage insurance for Area. Every insurer authorized to do business in State A was required to be a member of Association. One of Association's statutory purposes was to protect policyholders of Association and to reduce the potential for payments by members of Association in the event of losses. To fulfill this statutory purpose, Association and Department, a department of State A, created Insurance Fund. Insurance Fund, which was not incorporated under state law, was separate and distinct from the State A treasury, and was funded by contributions from members of Association. Insurance Fund was administered by State A employees pursuant to an agreement between Association and the state. The administration of Insurance Fund was subject to oversight by Department. State A did not make any direct or indirect cash contribution to Insurance Fund. The Service ruled that, although Insurance Fund satisfied the control portion of the test for integral part status, it did not satisfy the state financial commitment portion of the test.

Substantial financial commitment to an enterprise by a state has been shown where:

³⁵ In GCM 34164, the Service noted that a corporation that would not be considered an integral part of a state or political subdivision might nevertheless be exempt from tax under Section 501(a) or 115(1).

- The state or its political subdivision or agency has legal ownership of the assets of the enterprise. PLR 199722029 (Feb. 28, 1997); PLR 200116017 (Jan. 12, 2001).
- The state has appropriated funds for the use of the enterprise. PLR 199923029 (Mar. 11, 1999).
- The state or its political subdivision or agency has transferred property to the enterprise. PLR 200031045 (May 9, 2000).
- The state has pledged its full faith and credit for debt obligations used to support the enterprise. PLR 199627016 (Apr. 5, 1996).
- Unexpended funds of the enterprise revert to the state or its political subdivision or agency. PLR 200243040 (July 29, 2002).
- The state or its political subdivision or agency pays the wages of the state employees administering the enterprise. PLR 200243040 (July 29, 2002).
- The enterprise does not reimburse the state for services provided to it by state employees. PLR 199952073 (Sept. 27, 1999).
- The enterprise receives revenues under a contract with a state or its political subdivision or agency. PLR 199923029 (Mar. 11, 1999).
- The state is entitled to the profits generated by the entity. PLR 199909013 (Nov. 25, 1998).
- Upon dissolution, all assets of the enterprise pass to the state, its political subdivision or agency. PLR 200116017 (Jan. 12, 2001).

Not all of these factors need to be present to satisfy the state financial commitment requirement. For example, in PLR 199722029 (Feb. 28, 1997), the requirement of state financial commitment was held to be met because the assets of the enterprise were owned by an integral part of the state, even though the enterprise was funded by surcharges on private individuals rather than by contributions from the state.

v. Public Purpose and Private Benefit

As discussed above, the determination of whether an enterprise qualifies as an integral part of a state generally turns on two principal factors: state control and state financial commitment. The Service's rulings in this area do not generally address the issue of whether an enterprise serves a public purpose or provides a private benefit. None of the rulings we reviewed expressly stated that an enterprise must serve a public purpose in order to be treated as an integral part of a state. In several rulings the Service made statements to the effect that the particular enterprises under consideration served a public purpose, but did not discuss the meaning of the term. For example, in Revenue Ruling 87-2, the Service noted that the income of Lawyer's Trust Fund was "disbursed . . . for public purposes" but did not specify what "public purposes" Lawyer's Trust Fund served. In PLR 200222007 (Feb. 20, 2002), the Service described a fund as having been established "for the public purpose of insuring the existence of an orderly market [of

certain types of insurance] for State residents and businesses." The Service did not explain why the purpose so described was public rather than private.

In several rulings, the Service cited the lack of public purpose or the presence of private benefit as a negative factor in the analysis of an entity's integral part status. See PLR 199733003 (May 9, 1997); PLR 199347001 (July 26, 1993). In these rulings, however, the lack of public purpose or the presence of private benefit was not the sole ground for denying the entity's integral part status, and the determination of the integral part status ultimately turned on the two critical factors -- state control and state financial commitment. In PLR 199733003 (May 9, 1997), the state sued operators of a trade school for various violations of state law. The case settled and the state deposited the settlement proceeds into Fund A to be used as restitution to students who had enrolled in the trade school. Fund A was maintained and accounted for by the attorney general as the receiver for the money paid into the fund. Disbursements from Fund A were made pursuant to court order. The Service ruled that Fund A was not an integral part of the state because the state lacked a sufficient financial commitment to Fund A. Almost as an afterthought, the Service observed that Fund A was distinguishable from Lawyers Trust Fund in Revenue Ruling 87-2 because the income and principal of Fund A benefited private parties and lacked the public benefit of Lawyers Trust Fund. In PLR 199347001 (July 26, 1993), X was a joint underwriting association of private insurers established by state statute. X was governed by a board some of whose members were elected by the insurers and others of which were appointed by an elected official of the state. The purpose of X was to provide insurance to otherwise uninsurable private entrepreneurs. X was funded primarily by policy premiums. The Service ruled that X was not an integral part of the state because X received no state funds and no funds from X were applied to any public purposes. Again, the lack of public purpose was not the sole ground for denying the integral part status. We are not aware of any ruling in which an enterprise that was funded entirely by the state was held to lack a public purpose.

There are many rulings in which payments were made to or on behalf of private persons and yet the entities making such payments were held to be integral parts of a state. For example, in PLR 200243040 (July 29, 2002), a trust fund was established to provide medical benefits for retired state employees ("Medical Fund"). The assets of Medical Fund were credited to separate recordkeeping accounts established for each participant. Individual participants could direct the investment of the amount credited to their accounts among different investment options. Disbursements from Medical Fund were used to pay participants' post-retirement medical expenses. The state controlled Medical Fund and made a significant financial commitment to Medical Fund. Without raising the private benefit/public purpose issue, the Service ruled that Medical Fund was an integral part of the state. See also PLR 200210024 (Nov. 29, 2001) (program to reimburse cancer-stricken active and retired firefighters for certain medical expenses

qualified as an integral part of the state); PLR 8216088 (Jan. 22, 1982) (fund to provide retirement benefits to public school employees qualified as an integral part).

In PLR 199840032 (July 1, 1998), a fund ("Reimbursement Fund") was established by the public utility commission ("PUC"), an integral part of the state, for the purpose of reimbursing telecommunications providers who provided discounted service to qualifying schools, libraries, hospitals, health clinics and community-based organizations. Reimbursement Fund was funded by surcharges on end-users of telecom services. Reimbursement Fund was managed by a committee appointed and controlled by PUC. PUC determined the amounts and recipients of disbursements from Reimbursement Fund. The Service ruled that Reimbursement Fund was an integral part of PUC and did not address whether Reimbursement Fund served a public purpose. *See also* PLR 8931042 (May 8, 1989) (fund established to subsidize the utility rates of the poor held to be an integral part).

In PLR 200222007 (Feb. 20, 2002), a fund ("Disaster Fund") was established by the state legislature "for the public purpose of insuring the existence of an orderly market of [certain types of insurance] for State residents and businesses." Disaster Fund paid insureds' claims when losses occurred. Finding that the state control and the state financial commitment requirements were satisfied, the Service ruled that Disaster Fund was an integral part of the state. Except for the conclusory statement that Disaster Fund was established for a specific public purpose, the public purpose requirement was not discussed. *See also* PLR 9507037 (Nov. 21, 1994) (Florida state disaster fund, organized to reimburse private insurers for a percentage of losses from a natural disaster, was an integral part of the state because the fund was controlled by state officials and the state had a financial interest in the fund), *supplemented by*, PLR 9522039 (Mar. 6, 1995) (amendments to the enabling statute enacted after the issuance of the initial ruling would not adversely affect the initial ruling); PLR 9706006 (Nov. 8, 1996) (California state disaster fund, established to provide disaster insurance coverage to private persons, was an integral part of the state because the fund was controlled by state officials and the state made a substantial financial commitment to the fund).

In sum, although the public purpose language appears in a number of rulings, there is no specific requirement that an entity must serve a public purpose in order to qualify as an integral part of a state. Likewise, there is no specific prohibition against private benefit; and in fact, in a number of rulings, entities that made distributions to private individuals were held to be integral part of a state and the issue of private benefit was not even raised.

3. Return Requirement

States, political subdivisions and integral parts of states and political subdivisions are not required to file federal income tax returns. *See* Rev. Rul. 78-316, 1978-2 C.B. 304.

C. Section 115 Exclusion from Gross Income

Section 115(l) excludes from tax income (a) derived by a separate entity³⁶ from the exercise of any essential governmental function and (b) accruing to a state or political subdivision.

1. Essential Governmental Function

The Service takes the position that investment of state funds is an essential governmental function. *See* Rev. Rul. 77-261, 1977-2 C.B. 45. In Rev. Rul. 77-261, the state treasurer of State X established Investment Fund under State X law for the purpose of investing funds of State X and its political subdivisions. The establishment of Investment Fund was authorized by state statute. Investment Fund was established under a written declaration of trust and designated as an instrumentality of State X. Investment Fund was managed by the state treasurer as trustee. The income of Investment Fund was allocated among and accrued to State X and its political subdivisions. The Service ruled that "[t]he investment of positive cash balances by a State or political subdivision thereof in order to receive some yield on the funds until they are needed to meet expenses is a necessary incident of the power of the State or political subdivision to collect taxes and other revenues for use in meeting governmental expenses." 1977-2 C.B. at 46. Accordingly, Investment Fund's income was held to derive from the performance of an essential governmental function.

2. Accrual

It is the position of the Service that income accrues to a state or political subdivision for purposes of Code Section 115 where the state or political subdivision has an unrestricted right to receive its proportionate share of such income as that income is earned. *See* Rev. Rul. 77-261, 1977-2 C.B. 45, *as clarified by* Rev. Rul. 78-316, 1978-2 C.B. 304. In Rev. Rul. 77-261, described above, State X authorized establishment of an investment fund for the purpose of investing funds of State X and its political subdivisions. The treasurer of State X as trustee of the fund sold participation units in the

³⁶ Section 115 and its predecessors have been interpreted to apply only to separate entities that do not qualify as integral parts of a state. *See* GCM 37657 (Aug. 31, 1978); GCM 14407, XIV-1 C.B. 103 (1935).

fund to State X and its political subdivisions. The income of the fund was allocated among and accrued to State X and its political subdivisions in proportion to the number of units held by each participant. Each participant was entitled to withdraw any amount from its account in the fund at any time. The Service ruled that, since the participating political subdivisions and State X had an unrestricted right to receive their proportionate share of the fund's income as it was earned, the fund's income accrued to them within the meaning of Code Section 115.

The Service's view of the accrual requirement is more lenient than the view espoused by the courts. Older judicial decisions had required actual receipt of the income. *See Bear Gulch Water Co. v. Commissioner*, 116 F.2d 975 (9th Cir.), *cert. denied*, 314 U.S. 652 (1941). Other judicial decisions, particularly more recent ones, have held that the receipt of the income may either be actual or constructive. *See City of Bethel v. United States*, 594 F.2d 1301 (9th Cir.), *cert. denied*, 444 U.S. 980 (1979); *Omaha Pub. Power Dist. v. O'Malley*, 232 F.2d 805 (8th Cir.), *cert. denied*, 352 U.S. 837 (1956).

3. Private Benefit

Section 115 does not contain an express prohibition against private benefit. In recent years, however, the Service has taken the position that Code Section 115 will not apply if the operation of the enterprise involves more than an incidental private benefit. For example, in Rev. Rul. 90-74, 1990-2 C.B. 34, the Service considered the application of Code Section 115 to the income of certain risk-sharing pools operated on behalf of state and local governments. The entity was formed, operated, and funded by various political subdivisions to pool their casualty risks or other risks arising from their obligations concerning public liability, workers' compensation, or employees' health. Revenue Ruling 90-74 held that the income of such risk-sharing pools was excluded from gross income under Code Section 115 only if private interests neither participated in the entity nor benefited more than incidentally from the entity. The payments to covered workers were considered an incidental benefit to them.

4. Return Requirement

Corporations are required to file annual federal income tax returns on Form 1120 even if their income is excluded under Code Section 115(1). Code § 6012(a); Rev. Rul. 77-261, 1977-2 C.B. 45; PLR 8728057 (Apr. 15, 1987).

III. Analysis

A. The Fund

1. **The Fund as Currently Constituted Should Not Be Subject to Federal Income Tax Because It Is Operated Directly by the State.**

Several factors support the position that income earned by the Fund is income earned directly by the State of Alaska and not by an integral part of the state. However, as noted above, the Service rarely distinguishes one from the other.

a. **The Fund Has no Legal Existence Separate From the State.**

The Fund was created by an amendment to the Alaska Constitution but has no separate organizational structure. It is no more than a collection of assets or investments that are owned directly by the State. The Fund's assets and income are included in the State's financial statements. The Fund was not created as a trust or a corporation by statute or any type of organizing document, and it has neither trustees nor a governing board. Although the legislative history of the Fund and the Corporation's annual reports refer to the Fund as a "trust," the Alaska Constitution and the Alaska Statutes pertinent to the Fund do not use the words "corporation" or "trust" in relation to the Fund. The Fund is clearly not a trust in the legal sense of the word.³⁷

The principal and the income of the Fund are included in the financial statements of the State of Alaska and are considered by Moody's and Standard & Poor's in rating the State's bonds. The Fund is treated as inseparable from the state for liability purposes; *i.e.*, the Fund is immune from suit, except to the extent the government of the State of Alaska has consented to be sued. The Fund is exempt from all state taxes and assessments. Alaska Stat. § 37.13.180. The Fund's annual reports refer to the Fund as an "investment savings account that belongs to the State of Alaska." *See* APF 2002 Annual Report.

³⁷ The term "trust" is defined in Treasury regulations for tax purposes as an arrangement whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts. Treas. Reg. § 301.7701-4(a).

b. The Fund's Principal Is Derived From Natural Resources That Are the Property of the State.

Article IX, Section 15 of the Alaska Constitution provides that "[a]t least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments." The courts have held that Alaska's natural resources and the earnings generated thereby belong to the State of Alaska. *Beattie v. United States*, 635 F. Supp. 481, 491 (D. Alaska 1986), *aff'd*, *Greisen v. United States*, 831 F.2d 916, 918 (9th Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988). In creating the Fund, the State did not renounce or disclaim its proprietary interest in the assets placed in the Fund. The Alaska Attorney General's office has issued an opinion advising that the assets of the Fund are owned by the State of Alaska. 1983 Op. Att'y Gen. Alas. 112, File No. 366-656-83 (Aug. 10, 1983).

c. Income Earned From Investment of the Fund's Principal Is Disbursed as Provided by State Law.

The Constitution requires "[a]ll income from the permanent fund [to] be deposited in the general fund unless otherwise provided by law." Alaska Const. art. IX, § 15. Thus, the Constitution envisions a perpetual cycle in which the Fund derives its principal from the revenues of the State and then adds earnings from the investment of the Fund's principal back to the revenues of the State, to be disbursed as provided under state law. From 1977-1979, the earnings of the Fund were in fact deposited in the general fund. Under currently applicable provisions of Alaska law, the earnings of the Fund are deposited in the earnings reserve account from which transfers are made to the principal of the Fund to offset the effect of inflation and to the Dividend Fund to make disbursements to residents of the State.³⁸ Alaska Stat. § 37.13.145(b), (c). In *Beattie*, the court held that the earnings of the Fund were subject to the requirement of the Alaska Constitution that state funds can be expended only for public purposes, thus implicitly holding that the earnings of the Fund are state funds. 635 F. Supp. at 483.

d. The State has Absolute Control Over the Fund

As befits the owner of property, the State of Alaska has complete control over the Fund. When the Fund was first established, the Alaska Department of Revenue managed the Fund. In 1980, APFC was established by state statute to manage the Fund. However,

³⁸ The earnings in the earnings reserve account may be appropriated by the state legi. in the same manner as amounts in the general fund. *See Computer*, 874 P.2d 922.

transfer of the management of the Fund to APFC does not diminish the State's absolute control over the Fund. Just as APFC was created by statute, it can be terminated by statute.

e. Summary

In summary, the lack of any organizational structure separate from the State, the State's ownership of the Fund's assets and its income, and the State's control of the Fund's administration and disbursements all point to the conclusion that the Fund is an asset owned by the State and its income is income earned directly by the State. In our opinion, income earned by APF is income earned directly by the State from its property. Thus, under the doctrine of implied statutory tax immunity, the Fund should not be subject to federal income tax. *See* GCM 14407, XIV-1 C.B. 103 (1935); Rev. Rul. 71-131 1971 C.B. 28; Rev. Rul. 71-132, 1971 C.B. 29. Because income earned by APF is income earned directly by the State, APF should not be required to file a federal income tax return.

2. In the Alternative, the Fund as Currently Constituted Should Not be Subject to Federal Income Tax Because It is an Integral Part of the State.

As discussed above, the Service tends to analyze cases in terms of whether an enterprise is an integral part of a state, even when it appears that the enterprise could be considered operated directly by the state. Thus, it is possible that the Service may contend that the establishment of the Fund by constitutional amendment as a segregated permanent fund, managed by a separate corporation, sets it apart from the State sufficiently for the integral part analysis to be necessary. In our opinion, the Fund should be held to meet the requirements for treatment as an integral part of a state.

a. APF Has the Same Characteristics as the Fund in Revenue Ruling 87-2.

As noted above, Revenue Ruling 87-2 is the only published ruling on the integral part test. APF and Lawyer's Trust Fund in Revenue Ruling 87-2 are strikingly similar. Because Lawyer's Trust Fund in Revenue Ruling 87-2 was held to be an integral part of the state, APF should also be treated as an integral part of the State.³⁹

³⁹ As mentioned above, it is the policy of the Service to follow its own published guidance. IRS Chief Counsel Notice CC-2002-043 (Oct. 17, 2002).

i. Establishment of the Fund.

In Revenue Ruling 87-2, the state Supreme Court, a branch of the state government, established Lawyer's Trust Fund. APF was established by a constitutional amendment to the Alaska Constitution. The amendment was passed by a two-thirds vote of each house of the legislature, a branch of state government, and approved by majority vote of the people of Alaska. Alaska Const. art. XIII, § 1.

ii. Governance of the Fund.

In Revenue Ruling 87-2, the state Supreme Court had control over the appointment and removal of the nine members of the governing board of Lawyer's Trust Fund. APF itself does not have a governing board. However, the governor appoints and has the power to remove members of the board of trustees of APFC, which was created by state statute to manage the Fund. There is no meaningful distinction between Revenue Ruling 87-2 and Alaska's situation with reference to fund governance.

iii. Reporting Requirements.

In Revenue Ruling 87-2, a Supreme Court judge attended all meetings of the governing board and reported to the court on the meeting. In addition, Lawyer's Trust Fund submitted quarterly reports to the Supreme Court. Again, APF has no existence separate from the State but APFC reports to the governor, the state legislature and the public. Specifically, APFC publishes an annual report for distribution to the Governor, the State legislature and the public and quarterly reports for submission to the Legislative Budget and Audit Committee. The Legislative Budget and Audit Committee has oversight responsibility for the activities of APFC. Meetings of the board of APFC are open to the public. All books and records of APFC, unless privileged, are available for public inspection.

iv. Disbursement of Funds.

In Revenue Ruling 87-2, amounts were disbursed from Lawyer's Trust Fund for public purposes and the Supreme Court had ultimate control over those disbursements. As funds of the State, the income of APF must, under the Alaska Constitution, be disbursed for public purposes. Moreover, because the Constitution provides that income from the Fund is to be deposited in the general fund of Alaska unless otherwise provided by law, the State of Alaska controls the disbursement of funds through the legislative process. As noted above, the legislature has exercised this power by passing statutes to protect the value of the Fund from erosion through inflation and to make disbursements to residents through the Dividend Fund.

v. Termination of the Fund.

In Revenue Ruling 87-2, Lawyer's Trust Fund could be terminated by the court and any balance remaining would then be transferred to another state agency, an organization exempt under Section 501(c)(3), or the general fund of the state. APF was established by constitutional amendment and can be terminated by constitutional amendment. Because APF is an asset of the State of Alaska, under the Alaska Constitution, if APF is dissolved, its funds must be used for public purposes.

b. Other Authorities

APF also should be held to satisfy the two critical factors that are applied in the Service's interpretations of the integral part test -- state control and state financial commitment.

i. State Control

As discussed above, the State's degree of control over the Fund is absolute. The Fund does not have a separate legal identity and cannot sue and be sued in its own name. *See* PLR 199722029 (Feb. 28, 1997). The Fund does not have its own trustees or employees. *See* GCM 39601 (Jan. 25, 1985); PLR 199722029 (Feb. 28, 1997). The State is solely responsible for the disposition of income from the Fund. *See* Rev. Rul. 87-2, 1987-2 C.B. 18; PLR 199923029 (Mar. 11, 1999). The Fund's assets are reflected in the financial statements of the State. *See* PLR 199952073 (Sept. 27, 1999).

The Fund is managed by APFC, which was created by the State and can be dissolved by the State. APFC is located within the State's Department of Revenue. *See* PLR 199627016 (Apr. 5, 1996). APFC is treated as a State agency and is subject to State statutes applicable to governmental agencies. *See* PLR 199923029 (Mar. 11, 1999). APFC reports periodically to the Governor of the State and the State legislature. *See* Rev. Rul. 87-2, 1987-2 C.B. 18.

The Trustees of APFC are appointed by the Governor. GCM 39601 (Jan. 25, 1985); PLR 199627016 (Apr. 5, 1996). Two of the trustees of APFC are high-ranking State officials. *See* PLR 199627016 (Apr. 5, 1996). The trustees of APFC can be removed by the Governor of the State. *See* GCM 39601 (Jan. 25, 1985); PLR 199722029 (Feb. 28, 1997). The duties of the trustees are prescribed by statute. *See* PLR 200243040 (July 29, 2002).

The employees of APFC who are responsible for the day-to-day administration of the Fund are State employees. *See* Rev. Rul. 87-2, 1987-2 C.B. 18; GCM 39601 (Jan. 25,

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1985); P.L.R. 199722029 (Feb. 28, 1997); P.L.R. 200243040 (July 29, 2002); P.L.R. 199627016 (Apr. 5, 1996).

These factors in combination make a compelling case that the state control requirement is met.

ii. State Financial Commitment

The principal of the Fund is funded entirely by the State's mineral revenues, special appropriations by the State legislature, and the income from investment of the Fund's principal. There are no requirements for any private contributions. The operating costs of APFC, which is the manager of APF, are paid out of the income of the Fund, pursuant to a budget that is approved under the provisions of the Executive Budget Act that governs the budgetary appropriations of all State agencies.

iii. Public Purpose and Private Benefit

As discussed above, there is no specific requirement that integral parts of a state serve a public purpose. Likewise, there is no specific prohibition against private benefit. In any event, APF serves a public purpose and does not provide a private benefit. Although a portion of the income of APF is used to pay dividends to the residents of Alaska, the payment of dividends should not be deemed to constitute a private benefit. Under the Constitution of Alaska, the income of the Fund can be expended only for public purposes. See *Beattie*, 635 F. Supp. at 483. The payment of dividends is made pursuant to state law, in accordance with the public purposes stated therein. Specifically, the Dividend Fund program has the following public purposes: (1) to provide equitable distribution of a portion of the State's energy wealth to Alaskans; (2) to encourage people to remain Alaska residents, thereby reducing population turnover in the state; and (3) to encourage awareness and interest in the management of the Fund. 1980 Alaska Sess. Laws ch. 21, § 1(b). Thus, as in Revenue Ruling 87-2, the Fund's distributions, including the dividends, are made for public purposes, as provided by State law.

The Fund resembles those entities that disburse medical or retirement benefits to private persons or to entities that ensure the availability of certain services to private persons. As discussed above, numerous rulings treat such entities as integral parts of a state. See, e.g., P.L.R. 200243040 (July 29, 2002); P.L.R. 200210024 (Nov. 29, 2001); P.L.R. 8216088 (Jan. 22, 1982); P.L.R. 8931042 (May 8, 1989); P.L.R. 200222007 (Feb. 20, 2002); P.L.R. 200140032 (July 3, 2001). Like those entities, the Fund satisfies the key requirements under the integral part test -- state control and state financial commitment -- and thus, like those entities, the Fund should be treated as an integral part of the State even if it is assumed that payments of Fund dividends constitute a private benefit.

It should not be assumed that Fund dividends constitute a private benefit, however, because the Fund's dividend program benefits on equal statutory terms virtually all residents of the State. In PLR 200140032 (July 3, 2001), the Service ruled that a fund that provided incentives for the use of renewable energy sources by state residents was an integral part of the state, and noted with approval that that fund was used for programs that benefited equally the entire populace of the state. *See also* PLR 199522039 (Mar. 6, 1995) (in ruling that the California state disaster fund qualified as an integral part of the state, noted with approval that the programs of the fund were open to all citizens of the state). In sum, the Fund should be viewed as serving a public purpose and should not be deemed to provide a private benefit.

c. Summary

If the income of the Fund is not treated as income earned directly by the State, then the Fund should be treated as an integral part of the State and its income should not be subject to federal income taxation under the authority of GCM 14407 and Revenue Ruling 87-2. As an integral part of the State of Alaska, the Fund should not be required to file a federal income tax return.

B. The Corporation

1. APFC Should Not Be Subject to Federal Income Tax Because It Is an Integral Part of the State.

We understand that APFC manages APF but has no income of its own.⁴⁰ Its operating expenses are paid out of the revenue generated by the Fund's investments pursuant to a budget that is submitted to the legislature and approved by the legislature under the procedures established by the Executive Budget Act. Alaska Stat. § 37.13.150. Thus, from the standpoint of tax liability, the issue of whether APFC is exempt from federal income tax is not particularly important.⁴¹ The significant issue is whether APFC

⁴⁰ As noted above APFC also manages a portion of the Alaska mental health trust fund. APFC is reimbursed for expenses incurred in the management of the mental health trust. *See* Alaska Stat. § 37.14.009(a)(3); Alaska Stat § 37.14.041(a)(4)(A). It is our understanding that APFC does not make a profit or accumulate funds from this management function.

⁴¹ If APFC were taxable, arguably, it would have no gross income and thus no tax liability. Alternatively, the payment of APFC's expenses by the State (*i.e.*, out of the revenue of APF, an asset of the State) might be treated as gross income to APFC for federal income tax purposes. In that case, APFC's gross income (which would equal its expenses) presumably would be offset by deductible expenses. Because of the complexity of the tax laws, it is possible that some portion of APFC's expenses would

must file a federal income tax return. An integral part of a state is not required to file a return, while a separate corporate entity that is not treated as an integral part of a state is required to file a return, even if it has no gross income or tax liability. Code § 6012(a)(2); Rev. Rul. 78-316, 1978-1 C.B. 259.

a. State Control

Much of the discussion above regarding whether the Fund would be considered an integral part of the State relies on the fact that the State controls and funds the corporation that manages the Fund, and is equally germane to the question whether the corporation itself would be considered an integral part of the State. As noted above, APFC was created by state statute and can be terminated at any time. Moreover, it is a part of the Department of Revenue, and is treated as a State agency. In addition, the Governor's control over appointments to the board of APFC, and the fact that employees of APFC are employees of the State are indicative of State control over APFC. Further, the fact that the operating budget of APFC is subject to the Executive Budget Act and that budgeted amounts are paid out of the Fund's income demonstrate that the State is the sole source of funding for APFC.

The significant difference between the Fund and APFC is that APFC was formed as a "public corporation" and a "government instrumentality" while APF has no separate legal identity. On these facts, it must be determined whether the Corporation is so "subservient" to the State that its corporate form should be ignored and it should be treated as an integral part of the State.

The fact that APFC was created by a special statute rather than under general State laws governing corporations indicates that APFC is an integral part of the State. *See* GCM 34164 (July 14, 1969). APFC does not possess a regular corporate form and is not subject to the general corporate laws of the State of Alaska. *Cf.* GCM 34164 (July 14, 1969). APFC's organizational attributes, duties and obligations are prescribed in its enabling statute. *See* PLR 200116017 (Jan. 12, 2001). APFC is located within the Department of Revenue and is treated as a State agency subject to State statutes governing other governmental entities. *See* PLR 199627016 (Apr. 5, 1996); PLR 200243040 (July 29, 2002).

not be deductible and that gross income would not be entirely offset by deductible expenses. However, it is likely that gross income would be entirely, or almost entirely, offset by deductible expenses. Moreover, as discussed below, if APFC does not qualify as an integral part of the State of Alaska, its income should be excluded from gross income under Code Section 115(1).

Furthermore, the board of APFC is controlled by the State. All six members of APFC's board of trustees are appointed by the Governor of Alaska and are subject to removal by the Governor. *See* GCM 39601 (Jan. 25, 1985); PLR 199627016 (Apr. 5, 1996); PLR 199722029 (Feb. 28, 1997). Two members of APFC's board are high-ranking public officials.

Another important factor is that APFC's employees, who are responsible for its day-to-day operations, are State employees. *See* Rev. Rul. 87-2, 1987-2 C.B. 18; GCM 39601 (Jan. 25, 1985); PLR 199627016 (Apr. 5, 1996); PLR 199722029 (Feb. 28, 1997). In a number of rulings, operational control of an entity by state employees acting as such versus operational control by private parties was a critical factor in deciding whether an entity was an integral part of a state. *See* GCM 39601 (citing to GCM 39006 (Apr. 28, 1983); GCM 34535 (June 28, 1971); GCM 38921 (July 29, 1982)). As noted above, employees of APFC are exempt from the State Personnel Act and their salaries are established by the board of APFC, but they are nonetheless State employees.

Furthermore, the State controls APFC's expenditure of operating funds through the budget process and APFC is empowered to make expenditures only for the purposes specified in its enabling statute. The Governor, the legislature and the public are kept informed of APFC's activities and performance through formal and informal reports. *See* Rev. Rul. 87-2, 1987-2 C.B. 18; PLR 9627017 (Apr. 5, 1996). Meetings of the board are open to the public.

These factors strongly point to the conclusion that APFC meets the state control requirement for purposes of the integral part test.

b. State Financial Commitment

APFC has no independent funding and is entirely dependent upon the State for its operating funds. Its operating budget must be approved by the State legislature and is paid from the earnings of the Fund, which is State property. *See* GCM 38921 (Nov. 26, 1982); Rev. Rul. 87-2 1987-2 C.B. 18; PLR 199923029 (Mar. 11, 1999). No private individuals or entities either invest money in APF or APFC or have a property interest in the assets of either. *See Geisen v. United States*, 831 F.2d 916, 918 (9th Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988). Unused budget authorizations of APFC cannot be accumulated by APFC but rather lapse and are treated as income of the Fund. *See* PLR 200243040 (July 29, 2002). Because the State funds the operations of APFC, the State has made a financial commitment to APFC for integral part test purposes.

c. Summary

In our opinion APFC should be treated as an integral part of the State because it was formed under a special statute rather than the general corporation law, the State of Alaska exercises control over APFC through the appointment of its board and detailed statutory provisions regarding its operations, and it is funded entirely by State appropriations pursuant to the Executive Budget Act. Its income, if any, should be excluded from federal income tax under the authority of GCM 14407 and Revenue Ruling 87-2, and it should not be required to file income tax returns.

2. APFC's Income, if Any, Should Be Excludable Under Section 115(1) of the Code

In the unlikely event that APFC is not treated as an integral part of the State, the income of APFC, if any, should be excluded from gross income under Section 115(1) of the Code because (a) APFC is exercising an essential governmental function; and (b) the income of APFC, if any, accrues to the State of Alaska. Because APFC's activities are limited to managing and investing the assets of APF and other funds, all of which are assets of the State, APFC's activities should not raise any private benefit issues.

a. Essential Governmental Function

The purpose of APFC is to manage and invest the property of the Fund. Based on the Service's holding in Revenue Ruling 77-261 that investment of state funds is an essential governmental function, APFC should be treated as performing an essential governmental function.⁴² Although the investments at issue in Revenue Ruling 77-261 were short-term investments and limited to high-grade money market instruments, the reasoning in Revenue Ruling 77-261 did not turn on the type of investments. Thus, the proposition that investment of state funds is an essential governmental function should hold true regardless of the type of investments involved or the term of the investments.

b. Accrual

As discussed above, APFC does not have any source of income. However, the State's payment of APFC's operating expenses might be treated as a reimbursement of expenses that is includable in gross income for federal income tax purposes. *See, e.g.,* PLR 200332025 (Jan. 7, 2003) (ruling that reimbursement of operating expenses of an entity providing telecommunications services to the poor was income under Section 61 of

⁴² As noted above, APFC manages other funds designated by law. It is our understanding, based on discussions with staff in the Law Department, that all funds managed by APFC are property of the State of Alaska.

the Code). If the State's payment of APFC's operating expenses out of revenues from the Fund gives rise to gross income for federal tax purposes, all such income should be treated as accruing to the State of Alaska because it may be used solely for the benefit of the State, *i.e.*, to manage APF, an asset owned by the State. Furthermore, because any budget appropriation that is not expended, lapses and is added to the income of APF, APFC does not accumulate any income.

c. Return Requirement

If the income of APFC is excluded from gross income under Code Section 115 rather than under the integral part doctrine, APFC would be required to file a corporate income tax return.

C. Impact of Constitutional Amendments on Federal Income Tax Treatment of the Fund and Corporation

As noted above, amendments to the Alaska Constitution that would require payment of a dividend to residents of Alaska from the Fund, commonly referred to as a permanent fund dividend, are under consideration. Although proposed constitutional amendments regarding the permanent fund dividend are pending in the House and Senate of the Alaska legislature, our opinion is not based on the specific language of the pending amendments and is not limited to the amendments that are currently pending. We have also been asked to consider the effect of a constitutional amendment that would require that a portion of the Fund's earnings be used to defray the State's obligations to fund public education. No specific constitutional amendments have been introduced in the legislature regarding dedication of earnings from APF to public education.

A constitutional amendment requiring payment of a dividend from the APF would not in any way affect the Corporation. APFC would continue an existence under the present statutory scheme. Such an amendment also would not affect the Fund's status if it were regarded as operated directly by the State (as we believe it should be). Because the Service has consistently concluded that Congress did not intend to tax the states, if a determination is made that the Fund is operated directly by the State, that is the end of the federal government's inquiry.

Nor should a constitutional amendment requiring payment of a permanent fund dividend change the answer to the question whether the Fund is an integral part of the State. If the Fund were viewed as sufficiently separate from the State to be subject to the integral part test, it would then be necessary to determine whether the constitutional amendment would affect the critical factors discussed above -- state control and state financial commitment. A constitutional amendment requiring payment of a permanent

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fund dividend would not change the source of the Fund's revenue, and thus the state financial commitment test should be held to be satisfied.

The state control test likewise should be held to be satisfied. Under current law, the State of Alaska controls the Fund through the constitutional provision establishing the Fund and through various statutory provisions. The incorporation into the State Constitution of a requirement to pay a permanent fund dividend or the addition of provisions to the State Constitution that provide for disbursements for public education from the Fund should not affect the State's control over the Fund. The fact that the State Constitution is higher in the hierarchy of State law and subject to different procedures than a state statute for passage and amendment does not change the fact that the constitution is the law of the State. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176-77 (1803) (holding that the federal Constitution is the supreme law of the land). Further, it does not change the substance and effect of the provisions at issue for purposes of federal income tax law. If the provisions that would be incorporated into the Alaska Constitution under the proposed amendments would not cause the Fund to be taxable when included in State statutes, they should not cause the Fund to be taxable when included in the State Constitution.

The requirement that a constitutional amendment be ratified by the voters of Alaska does not diminish State control over the Fund or result in private control over the Fund. In framing or amending a constitution, the people act in their collective capacity as a body politic rather than as private individuals. The act of the people framing or amending a constitution is an act of lawmaking as much as an act of a state legislature passing a statute is an act of lawmaking. See Robert F. Williams, *State Constitutional Law Processes*, 24 Wm. & Mary L. Rev. 169, 175-77 (1983). The only difference between them is that an act of voter-approved lawmaking is an expression of direct democracy while an act of legislative lawmaking is an expression of representative democracy. Although constitutional law ranks higher than statutory law, both of these bodies of law are closely intertwined in many states because many constitutional provisions are not self-executing and require implementing legislation. See Robert F. Williams, *The Brennan Lecture: Interpreting State Constitutions as Unique Legal Documents*, 27 Okla. City U.L. 189, 222 (Spring 2002); G. Alan Tarr, *Understanding State Constitutions* 22-23 (1998).

In our opinion, because a state constitution is a form of state law, the adoption of a constitutional amendment requiring payment of a permanent fund dividend should have no effect on the federal income tax status of the Fund. In other words, any provision that would not affect the federal income tax status of the Fund if included in the Alaska Statutes would not affect the status of the Fund merely because the provision was incorporated into the Constitution.

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Similarly, the adoption of a constitutional amendment requiring that a portion of earnings from the Fund be used to defray the State's obligation to fund public schools should have no effect on the federal income tax status of the Corporation or the Fund, as long as the substance of the amendment does not affect the Fund's ability to satisfy the integral part test.

We note, however, that our opinion on the impact of constitutional amendments that would require payment of a permanent fund dividend and dedication of a portion of the Fund's earnings to public education is based on general concepts and not on any specific proposed amendment.

IV. Conclusion

We conclude that APF, as currently constituted, should not be subject to federal income tax because it is an asset of the State of Alaska and its income is earned directly by the State of Alaska or, in the alternative, because it is an integral part of the State of Alaska. As an asset of the State or an integral part of the State, APF should not be required to file federal income tax returns. In our opinion, the adoption of a constitutional amendment requiring payment of a permanent fund dividend or an amendment requiring that a portion of earnings from the Fund be used to defray the State's obligations to fund public education should not affect the qualification of APF as property and income of the State of Alaska or as an integral part of the State of Alaska.

We further conclude that APFC, as currently constituted, should not be subject to federal income tax because it is an integral part of the State of Alaska. As an integral part of the State, APFC should not be required to file federal income tax returns. In the alternative, APFC's income should be excluded under Section 115 of the Code. However, if the income of APFC is excluded by reason of Section 115, rather than by reason of APFC's integral part status, APFC would be required to file corporate federal income tax returns. In our opinion, the adoption of a constitutional amendment requiring payment of a permanent fund dividend or an amendment requiring that a portion of earnings from the Fund be used to defray the State's obligations to fund public education should not affect the qualification of APFC as an integral part of the State or the application of Section 115 to APFC.

Sincerely,

STEPTOE & JOHNSON LLP

SENATE COMMITTEE REPORT

DATE: 5/14/03

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 2/27/04

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 19

19 CONST. AM: PERMANENT FUND INCOME

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund.

and recommend:

- be replaced with _____ CS SR 19 (JO)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
GOV	1/16	✓		3
REV	1/18		✓	4

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
<i>[Signature]</i> DOES NOT PROTECT THE FUND			X	
<i>[Signature]</i>			X	
CHAIR: <i>[Signature]</i>		X		

Ellis
French
Therriault
Ogan
Sims

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 5/2/03

FURTHER: Judiciary
 Finance

Date of 5-Day Notice: 24 Hour Rule in Effect
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 5/14/03

State Affairs Committee considered SENATE JOINT RESOLUTION NO. 19

SJR 19 CONST. AM: PERMANENT FUND INCOME

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOR	5/12/03		✓	1
Gov	5/12/03	✓		2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:

Cowdery
 Lyson
 Guss

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>John J. Cowdery</i>			✓	
<i>John Lyson</i>			✓	
<i>Richard Guss</i>	✓			
CHAIR: <i>S. Stevens</i>			✓	

S. Stevens

SJR 32

PERM. FUND

INCOME FOR

DIVIDENDS

CS FOR SENATE JOINT RESOLUTION NO. 32(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/1/04
Referred: Finance

Sponsor(s): SENATOR ELTON

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to
2 appropriations from the Alaska permanent fund to be used for a program of dividends
3 for all state residents and providing a conditional effect and effective date for the
4 amendment.

5 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. PURPOSE. Alaska's constitution enshrines the principle that the state's
7 resources must be managed for the maximum benefit of the people. The Alaska permanent
8 fund, built on the state's resource wealth, has for decades paid dividends directly to state
9 residents. The purpose of this amendment is to preserve the benefits of the permanent fund
10 dividend for state residents, now and in the future.

11 * Sec. 2. Article IX, sec. 15, Constitution of the State of Alaska, is amended by adding a
12 new subsection to read:

13 (c) At least eighty percent of the amount appropriated from the permanent
14 fund shall be used for a program of dividend payments for all State residents
15 established by law.

1 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new
2 section to read:

3 **Section 30. Conditional Effect of Section 15(c) of Article IX.**
4 Notwithstanding Section 1 of Article XIII, the amendment requiring a portion of
5 appropriations from the permanent fund to be used for a program of dividend
6 payments (art. IX, sec. 15(c)) takes effect only if an amendment to Section 15 of
7 Article IX to limit appropriations from the Alaska permanent fund based on an
8 averaged percent of the fund market value and an amendment to Section 16 of Article
9 IX relating to an appropriation limit are approved by the voters in the 2004 general
10 election and take effect. If the amendment concerning a program of dividend
11 payments (art. IX, sec. 15(c)) takes effect, it takes effect on the date the condition is
12 satisfied.

13 * Sec. 4. The amendments proposed by secs. 2 and 3 of this resolution shall be placed
14 before the voters of the state at the next general election in conformity with art. XIII, sec. 1,
15 Constitution of the State of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 32
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY SENATOR ELTON

Introduced: 2/16/04
Referred: Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to
2 appropriations from the Alaska permanent fund to be used for a program of dividends
3 for all state residents and providing a conditional effect and effective date for the
4 amendment.

5 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. PURPOSE. Alaska's constitution enshrines the principle that the state's
7 resources must be managed for the maximum benefit of the people. The Alaska permanent
8 fund, built on the state's resource wealth, has for decades paid dividends directly to state
9 residents. The purpose of this amendment is to preserve the benefits of the permanent fund
10 dividend for state residents, now and in the future.

11 * Sec. 2. Article IX, sec. 15, Constitution of the State of Alaska, is amended by adding a
12 new subsection to read:

13 (c) At least eighty percent of the amount appropriated from the permanent
14 fund shall be used for a program of dividend payments for all State residents
15 established by law.

1 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new
2 section to read:

3 Section 30. Conditional Effect of Section 15(c) of Article IX.
4 Notwithstanding Section 1 of Article XIII, the amendment requiring a portion of
5 appropriations from the permanent fund to be used for a program of dividend
6 payments takes effect only if an amendment to Section 15 of Article IX to limit
7 appropriations from the Alaska permanent fund based on an averaged percent of the
8 fund market value is approved by the voters in the 2004 general election and takes
9 effect. If this amendment concerning a program of dividend payments takes effect, it
10 takes effect on the date the condition is satisfied.

11 * Sec. 4. The amendments proposed by secs. 2 and 3 of this resolution shall be placed
12 before the voters of the state at the next general election in conformity with art. XIII, sec. 1,
13 Constitution of the State of Alaska, and the election laws of the state.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSJR 32(JUD)
(S) Publish Date: 3/1/04

Revision Date/Time (Note if correction):

Dept. Affected: Revenue

Title Const Am: Perm Fund
Income For Dividends

RDU AK Permanent Fund Corporation

Component AK Permanent Fund Corporation

Sponsor Sen. Elton

Requester Senate Judiciary Committee

Component No. 109

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

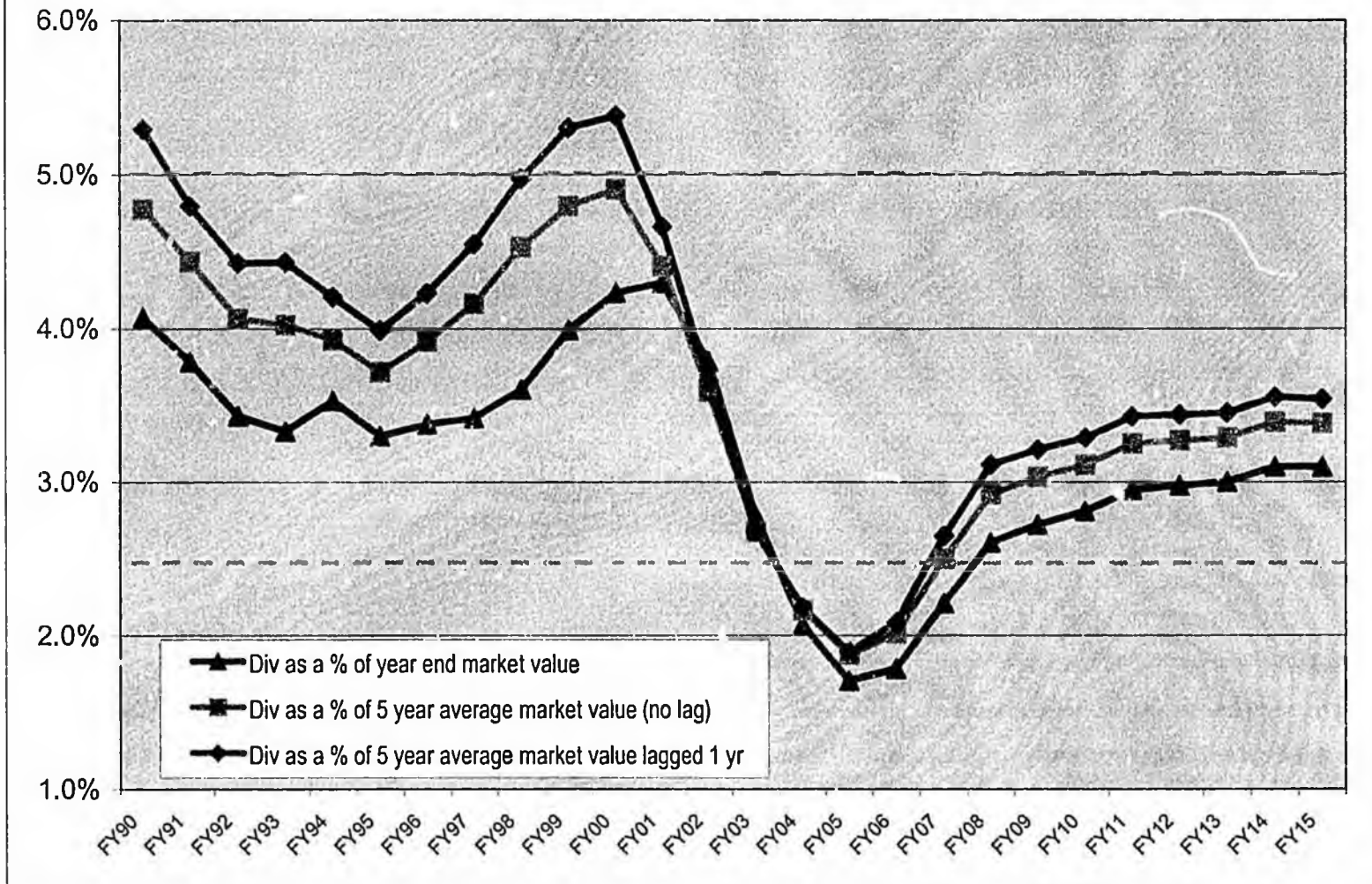
ANALYSIS: *(Attach a separate page if necessary)*

SJR 32 proposes a Constitutional amendment that would require 80% of funds appropriated from the Permanent Fund to be used for dividends. This would not change the operations of the Alaska Permanent Fund Corporation.

Prepared by: Robert D. Storer, Executive Director
Division: Alaska Permanent Fund Corporation
Approved by: Steve Porter, Deputy Commissioner
Agency: Department of Revenue

Phone 465-2047
Date/Time 2/23/04 5:42 PM
Date 2/6/2004

Comparison of dividend payout methods Historical and forecasted data



Note: all year end market values are pre-payout

Perm Fund Corp

	Fiscal Year	Ending market value (after payouts)	Actual dividend paid out (based on realized earnings)	Year end market value (before payouts)	5 year average market value (no lag)	Dividend as % of year end market value before payout	Dividend as % of the average five year end market values before payout	5 year average market value (lagged 1 year)	Dividend as % of the average five year end market values before payout (lagged 1 yr)	
<i>History</i>	FY85	6,752	217	6,969				3,145		
	FY86	8,481	303	8,784				4,434		
	FY87	8,926	391	9,317				5,803		
	FY88	9,474	424	9,898				6,973		
	FY89	10,555	460	11,015				8,037		
	FY90	11,471	487	11,958	10,194	4.1%	4.8%	9,197	5.3%	
	FY91	12,430	489	12,919	11,021	3.8%	4.4%	10,194	4.8%	
	FY92	13,735	488	14,223	12,003	3.4%	4.1%	11,022	4.4%	
	FY93	15,438	532	15,970	13,217	3.3%	4.0%	12,003	4.4%	
	FY94	15,197	556	15,753	14,165	3.5%	3.9%	13,217	4.2%	
	FY95	16,555	565	17,120	15,197	3.3%	3.7%	14,165	4.0%	
	FY96	18,395	643	19,038	16,421	3.4%	3.9%	15,197	4.2%	
	FY97	21,106	747	21,853	17,947	3.4%	4.2%	16,421	4.5%	
	FY98	23,872	893	24,764	19,706	3.6%	4.5%	17,947	5.0%	
	FY99	25,130	1,045	26,175	21,790	4.0%	4.8%	19,706	5.3%	
FY00	26,514	1,173	27,686	23,903	4.2%	4.9%	21,790	5.4%		
FY01	24,812	1,115	25,927	25,281	4.3%	4.4%	23,903	4.7%		
FY02	23,522	926	24,448	25,800	3.8%	3.6%	25,281	3.7%		
FY03	24,194	691	24,885	25,824	2.8%	2.7%	25,800	2.7%		
<i>Actual</i>	FY04	26,672	563	27,236	26,036	2.1%	2.2%	25,824	2.2%	
	FY05	28,380	493	28,873	26,273	1.7%	1.9%	26,036	1.9%	
	FY06	30,160	548	30,708	27,230	1.8%	2.0%	26,273	2.1%	
	FY07	31,899	721	32,621	28,864	2.2%	2.5%	27,230	2.6%	
	FY08	33,593	899	34,492	30,786	2.6%	2.9%	28,864	3.1%	
	FY09	35,325	989	36,314	32,601	2.7%	3.0%	30,786	3.2%	
	FY10	37,094	1,073	38,160	34,460	2.8%	3.1%	32,601	3.3%	
	FY11	38,873	1,181	40,054	36,329	2.9%	3.3%	34,460	3.4%	
	FY12	40,708	1,250	41,958	38,197	3.0%	3.3%	36,329	3.4%	
	FY13	42,601	1,318	43,919	40,082	3.0%	3.3%	38,197	3.5%	
	FY14	44,518	1,425	45,943	42,008	3.1%	3.4%	40,082	3.6%	
	FY15	46,509	1,488	47,997	43,974	3.1%	3.4%	42,008	3.5%	
					average FY90 - FY03		3.7%			4.6%
					average FY04 - FY15		2.6%			3.0%
					average FY90 - FY15		3.2%			3.8%

I verified that this data is based on 10/31/03 financial data and has not been updated with the 11/30/03 financials.



SENATOR KIM ELTON

SJR 32

Guaranteeing 80% of POMV money for dividends

Sponsor Statement

Governor Murkowski's Conference of Alaskans carefully examined several questions regarding the Alaska Permanent Fund. The conferees' letter to Alaskans stated, "Permanent Fund Dividends provide the crucial link between the Permanent Fund and its true owners, the People of Alaska, and so they too must continue." They concluded that after paying dividends, Alaska must use some earnings from the fund. They also supported state policy makers supplementing spending from the Permanent Fund earnings stream with income and other taxes. Senate Joint Resolution 32 is a vehicle to allow the legislature to take up the conference's recommendation that a portion of the earnings stream be used for dividends and a portion used for spending on state services.

SJR 32 constitutionally guarantees that 80% of the revenue stream from the permanent fund under a Percent of Market Value (POMV) approach to fund management will go to permanent fund dividends. This constitutional amendment takes effect only if a POMV amendment passes the legislature and is approved by the voters. It leaves the remaining 20% to the legislature's discretion.

Paying dividends at 4% of market value (80% of 5% POMV) would make them significantly larger in the next few years, because of the recent downturn in the investment markets. However, in 2000, payment of the dividend required roughly 4.3% of the fund's year-end market value (combining the principal and earnings reserve.) Permanent Fund Corporation analysis of the revenue stream available under CSSJR 18 (STA) projects the current dividend calculation statutes will require an average of approximately 60% of the POMV revenue stream from FY 2004-2015. If historical data from FY 90 to the present is included in that average, the number approaches 76%. Among the benefits of a higher payout is that it provides Alaska's economy with a significant boost to enhance revenue from any future broad based taxes.

The Conference of Alaskans' conclusion was clear: "A reasonable percentage of the Permanent Fund money available under POMV should be constitutionally dedicated to PFDs in order to make them "permanent" like the Fund itself."

I would appreciate your support.

ALASKA SENATE

STATE CAPITOL • JUNEAU, ALASKA 99801-1182 • (907) 465-4947 • FAX (907) 465-2108
SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 2/16/04

FURTHER: Finance

Date of 5-Day Notice: 2/19/04
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/27/04

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 32

SJR 32 CONST AM: PERM FUND INCOME FOR DIVIDENDS

Proposing amendments to the Constitution of the State of Alaska relating to appropriations from the Alaska permanent fund to be used for a program of dividends for all state residents and providing a conditional effect and effective date for the amendment.

and recommendations:

be replaced with _____ CS SJR 32 (JUD)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
REV	2/23			✓	1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

Ellis
French
Theriault
Ogawa
Seidens

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>				
CHAIR: <i>[Signature]</i>			X	

SJR 24
GUARANTEE
PERM. FUND
DIVIDEND

CS FOR SENATE JOINT RESOLUTION NO. 24(JUD)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/1/04
 Referred: Finance

Sponsor(s): SENATORS OGAN, Wagoner, Green

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska to guarantee the
 2 permanent fund dividend, establishing the earnings reserve account, and relating to the
 3 Alaska permanent fund; and providing for an effective date.

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

5 * Section 1. This resolution shall be known as an amendment to guarantee the permanent
 6 fund dividend.

7 * Sec. 2. Article IX, sec. 15, Constitution of the State of Alaska, is amended to read:

8 Section 15. Alaska Permanent Fund. (a) At least twenty-five per cent of all
 9 mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing
 10 payments and bonuses received by the State shall be placed in a permanent fund, the
 11 principal of which shall be used only for those income-producing investments
 12 specifically designated by law as eligible for permanent fund investments. The
 13 earnings reserve account is established as a separate account in the fund. Income
 14 from the fund shall be deposited into the earnings reserve account as soon as it is
 15 received. Except as provided in (b) of this section, money in the earnings reserve
 16 account may be appropriated for any public purpose. [ALL INCOME FROM

1 THE PERMANENT FUND SHALL BE DEPOSITED IN THE GENERAL FUND
2 UNLESS OTHERWISE PROVIDED BY LAW.]

3 * Sec. 3. Article IX, sec. 15, Constitution of the State of Alaska, is amended by adding a
4 new subsection to read:

5 (b) Net income of the permanent fund shall be computed annually as of the
6 last day of the fiscal year in accordance with generally accepted accounting principles,
7 excluding any unrealized gains or losses. Income available for distribution under this
8 subsection equals twenty-one percent of the net income of the fund for the last five
9 fiscal years, including the fiscal year just ended, but may not exceed net income of the
10 fund for the fiscal year just ended plus the balance in the earning reserve account. At
11 the end of each fiscal year, fifty percent of the income available for distribution,
12 calculated under this subsection, shall be transferred from the earnings reserve account
13 and used for a program established by law of dividend payments to State residents.

14 * Sec. 4. Article XV, Constitution of the State of Alaska, is amended by adding new
15 sections to read.

16 Section 30. **Conditional Effect.** The 2004 amendments to the Alaska
17 permanent fund (art. IX, sec. 15) take effect only if, in 2004, the voters approve an
18 amendment relating to an appropriation limit (art. IX, sec. 16).

19 Section 31. **Suspension and Repeal of Amendments.** (a) Notwithstanding
20 Section 1 of Article XIII, the 2004 amendments to Section 15 of Article IX are
21 suspended on the date of an initial determination by the Internal Revenue Service that
22 all or a portion of the permanent fund is subject to federal taxation. The suspension is
23 terminated on the date the amendments are repealed under (b) of this section or one
24 hundred eighty days after the date of a final, nonappealable judgment or order by a
25 federal court deciding that no portion of the permanent fund would be subject to
26 federal taxation as a result of the amendments. During the period of suspension under
27 this subsection, Section 15 of Article IX shall apply as it read on January 1, 2003.

28 (b) Notwithstanding Section 1 of Article XIII, the 2004 amendments to
29 Section 15 of Article IX are repealed one hundred eighty days after the date of a final,
30 nonappealable judgment or order by a federal court deciding that all or a portion of the
31 permanent fund is subject to federal taxation. Upon repeal of the 2004 amendments

1 under this subsection, Section 15 of Article IX is amended to read as it read on
2 January 1, 2003.

3 * Sec. 5. The amendments proposed by this resolution shall be placed before the voters of
4 the state at the next general election in conformity with art. XIII, sec 1, Constitution of the
5 State of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 24

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY SENATORS OGAN, Wagoner, Green

Introduced: 2/4/04

Referred: Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska to guarantee the
 2 permanent fund dividend, establishing the earnings reserve account, and relating to the
 3 Alaska permanent fund; and providing for an effective date.

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

5 * Section 1. This resolution shall be known as an amendment to guarantee the permanent
 6 fund dividend.

7 * Sec. 2. Article IX, sec. 15, Constitution of the State of Alaska, is amended to read:

8 Section 15. Alaska Permanent Fund. (a) At least twenty-five per cent of all
 9 mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing
 10 payments and bonuses received by the State shall be placed in a permanent fund, the
 11 principal of which shall be used only for those income-producing investments
 12 specifically designated by law as eligible for permanent fund investments. The
 13 earnings reserve account is established as a separate account in the fund. Income
 14 from the fund shall be deposited into the earnings reserve account as soon as it is
 15 received. Except as provided in (b) of this section, money in the earnings reserve
 16 account may be appropriated for any public purpose. [ALL INCOME FROM

1 THE PERMANENT FUND SHALL BE DEPOSITED IN THE GENERAL FUND
2 UNLESS OTHERWISE PROVIDED BY LAW.]

3 * Sec. 3. Article IX, sec. 15, Constitution of the State of Alaska, is amended by adding a
4 new subsection to read:

5 (b) Net income of the permanent fund shall be computed annually as of the
6 last day of the fiscal year in accordance with generally accepted accounting principles,
7 excluding any unrealized gains or losses. Income available for distribution under this
8 subsection equals twenty-one percent of the net income of the fund for the last five
9 fiscal years, including the fiscal year just ended, but may not exceed net income of the
10 fund for the fiscal year just ended plus the balance in the earning reserve account. At
11 the end of each fiscal year, fifty percent of the income available for distribution,
12 calculated under this subsection, shall be transferred from the earnings reserve account
13 and used for a program established by law of dividend payments to State residents.

14 * Sec. 4. Article XV, Constitution of the State of Alaska, is amended by adding a new
15 section to read:

16 Section 30. Conditional Effect. The 2004 amendments to the Alaska
17 permanent fund (art. IX, sec. 15) take effect only if, in 2004, the voters approve an
18 amendment relating to an appropriation limit (art. IX, sec. 16).

19 * Sec. 5. The amendments proposed by this resolution shall be placed before the voters of
20 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
21 State of Alaska, and the election laws of the state.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSJR 24(JUD)
(S) Publish Date: 3/1/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
Title Constitutional amendment relating to RDU Elections
the Alaska Permanent Fund. Component Elections
Sponsor Senators Ogan, Wagoner, Green
Requester Senate Judiciary Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Leonard G. Jones Phone 465-3051
Division: Division of Elections Date/Time 2/20/04 12:56 PM
Approved by: Laura A. Glaiser, Director Date 2/20/2004
Agency: Office of the Lt. Governor, Division of Elections

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSJR 24(JUD)
(S) Publish Date: 3/1/04

Revision Date/Time (Note if correction):
Title Const Am: Guarantee
Perm Fund Dividend

Dept. Affected: Revenue
RDU AK Permanent Fund Corporation
Component AK Permanent Fund Corporation

Sponsor Sen. Ogan
Requester Senate Judiciary Committee

Component No. 109

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SJR 24 proposes two amendments to the Alaska Constitution. One would move provisions regarding the Earnings Reserve Account from statute to the Constitution, and the other would memorialize the existing dividend calculation in the Constitution. These changes will not affect the operations of the Alaska Permanent Fund Corporation.

Prepared by: Robert D. Storer, Executive Director Phone 465-2047
Division Alaska Permanent Fund Corporation Date/Time 2/23/04 5:36 PM
Approved by: Steve Porter, Deputy Commissioner Date 2/6/2004
Agency Department of Revenue



SENATOR SCOTT OGAN Alaska State Legislature

Senate District H Lazy Mountain * Butte * Chugiak * Peters Creek * Fairview Loop
Knik-Goose Bay * Big Lake * Houston * Willow * Talkeetna * Trapper Creek

State Capitol, Room 103, Juneau Alaska 99801 * (907) 465-3878 * (800) 862-3878 * Fax (907) 465-3265

Senator_Scott_Ogan@legis.state.ak.us

[Http://www.akrepublicans.org/ogan](http://www.akrepublicans.org/ogan)

23-LS1543/I

CS for Senate Joint Resolution No. 24 (JUD)

Dividend Protection Plan

Sponsor Statement

SJR 24 was introduced to make sure the Permanent Fund Dividend enjoys constitutional protection. Currently, the dividend exists at the sole pleasure and protection of a simple majority of the legislature.

The Constitution protects the principle of the Permanent Fund. However, each year, dividends, inflation-proofing and unspent earnings are at the whim of each legislature. Many Alaskans think that a vote of the people is required before changes can be made to the dividend program. This will only be true when the dividend is protected by the Constitution.

Until Alaskans feel confident that the Permanent Fund and the dividend is safe from legislative control, we will not be able to start discussion about what to do with any excess earnings. This resolution offers the security that voters want.

Royalties from the subsurface mineral estate endow the Permanent Fund. Alaska subsurface mineral rights are, in general, collectively owned by the state instead of by the individual landowners. By constitutionally protecting the dividend, we recognize compensation for the mineral estate most Alaskans do not receive if they own the land.

In summary, passage of SJR 24 gives Alaskans an opportunity to make their Permanent Fund Dividend a Constitutional mandate instead of a legislative option.

Contact Karen Sawyer,
Legislative Aide to Senator Scott Ogan
907-465-3878

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 2/4/04

FURTHER: Finance

Date of 5-Day Notice: 2/19
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/1/04

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 24

SJR 24 CONST AM: GUARANTEE PERM FUND DIVIDEND

Proposing amendments to the Constitution of the State of Alaska to guarantee the permanent fund dividend, establishing the earnings reserve account, and relating to the Alaska permanent fund; and providing for an effective date.

and recommends:

be replaced with _____ CS SJR 24 (JUD)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
REV	2/23			✓	1
GOV	2/20	✓			2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

Ellis
French
Theriot
Searles

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>				X
<i>[Signature]</i>				X
<i>[Signature]</i>			X	
<i>[Signature]</i>	X			
CHAIR: <i>[Signature]</i>			X	

CONSTITUTIONAL
BUDGET
RESERVE



Alaska State Senate Senate Finance Committee

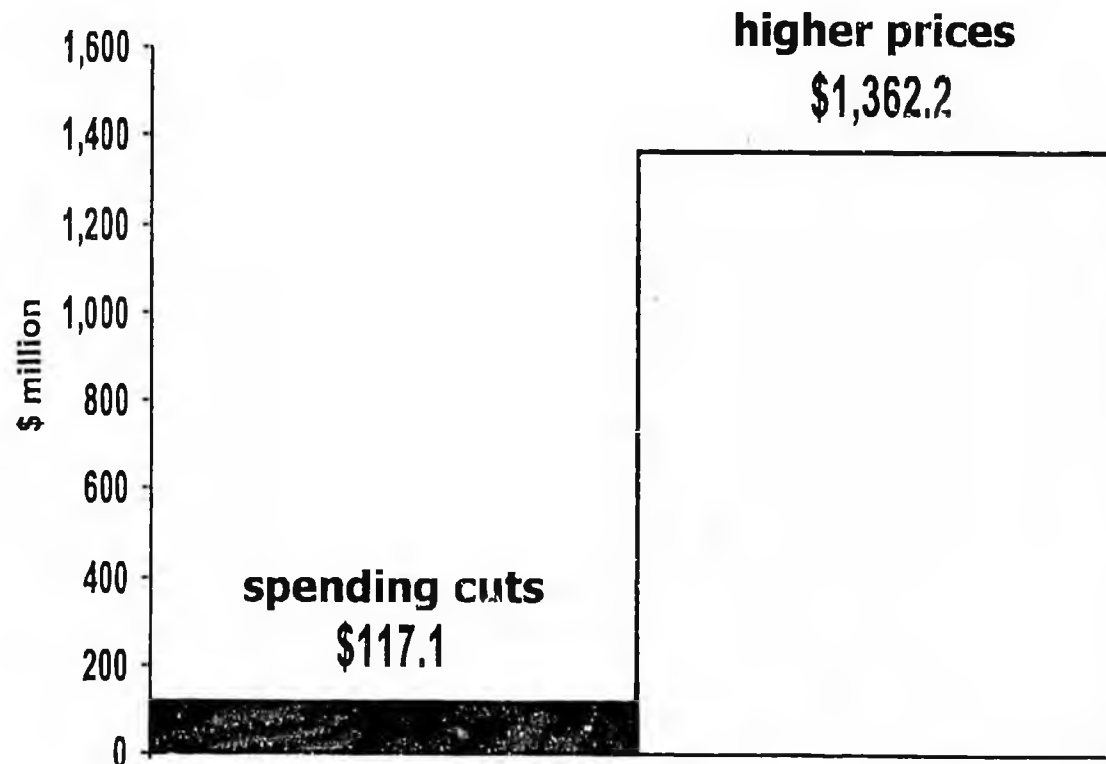
William A. Corbus, Commissioner
Department of Revenue

March 2004

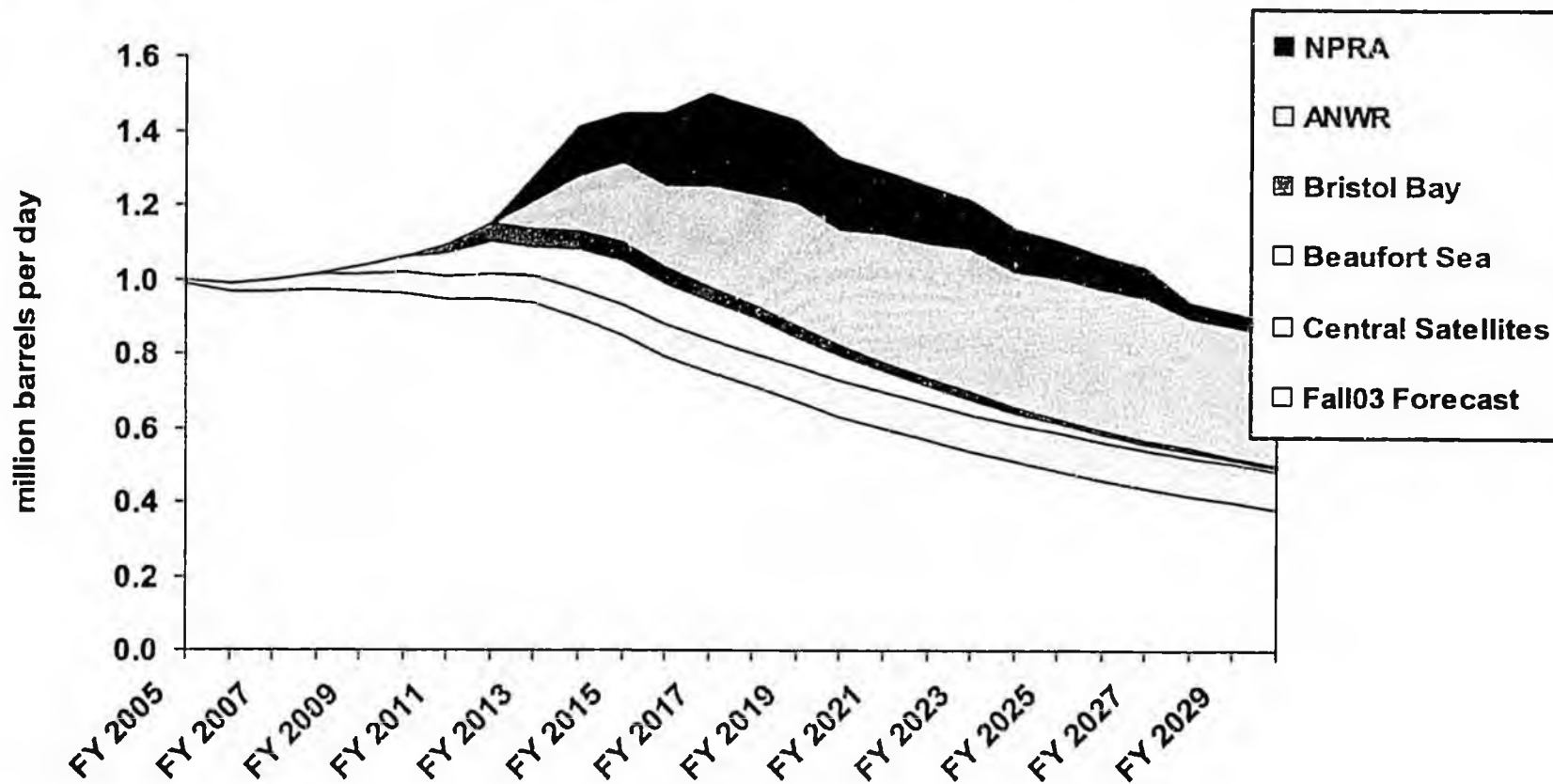
Fall 2000 Forecast Projected
December 2005 Depletion of the CBRF

Fall 2003 Forecast Projected
May 2007 Depletion of the CBRF

Difference=
Higher Prices and
Spending Cuts

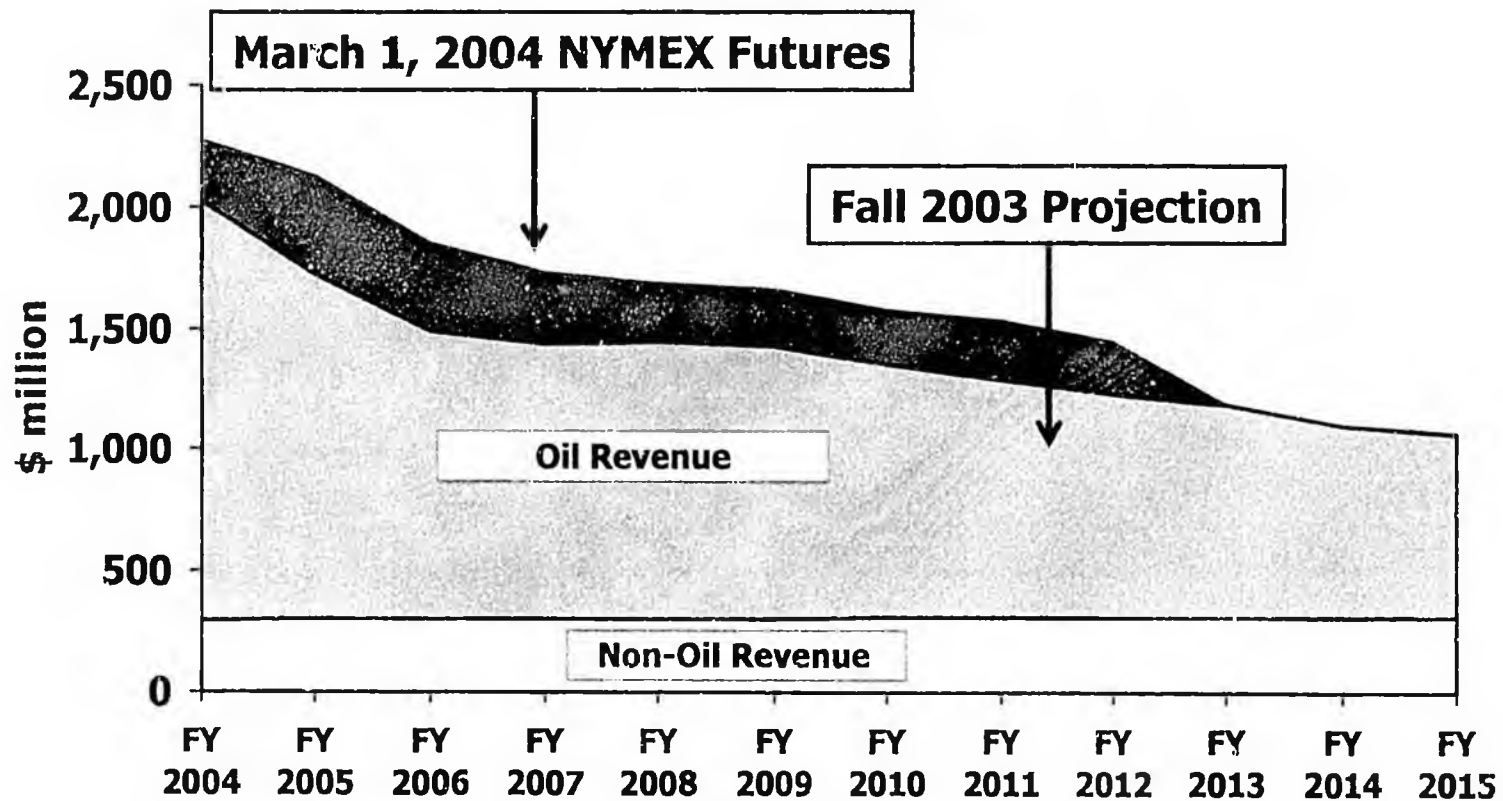


Possible Increases to ANS Production



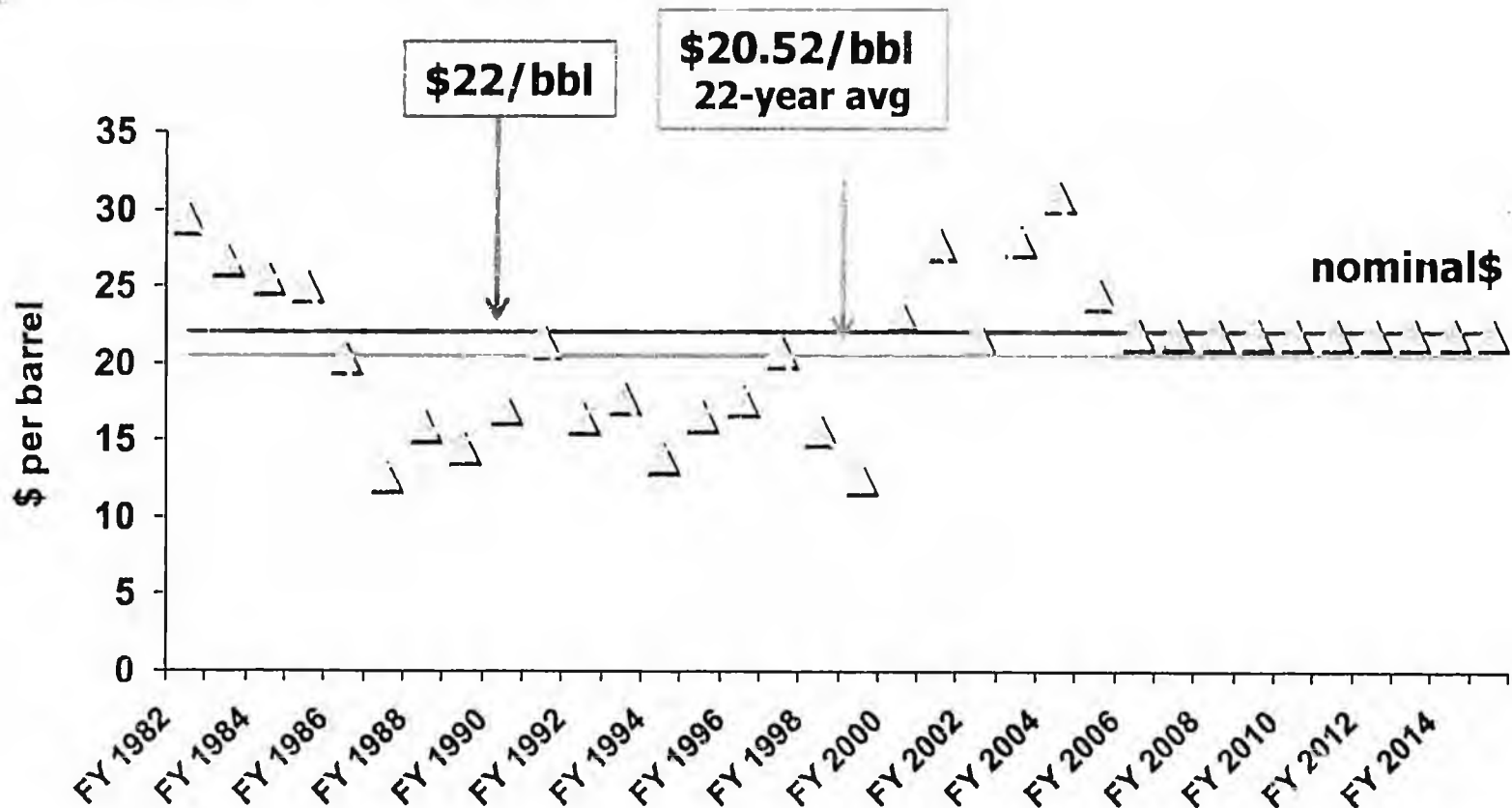
Source: Department of Revenue, Tax Division

General Fund Unrestricted Revenue



Source: Department of Revenue, Tax Division

ANS West Coast Price FY 1982-2004



Source: Department of Revenue, Tax Division



Conclusion

Four Year Price Boom

- **created revenues above expectations**
- **still needed over a billion dollars from the CBRF**
- **other revenues needed to complement resource revenues**

Pendulums Swing

- **commodity prices may decline before new resource revenues appear**

Time to Prepare for Lower Oil Prices

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

March 17, 2004

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110400
JUNEAU, ALASKA 99811-0400
TELEPHONE: (907) 465-2300
FACSIMILE: (907) 465-2389

The Honorable Gary Wilken
Co-Chair
Senate Finance Committee
Alaska State Capitol
Juneau, AK 99801

The Honorable Lyda Green
Co-Chair
Senate Finance Committee
Alaska State Capitol
Juneau, AK 99801

Re: March 16, 2004 Senate Finance Committee Hearing

Dear Senator Wilken and Senator Green:

Two questions were asked during the March 16 Senate Finance Committee hearing on the Constitutional Budget Reserve issue that required a written response.

The first question pertained to Constitutional Budget Reserve Fund earnings. I have included a table that shows the earnings rates of the Constitutional Budget Reserve Fund and the Constitutional Budget Reserve Fund Subaccount for the last 5 years. In round numbers, as of last September 30, the state had deposited \$5.6 billion in the fund (including the subaccount), withdrawn \$5.5 billion, and earned \$1.6 billion. I would be happy to provide any additional CBR information you would like.

The second question pertained to how the state managed its fiscal balances when an unexpected drop in petroleum prices during the late 1980s caused an economic downturn. Oil prices dropped from a high average price of \$34.92 in FY81 to under \$10 in 1986 as Saudi production increased. In December of 1985, Governor Sheffield submitted his FY87 budget based on forecasted unrestricted revenues of \$2,719 million (roughly equivalent to \$7.2 billion today if adjusted for inflation and population growth). On March 12, 1986, the Department of Revenue issued a new forecast which projected a drop of \$641 million. The legislature then passed a budget in early June that was only \$400 million less than the budget that had been submitted in December. Governor Sheffield vetoed \$40 million from that budget, and the budget was signed into law on June 9. Three weeks later the Department of Revenue issued another forecast, projecting a further decline of \$857 million.

In order to avoid deficit spending (which would have violated Art. IX, Sec. 8 of the Alaska Constitution), Governor Sheffield then issued Administrative Order No. 90. That order held spending on debt service, Medicaid, AFDC, adult public assistance and several other programs harmless but reduced most municipal pass-through spending such as revenue sharing and school debt reimbursement by 10 percent. General state and University spending was reduced by 15 percent. Capital spending was reduced by 65 percent. Capital budgets were larger during that

decade than has been the case more recently; FY85 capital spending was \$1.1 billion, equivalent to perhaps \$3.2 billion adjusted for inflation and today's Alaska population. Over \$1 billion was cut from the capital budget between FY85 and FY88.

Governor Cowper issued a supporting and clarifying Administrative Order No. 91 less than 4 months after Governor Sheffield issued No. 90. The legislature then ratified the actions in Administrative Orders 90 and 91 by enacting Chapter 9, SLA 1987, which is in law today; AS 37.07.080(g) provides:

The governor may direct the withholding or reduction of appropriations to a state agency at any time during the fiscal year only if the governor determines that the planned expenditures can no longer be made due to factors outside the control of the state which make the expenditure factually impossible.

This process was litigated and upheld by the Supreme Court of Alaska. (See Fairbanks North Star Borough v. State, 753 P.2d 1158 (Alaska 1988)).

I would be remiss if I did not list some of the profound effects—deeply stressful to many Alaskans—associated with this period of time in our history. Building permits in Anchorage had exceeded \$1 billion in 1983, and dropped to only \$87 million by 1987. Between July 1985 and July 1989, 44,000 more people left the state than moved here. Fifteen banks, savings and loan institutions and credit unions were lost, largely under markedly unfavorable circumstances. Total state job losses reached 10%, the population of Anchorage dropped 9%, Anchorage assessed property value dropped 46%, and state wage income dropped by 13%. Anchorage bankruptcies reached 93 per month, and between 1984 and 1987, AHFC foreclosures increased by almost 2800%. Over 10,000 residential properties were foreclosed between January 1985 and March 1988. I have included a briefing sheet that lists some of the economic indicators.

Fortunately, the recession was relatively short-lived. The fishing and timber industries experienced strong growth during the late 1980's, and to some degree those industries had already been able to insulate parts of Alaska from the recession. The Greens Creek mine opened in 1988, and the DeLong Mountain port and road project for the Red Dog Mine was completed in 1990. Military spending in Alaska and the numbers of summer tourists were increasing each year. TAPS throughput reached 2 million bbls/day during the period.

I am not an economist. However, it seems to me that just as an external event—the increased Saudi oil production—may have been a root cause of the Alaska recession; the capstone event that may have conclusively ended the recession was Iraq invading Kuwait on August 2, 1990, and the resultant doubling of oil prices. To some degree that price model continues today.

Whether state government was adequately prepared for the oil price shock of that time period was not the question posed by you and I do not address it. Given the current fiscal structure, the state is as dependent upon petroleum revenues today as it was then. Speaking only for myself, I have a much better appreciation of how state fiscal decisions can impact the statewide economy

March 17, 2004

than I would have if the recession had not occurred. I hope that all Alaskans have learned, and that we will not revisit those economic dislocations.

Economists believe that the state economy is vulnerable today to a substantial decline in petroleum prices, and to a moderate combined decline in petroleum prices and federal spending. Today, even a price reversion to the long-term prices expected by the Department of Revenue would require significant state fiscal action. Without adequate preparatory action taken now, fiscal actions taken in reaction to external events could again bring economic dislocations.

Governor Murkowski has reduced the annual draws on one-time reserves even while making significant investment in new resource development. Continued careful and strong fiscal management, POMV, a spending cap, and a CBR balance maintained at \$1 billion or more will best ensure that the Alaskans living here today are able to have a reasonable economy during this period.

Thank you and your committee for all your hard work. The Department of Revenue stands ready to help in every way.

Very truly yours,



William A. Corbus
Commissioner

Enclosures

The Alaskan Economic Crash 1986—1988

The economic collapse brought on by the crash in oil prices in 1986 has been examined in a number of ways. The fundamental impacts were a loss of employment, net out-migration and the collapse of the real estate market which had dire consequences for the financial sector. (Data from ISER/UAA and the Alaska Department of Labor).

<u>Employment</u>	<u>1980</u>	<u>1985</u>	<u>1987</u>	<u>1988</u>
Alaska	170,000	230,000	210,100	212,300
Anchorage	80,500	114,500	101,200	100,600

<u>Out-Migration</u>	<u>1985—1988</u>
	55,000 Into the State
	83,000 Out of the State
	28,000 Net Loss

<u>Real Estate</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
AHFC Foreclosures	129	508	1671	3701

<u>AHFC 1987 Foreclosures</u>	
Single Family	1325
Condos	1171
Mobile Homes	1192
3 & 4 Plexes	13

	<u>1980</u>	<u>1984</u>	<u>1985</u>	<u>1987</u>	<u>1988</u>
Anchorage Vacancies	8385	5163	7141	13,771	16,287

<u>Financial</u>	<u>1980</u>	<u>1984</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>
Alaska Bank Assets (Million \$)	2332	4227	5440	4870	4730

Summary 1986—1988 Recession (ISER)

- State job loss 22,000 (10%)
- Anchorage population loss: 29,000 (9%)
- State wage income loss: \$1.07 billion (13%)
- Decline in Anchorage assessed property value: \$7.2 billion (46%)
- Residential properties foreclosed
January 1985—March 1988: 10,429 (7% of total)
- Anchorage bankruptcies: 93 per month at the worst Point

Constitutional Budget Reserve Subaccount

AY10 CBRF Subaccount

As of 12/31/03

	Actual Allocation	Target Allocation	3 Months	YTD	1 Year	3 Year	5 Year
Broad Market Fxd Income Russell 3000 Index	39.76%	44%					
Short Term Pool	0.00%	0%					
SOA International Equity	17.45%	17%					
Total	100%	100%	7.81	19.17	19.17	1.79	
Benchmark			7.77	20.09	20.09	1.73	
Market Value As of 12/31/03	\$409,785,494						

Constitutional Budget Reserve

AY19 Constitutional Budget Reserve Fund

As of 12/31/03

	Actual Allocation	Target Allocation	3 Months	YTD	1 Year	3 Year	5 Year
Broad Market Fxd Income	20.00%	20%					
Short Term Pool	20.12%	20%					
Intermediate Term Fxd Income	59.88%	60%					
Total	100%	100%	0.30	3.50	3.50	5.93	5.62
Benchmark			0.13	2.57	2.57	6.07	5.67
Market Value As of 12/31/03	\$1,430,965,670						

Conference of Alaskans
Constitutional Budget Reserve
Fund

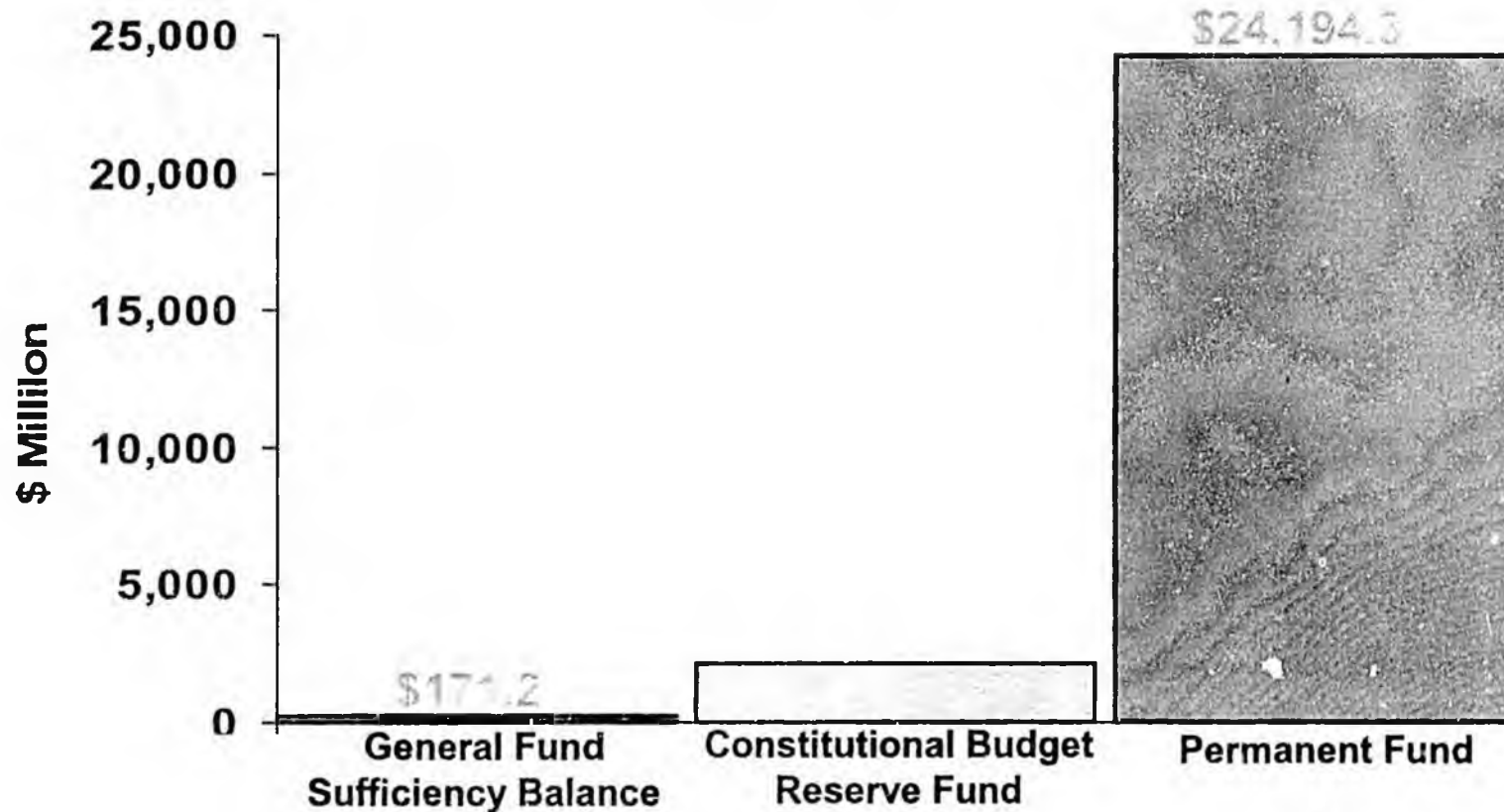
Alaska Department of Revenue

Bill Corbus, Commissioner

February 2004



Three Government Funds



CBR History

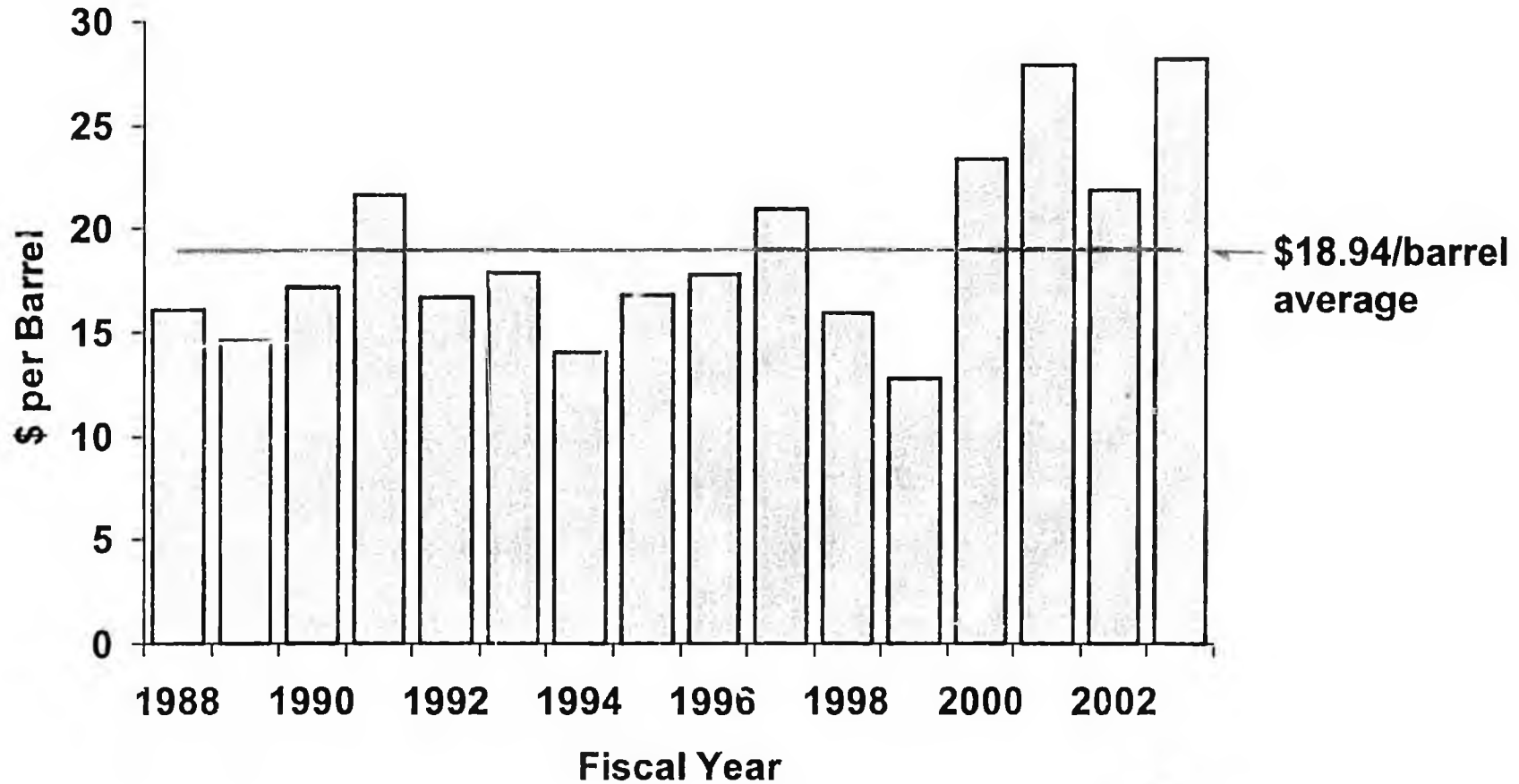
- **established to provide cash to fund government (the General Fund) during periods of temporarily low oil prices ~ when revenue falls short of expenditures**
- **as approved by voters in 1990, the CBR has been funded by oil and gas tax and royalty settlements**
- **State has deposited \$5.6 billion into the CBR and has earned \$1.6 billion in interest on the money**

CBR History, cont.

- **the CBR should grow in size over time because the general fund is supposed to repay the CBR when oil prices and production are high and revenues exceed expenditures**
- **however, due to falling oil production, the General Fund has run at a deficit almost since the inception of the CBR**
- **as of September 30, 2003, approximately \$5.5 billion has been withdrawn from the CBR to balance the budget**
- **no more significant new CBR funds are anticipated at this time**

Alaska North Slope Oil Price

FY 1988 – FY 2003



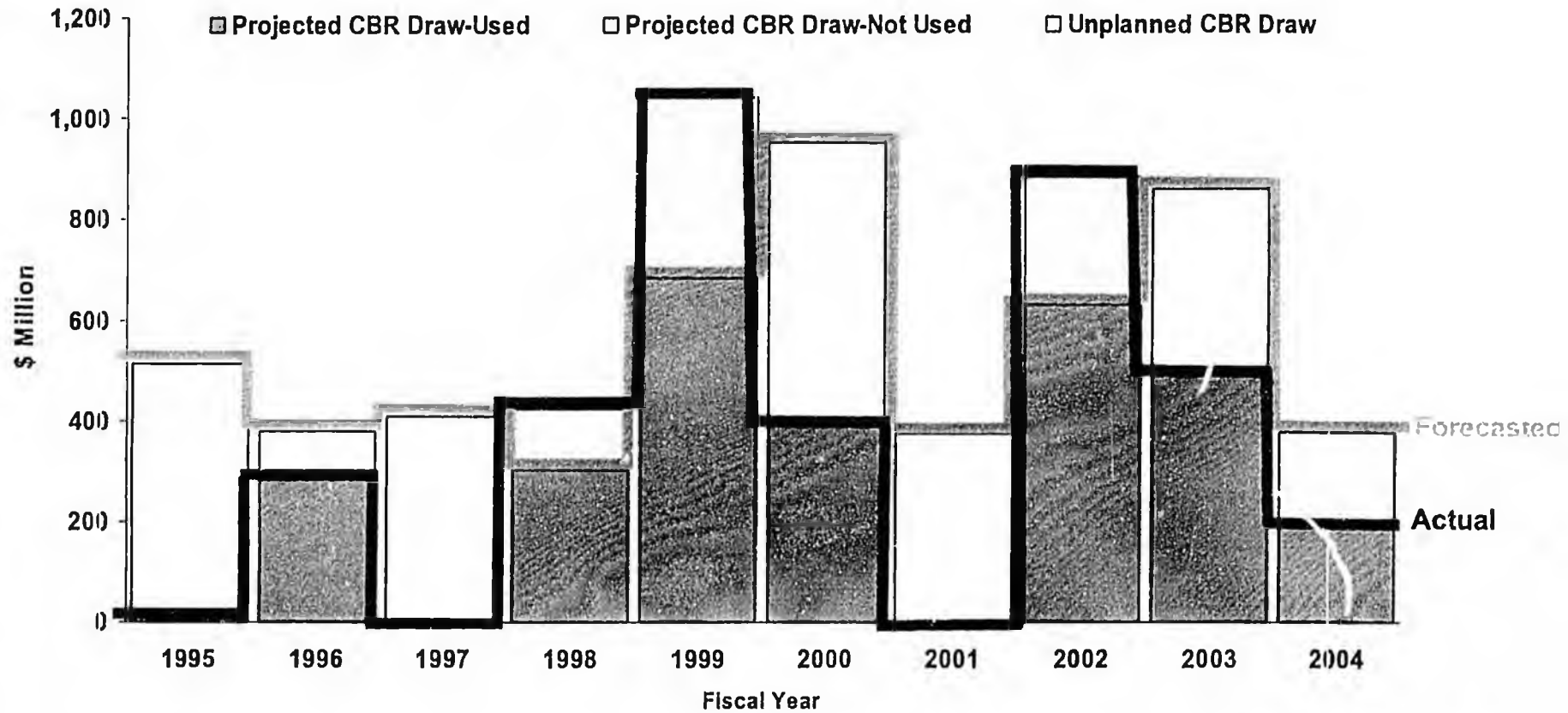
Source: DOR Fall 2003 Revenue Sources Book



Use of CBR

- **cover the budget deficit**
- **cover unexpected shortfalls in oil revenue**
 - **price**
 - **production**
- **cover the timing of cash flow**
 - **lag time between expenditure outflows and revenue inflows**
 - **most money is spent early in year; revenues received at month-end, particularly at end-of-year**
 - **State pays for federal expenditures first, federal reimburses after**

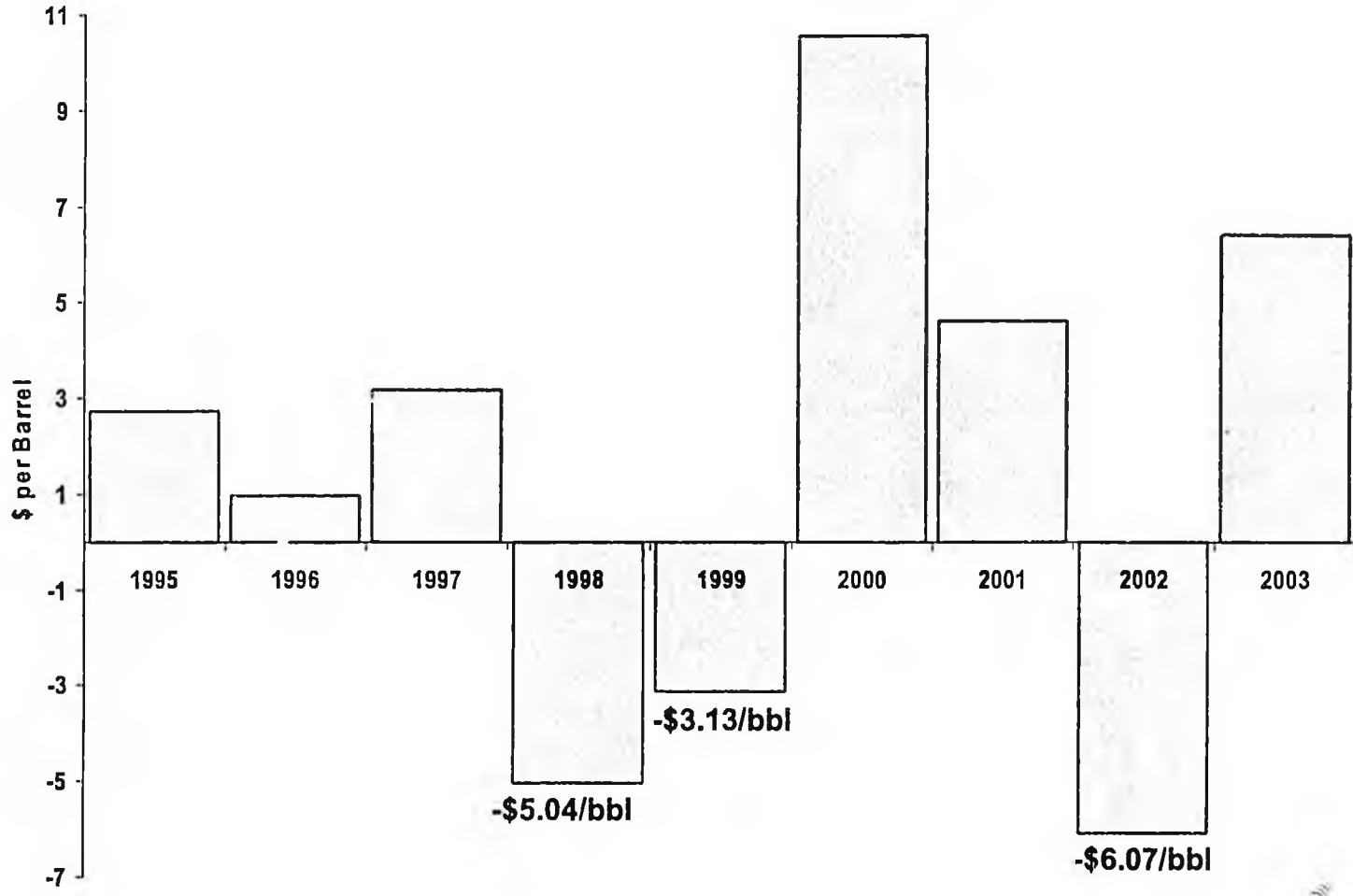
Projected vs. Actual CBR Draws



Source: Office of the Governor, Management and Budget

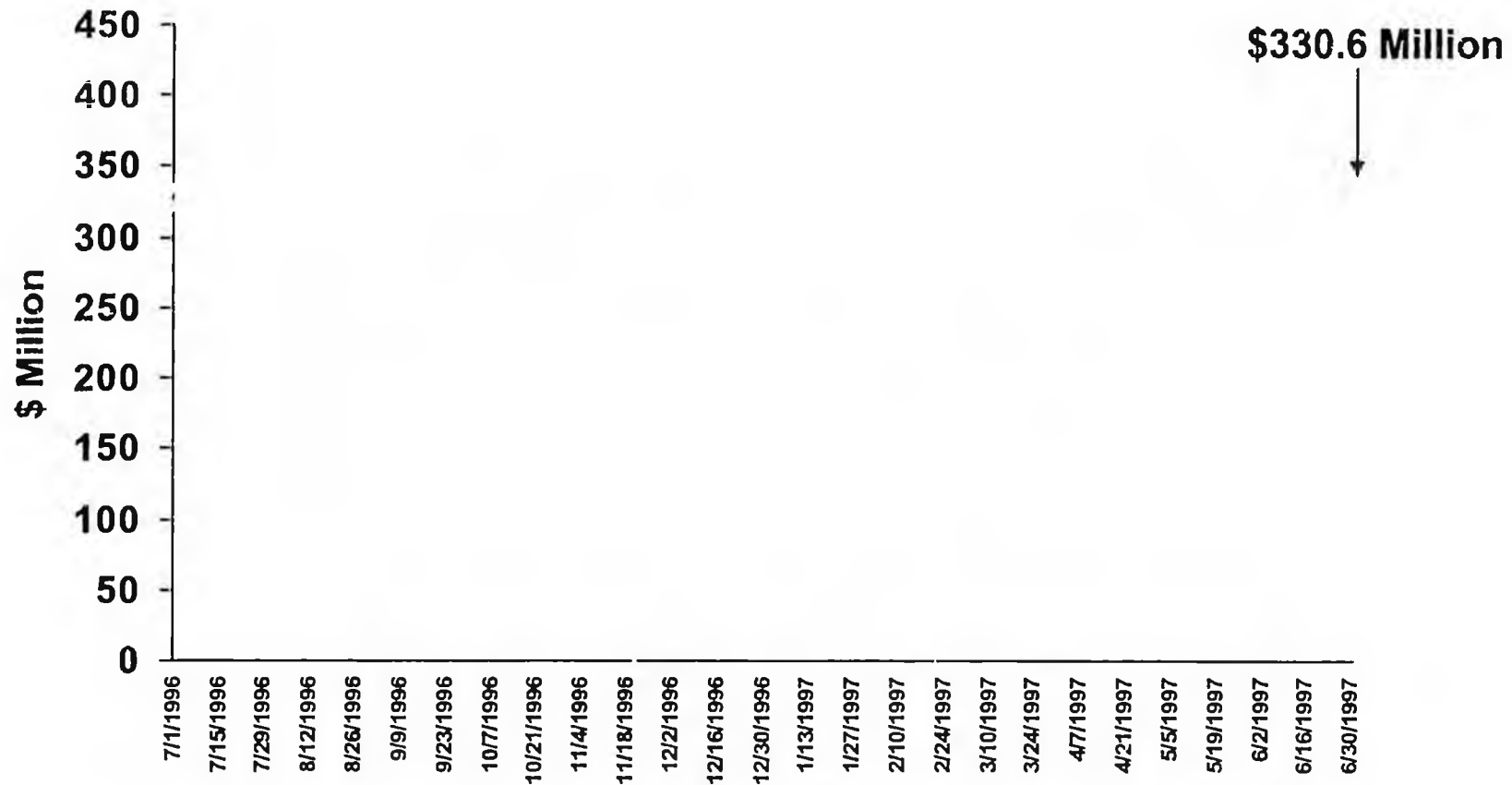
ANS Oil Price Differential

Change Year-to-Year, FY 1994-2003



Source: Department of Revenue, Tax Division

General Fund Cash Sufficiency With CBR Borrowing

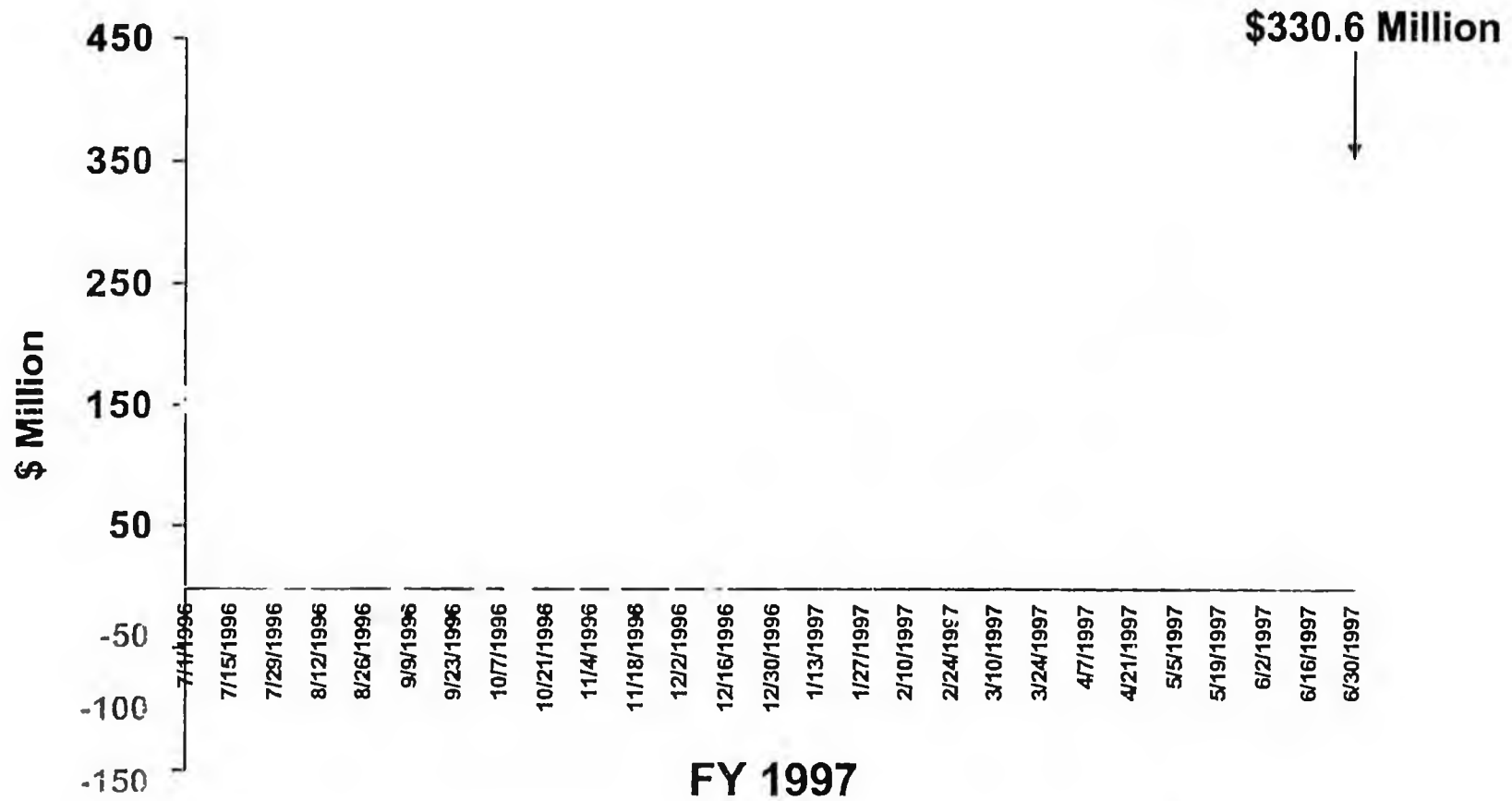


FY 1997

Source: Department of Revenue, Treasury Division



General Fund Cash Sufficiency Without CBR Borrowing

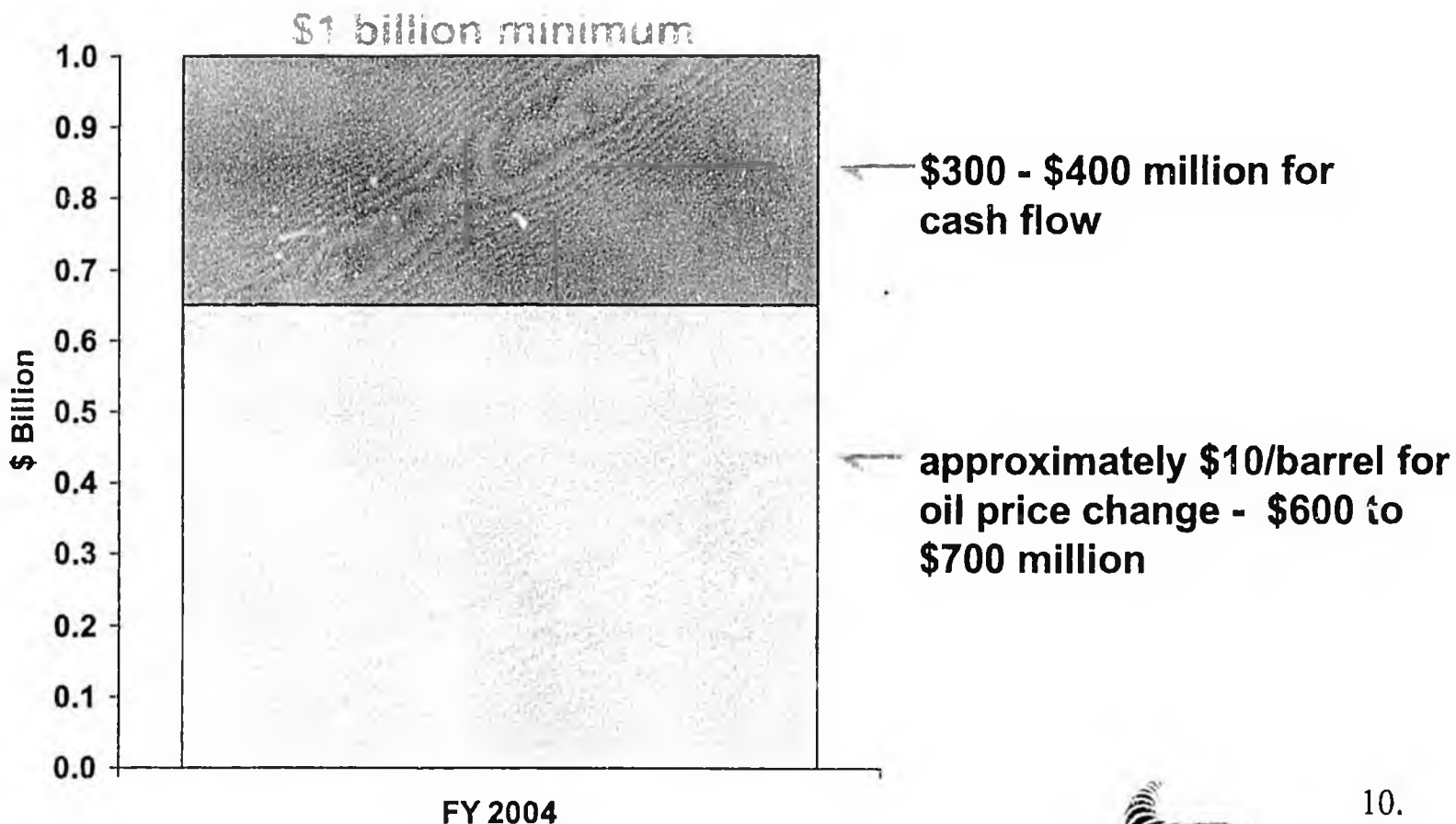


Source: Department of Revenue, Treasury Division



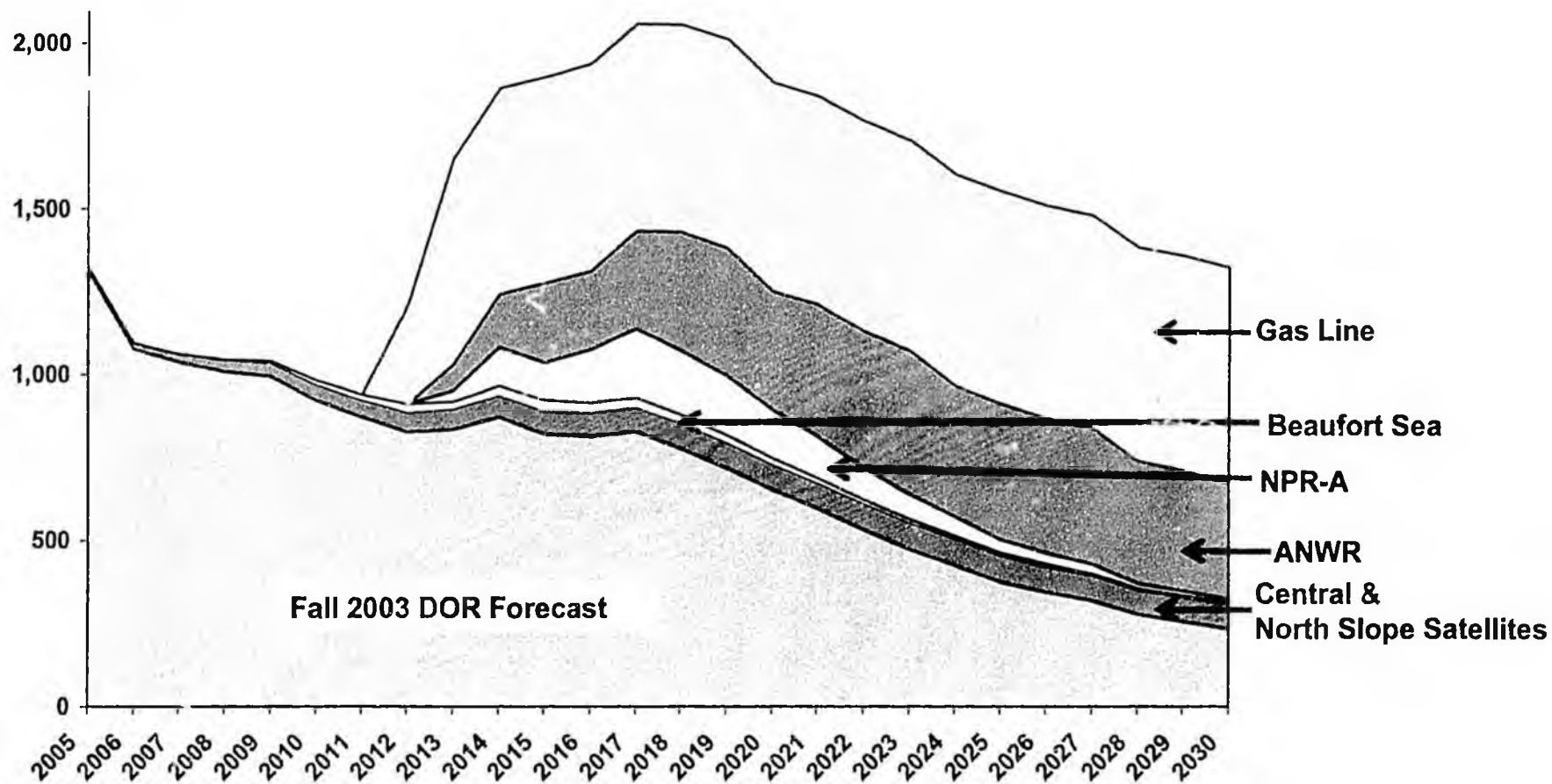
Should We Set Minimum for CBR

- tie to large and unexpected fall in oil price, say \$10/ barrel ?



Should We Set Minimum for CBR

~tie to possible increase in resource revenues ?



Source: DOR Fall 2003 Revenue Sources Book

Conclusion

- **looking to the future, we will not be able to draw on CBR to cover budget**
- **we need to keep CBR balance**
 - * **fluctuations in oil prices**
 - * **cash flow timing issues**
- **\$1 billion minimum CBR balance**

SJR 3

APPROPRIATIONS/
SPENDING LIMIT

CS FOR SENATE JOINT RESOLUTION NO. 3()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR DYSON

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to an
2 appropriation limit, and to deposits into a budget reserve fund.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article IX, sec. 16, Constitution of the State of Alaska, is repealed and
5 readopted to read:

6 Section 16. Appropriation Limit. (a) Subject to (b) of this section,
7 appropriations made for a current fiscal year shall not exceed the average amount
8 appropriated for the earliest three of the four fiscal years immediately preceding that
9 current fiscal year by more than the sum of the following:

10 (1) the average annual percentage rate of change in the Consumer
11 Price Index for all urban consumers for the Anchorage metropolitan area compiled by
12 a federal agency for the second, third, and fourth calendar years preceding the calendar
13 year during which the immediately preceding fiscal year began, but not to exceed the
14 average percentage of the change in the average personal income of State residents for
15 the second, third, and fourth calendar years preceding the calendar year during which
16 the immediately preceding fiscal year begins; plus

1 (2) the average annual percentage rate of change in the State
2 population for the second, third, and fourth calendar years preceding the calendar year
3 during which the immediately preceding fiscal year began compiled by a State
4 department.

5 (b) If the appropriation limit amount calculated under (a) of this section for a
6 current fiscal year is less than the appropriation limit amount calculated for the
7 immediately preceding fiscal year, the appropriation limit amount for the immediately
8 preceding fiscal year shall apply to the current fiscal year.

9 (c) Calculations made under (a) of this section shall not include appropriations

10 (1) to the Alaska permanent fund established in Section 15 of this
11 article;

12 (2) of Alaska permanent fund income for payments of permanent fund
13 dividends to State residents;

14 (3) of money from donations, gifts, or grants to the State for purposes
15 specified by the terms of those donations, gifts, or grants;

16 (4) of State general obligation bond, revenue bond, and certificates of
17 participation proceeds;

18 (5) required to pay obligations under revenue bonds;

19 (6) of money received from the federal government;

20 (7) of money received as tuition by the University of Alaska;

21 (8) of dedicated funds and trust funds; and

22 (9) made under (d) of this section.

23 (d) Except as provided in this subsection, the legislature shall not appropriate
24 more money for a fiscal year than is permitted under (a) and (b) of this section. If the
25 governor declares an emergency or declares that an extraordinary circumstance exists,
26 upon affirmative vote of at least two-thirds of the members of each house, the
27 legislature may adopt an appropriation that exceeds the appropriation limit to address
28 the emergency or extraordinary circumstance. An appropriation adopted under this
29 subsection may not be used for the payment of bonds, notes, or any other form of debt.

30 * Sec. 2. Article IX, sec. 17(d), Constitution of the State of Alaska, is amended to read:

31 (d) The [IF AN APPROPRIATION IS MADE FROM THE BUDGET

1 RESERVE FUND, UNTIL THE AMOUNT APPROPRIATED IS REPAYED, THE]
2 amount of money in the general fund available for appropriation at the end of each
3 [SUCCEEDING] fiscal year shall be deposited in the budget reserve fund. The
4 legislature shall implement this subsection by law.

5 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new
6 section to read:

7 **Section 30. Application and Reconsideration.** (a) The 2004 amendment
8 relating to an appropriation limit (art. IX, sec. 16) first applies to appropriations made
9 for fiscal year 2006 and applies thereafter. The 2004 amendment relating to deposits
10 to the budget reserve fund (art. IX, sec. 17(d)) first applies at the end of fiscal year
11 2005 and applies thereafter.

12 (b) If the 2004 amendment relating to an appropriation limit (art. IX, sec. 16)
13 is adopted, the lieutenant governor shall place the same 2004 proposition for
14 amendment on the ballot every four years. However, notwithstanding Section 1 of
15 Article XIII, if the voters reject the proposition, Section 16 of Article IX shall be
16 readopted as it read on January 1, 2003, and the lieutenant governor shall not again
17 place the 2004 proposition on the ballot under this subsection.

18 * Sec. 4. The amendments proposed by this resolution shall be placed before the voters of
19 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
20 State of Alaska, and the election laws of the state.



SENATOR FRED DYSON

MEMORANDUM

March 17, 2004

To: Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senate Finance Committee

Lyda
From: Senator Fred Dyson

RE: Sectional Analysis of SJR3, Version 23-LS0296\B

Following is an analysis by section of referenced proposed resolution.

Page 1, Section 1, lines 4 and 5: This resolution will repeal and replace the existing Appropriation Limit found in Article IX, Section 16 of the Alaska Constitution.

Subsection 1(a), Page 1, lines 6 through 9 establishes a moving, three-year average as the base for application of the limit. Such smoothing takes into account years of extreme variation in appropriations, and results in a smoother, more predictable limit to facilitate long range planning.

The base is also based on actual appropriations, the most accurate data for which have generally been two fiscal years prior to the fiscal year being considered – thus, the need to consider the second, third and fourth fiscal years (or earliest three of the last four fiscal years) for determining the base amount.

Finally, the limit is calculated independently of the previous year's limit, with the exception of negative factors as discussed below.

In contrast, the limit currently in effect uses a fixed amount of \$2,500,000,000 as the base. The existing limit uses inflation and population for determining the limit, but applies the factor cumulatively from July 1, 1981.

Subsection 1(a)(1). Page 1, lines 10 through 16 establishes one of the variables for determining the limit as the average of the Consumer Price Index – Anchorage. Like the base, the variable used is a three-year moving average but is derived from the calendar years that correlate to the fiscal years upon which the base is determined.

The inflation variable is limited, however, to not exceed per capita income for all Alaskans. The intent of this restriction is to avoid excessive limits during times of runaway inflation.

Subsection 1(a)(2). Page 2, lines 1 through 4 sets the second variable as average rate of population. Again, the variable used is a three-year moving average of the same calendar years as that of the inflation variable.

The limit is determined by adding the two variables (inflation and population) and multiplying that sum to the base determined in (a).

Subsection 1(b). Page 2, lines 5 through 8 is provided to ensure that in periods when the sum of the two variables results in a negative number, the limit will be the same as the limit for the previous fiscal year. This language is intended to avoid a “ratchet down” effect. No such provision exists in the current limit.

Subsection 1(c). Page 2, lines 9 through 22 allows certain instances where the limit would not be applied. Item (1) exempts all appropriations, including inflation proofing, to the Permanent Fund. Item (2) exempts appropriations of Permanent Fund income intended for payment of permanent fund dividends. It is not the intent of the sponsor to limit deposits to the Permanent Fund.

Item (3) exempts funds to any entity of the State that come from donations, gifts, or grants and for which the donation, gift, or grant has a specified purpose. The most likely recipient of such funds is the University of Alaska, such as when they are granted funds or if, for example, an alumnus makes a sizeable contribution. The limit is not intended to limit contributions via donations, gifts, or grants to the state.

Item (4) exempts proceeds from State general obligation bonds, revenue bonds, and certificates of participation from the limit. However, with the exception of revenue bonds (Item 5), the debt service for such instruments does fall within the limit. If the state incurs an obligation of indebtedness, consideration must be given annually to repayment of that indebtedness as long as the indebtedness remains. Debt service for revenue bonds is exempted.

Table 1 below depicts which bond proceeds and debt service is included under the limit and which are excluded.

Table 1
As Pertains to Limit

<u>Bond</u>	<u>Proceeds</u>	<u>Debt Service</u>
General Obligation	Excluded	Included
Revenue	Excluded	Excluded
Certificates of Participation	Excluded	Included
School Debt Reimbursement	N/A	Included

Item (6) exempts appropriations of money received from the federal government. Again, the intent is not to limit the receipt of funds from non-State sources.

Item (7) exempts funds the University of Alaska receives from tuitions. The University is expected to set tuition rates at a level that optimizes both revenue to the University and enrollment. Since monies paid in the form of tuition do not come from the State, they are exempted.

Item (8) exempts appropriations to dedicated funds and trust funds.

Item (9) exempts funds appropriated under unusual circumstances as specified in the following subsection (d).

The current provision exempts “appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations require 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.”

Subsection 1(d), Page 2, lines 23 through 29 allows for certain instances in which appropriations may be made beyond the limit. The two circumstances are when the Governor declares an emergency or an extraordinary circumstance. Both instances require the legislature to approve the appropriations by a 2/3rds vote of each house. It will be incumbent upon the governor to use restraint in invoking this clause, and upon the legislature to ensure they are in agreement that the circumstances warrant the appropriation. Such appropriations may not be made for the payment of bonds, notes, or any other form of indebtedness.

Legislative Legal has indicated that, technically, the term “emergency” is not defined and that adding “extraordinary circumstance” is superfluous. However, the Administration has indicated that they prefer to limit the use of “emergency” to such situations as responding to a natural disaster. The intent of adding “extraordinary circumstance” is to allow for unusual events such as, for example, the necessity of pre-investing for construction of a gas pipeline.

The current limit allows for the limit to be exceeded for appropriations to the permanent fund (which is addressed by the proposed amendment in the exemptions) and in bills for capital

projects (which is addressed by the proposed amendment in this subsection) if approved by the governor and $\frac{3}{4}$ of the legislature. The limit may also be exceeded if the governor declares a state of disaster as prescribed by law.

Section 2, Page 2, line 30 through Page 3, line 4 amends Article 17, Section (d). Currently this section requires that when an un-repaid draw from the Constitutional Budget Reserve exists, the amount of money available for appropriation at the end of each succeeding fiscal year will be deposited to the CBR. If there are no un-repaid draws the governor is charged with investing the money at “competitive rates.”

The proposed amendment would delete the reference to un-repaid draws so that available money would be deposited to the CBR regardless of whether an un-repaid draw exists.

Section 3, Page 3, lines 5 through 11 sets the effective date for both application of the limit in Section 1 (appropriations for FY06) and deposit of monies to the CBR in accordance with Section 2 (end of FY05).

Section 3, Page 3, lines 12 through 17 provides for a periodic re-ratification by voters every 4 years. The current limit has no such provision.

Section 4, Page 3, lines 18 through 20 directs the proposed amendment be placed before the voters at the next general election.

Other Issues

The current limit directs that “within this limit, one-third shall be reserved for capital projects.” This proposed amendment eliminates such requirement.

23-LS0296X
~~Cook~~
3/16/04
17

CS FOR SENATE JOINT RESOLUTION NO. 3()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR DYSON

A RESOLUTION

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6 Section 16. Appropriation and Spending Limit. (a) Subject to (b) of this
7 section, appropriations made for a current fiscal year shall not exceed the average
8 amount appropriated for the earliest three of the four fiscal years immediately
9 preceding that current fiscal year by more than the sum of the following:

10 (1)
11 the average annual percentage rate of change in
12 the Consumer Price Index for all urban consumers for the Anchorage metropolitan
13 area compiled by a federal agency for the second, third, and fourth calendar years
14 preceding the calendar year during which the immediately preceding fiscal year began;

15 *AND NOT TO EXCEED*

16 the average percentage of the change in the average personal

1 income of State residents for the second, third, and fourth calendar years preceding the
2 calendar year during which the immediately preceding fiscal year begins; plus

3 (2) the average annual percentage rate of change in the
4 State population for the second, third, and fourth calendar years preceding the calendar year
5 during which the immediately preceding fiscal year began compiled by a State department.

6 (b) If the appropriation limit amount calculated under (a) of this section for a current
7 fiscal year is less than the appropriation limit amount calculated for the immediately
8 preceding fiscal year, the appropriation limit amount for the immediately preceding fiscal year
9 shall apply to the current fiscal year.

10 (c) Calculations made under (a) of this section shall not include appropriations

11 (1) to the Alaska permanent fund established in Section 15 of this article;

12 (2) of Alaska permanent fund income for payments of permanent fund
13 dividends to State residents;

(3) TO THE ALASKA PERMANENT FUND FOR THE PURPOSE OF
INFLATION PROOFING.

(4) DEDICATED FUNDS AND TRUST FUNDS:

14 (5) of money from donations, gifts, or grants to the State for purposes
15 specified by the terms of those donations, gifts, or grants;

16 (6) of State general obligation bond, revenue bond, and certificates of
17 participation proceeds;

18 (7) required to pay obligations under revenue bonds;

19 (8) of money received from the federal government;

20 (9) of money received as tuition by the University of Alaska; and

21 (10) made under (d) of this section.

22 (d) The legislature shall not authorize an increase in appropriations for any fiscal year above the limit set forth
23 in (a) above, unless the governor declares an emergency or the existence of extraordinary circumstances
and at least two-thirds of the members of each house of the legislature vote to exceed such limit for the
purposes of such emergency or extraordinary circumstances. The legislature shall by law define
"extraordinary circumstances" for the purposes of this section and may amend such definitions, from time
to time, provided such appropriations shall not include expenditures for the payment of bonds, notes or
other evidences of indebtedness. The enactment or amendment of such definitions shall require the vote of
two-thirds of the members of each house of the legislature.

(e) omitted

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31 * Sec. 2. Article IX, sec. 17(d), Constitution of the State of Alaska, is amended to read:

WORK DRAFT

1 (d) The [IF AN APPROPRIATION IS MADE FROM THE BUDGET
2 RESERVE FUND, UNTIL THE AMOUNT APPROPRIATED IS REPAID, THE]
3 amount of money in the general fund available for appropriation at the end of each
4 [SUCCEEDING] fiscal year shall be deposited in the budget reserve fund. The
5 legislature shall implement this subsection by law.

6 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new
7 section to read:

8 Section 30. Application. The 2004 amendment relating to an appropriation
9 and spending limit (art. IX, sec. 16) first applies to appropriations made for fiscal year
10 2006 and applies thereafter. The 2004 amendment relating to deposits to the budget
11 reserve fund (art. IX, sec. 17(d)) first applies at the end of fiscal year 2005 and applies
12 thereafter.

SGC (4)

~~Concept Language for Periodic Reconsideration.~~

1 If the 2004 amendment relating to an appropriation and spending limit (art. IX, sec 16) is adopted
2 and becomes effective as set forth herein, the Lieutenant Governor shall place the ballot title and
3 proposition for the amendment on the ballot every ~~4~~ years to determine whether the provisions
4 of this amendment should be retained. If the 2004 amendment is not retained by the voters,
5 Article IX, Section 16 will be reinstated in the language as it read prior to the 2004 amendment.

13 * Sec. ~~3~~ The amendments proposed by this resolution shall be placed before the voters of
14 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
15 State of Alaska, and the election laws of the state.

23-LS0296
~~Cook~~
3/4/04
17

CS FOR SENATE JOINT RESOLUTION NO. 3()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred.

Sponsor(s): SENATOR DYSON

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to an
2 appropriation limit and a spending limit, and to deposits into the budget reserve fund.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article IX, sec. 16, Constitution of the State of Alaska, is repealed and
5 readopted to read:

6 Section 16. Appropriation and Spending Limit. (a) Subject to (b) of this
7 section, appropriations made for a current fiscal year shall not exceed the average
8 amount appropriated for the earliest three of the four fiscal years immediately
9 preceding that current fiscal year by more than the sum of the following:

10 (1)
11 the average annual percentage rate of change in
12 the Consumer Price Index for all urban consumers for the Anchorage metropolitan
13 area compiled by a federal agency for the second, third, and fourth calendar years
14 preceding the calendar year during which the immediately preceding fiscal year began;

AND NOT TO EXCEED

16 the average percentage of the change in the average personal

1 income of State residents for the second, third, and fourth calendar years preceding the
2 calendar year during which the immediately preceding fiscal year begins; plus

3 (2) the average annual percentage rate of change in the
4 State population for the second, third, and fourth calendar years preceding the calendar year
5 during which the immediately preceding fiscal year began compiled by a State department.

6 (b) If the appropriation limit amount calculated under (a) of this section for a current
7 fiscal year is less than the appropriation limit amount calculated for the immediately
8 preceding fiscal year, the appropriation limit amount for the immediately preceding fiscal year
9 shall apply to the current fiscal year.

10 (c) Calculations made under (a) of this section shall not include appropriations

11 (1) to the Alaska permanent fund established in Section 15 of this article;

12 (2) of Alaska permanent fund income for payments of permanent fund
13 dividends to State residents;

(3) TO THE ALASKA PERMANENT FUND FOR THE PURPOSE OF
INFLATION PROOFING.

(4) DEDICATED FUNDS AND TRUST FUNDS:

14 (5) of money from donations, gifts, or grants to the State for purposes
15 specified by the terms of those donations, gifts, or grants;

16 (6) of State general obligation bond, revenue bond, and certificates of
17 participation proceeds;

18 (7) required to pay obligations under revenue bonds;

19 (8) of money received from the federal government;

20 (9) of money received as tuition by the University of Alaska; and

21 (10) made under (d) of this section.

22 (d) The legislature shall not authorize an increase in appropriations for any fiscal year above the limit set forth
23 in (a) above, unless the governor declares an emergency or the existence of extraordinary circumstances
and at least two-thirds of the members of each house of the legislature vote to exceed such limit for the
purposes of such emergency or extraordinary circumstances. The legislature shall by law define
"extraordinary circumstances" for the purposes of this section and may amend such definitions, from time
to time, provided such appropriations shall not include expenditures for the payment of bonds, notes or
other evidences of indebtedness. The enactment or amendment of such definitions shall require the vote of
two-thirds of the members of each house of the legislature.

(e) omitted

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* Sec. 2. Article IX, sec. 17(d), Constitution of the State of Alaska, is amended to read:

WORK DRAFT

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(d) The [IF AN APPROPRIATION IS MADE FROM THE BUDGET RESERVE FUND, UNTIL THE AMOUNT APPROPRIATED IS REPAID, THE] amount of money in the general fund available for appropriation at the end of each [SUCCEEDING] fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

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* Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new section to read:

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Section 30. Application. The 2004 amendment relating to an appropriation and spending limit (art. IX, sec. 16) first applies to appropriations made for fiscal year 2006 and applies thereafter. The 2004 amendment relating to deposits to the budget reserve fund (art. IX, sec. 17(d)) first applies at the end of fiscal year 2005 and applies thereafter.

SEC. (4)

~~Concept Language for "Periodic Reconsideration."~~

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If the 2004 amendment relating to an appropriation and spending limit (art. IX, sec 16) is adopted and becomes effective as set forth herein, the Lieutenant Governor shall place the ballot title and proposition for the amendment on the ballot every 4 years to determine whether the provisions of this amendment should be retained. If the 2004 amendment is not retained by the voters, Article IX, Section 16 will be reinstated in the language as it read prior to the 2004 amendment.

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* Sec. 5. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

ADOPTED 3/16/04

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS0296X
Cook
3/16/04

CS FOR SENATE JOINT RESOLUTION NO. 3()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR DYSON

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to an
2 appropriation limit and a spending limit, and to deposits into the budget reserve fund.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article IX, sec. 16, Constitution of the State of Alaska, is repealed and
5 readopted to read:

6 Section 16. Appropriation and Spending Limit. (a) Subject to (b) of this
7 section, appropriations made for a current fiscal year shall not exceed the average
8 amount appropriated for the earliest three of the four fiscal years immediately
9 preceding that current fiscal year by more than the sum of the following:

10 (1) the lesser of

11 (A) ninety percent of the average annual percentage rate of change in
12 the Consumer Price Index for all urban consumers for the Anchorage metropolitan
13 area compiled by a federal agency for the second, third, and fourth calendar years
14 preceding the calendar year during which the immediately preceding fiscal year began;
15 or

16 (B) the average percentage of the change in the average personal

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1 income of State residents for the second, third, and fourth calendar years preceding the
2 calendar year during which the immediately preceding fiscal year begins; plus

3 (2) seventy-five percent of the average annual percentage rate of change in the
4 State population for the second, third, and fourth calendar years preceding the calendar year
5 during which the immediately preceding fiscal year began compiled by a State department.

6 (b) If the appropriation limit amount calculated under (a) of this section for a current
7 fiscal year is less than the appropriation limit amount calculated for the immediately
8 preceding fiscal year, the appropriation limit amount for the immediately preceding fiscal year
9 shall apply to the current fiscal year.

10 (c) Calculations made under (a) of this section shall not include appropriations

11 (1) to the Alaska permanent fund established in Section 15 of this article;

12 (2) of Alaska permanent fund income for payments of permanent fund
13 dividends to State residents;

14 (3) of money from donations, gifts, or grants to the State for purposes
15 specified by the terms of those donations, gifts, or grants;

16 (4) of State general obligation bond, revenue bond, and certificates of
17 participation proceeds;

18 (5) required to pay obligations under revenue bonds;

19 (6) of money received from the federal government;

20 (7) of money received as tuition by the University of Alaska; and

21 (8) made under (d) of this section.

22 (d) An appropriation that exceeds the appropriation limit under this section may be
23 made for any public purpose identified by the governor in a declaration of emergency upon
24 affirmative vote of at least two-thirds of the members of each house of the legislature.
25 Appropriations under this subsection may be made only for a fiscal year identified in the
26 declaration of emergency.

27 (e) If appropriations for a fiscal year exceed the amount validly appropriated under
28 this section, the governor shall reduce expenditures by the executive branch for its operation
29 and administration to the extent necessary to avoid spending more than the amount validly
30 appropriated.

31 * Sec. 2. Article IX, sec. 17(d), Constitution of the State of Alaska, is amended to read:

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(d) The [IF AN APPROPRIATION IS MADE FROM THE BUDGET RESERVE FUND, UNTIL THE AMOUNT APPROPRIATED IS REPAID, THE] amount of money in the general fund available for appropriation at the end of each [SUCCEEDING] fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

* Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 30. Application. The 2004 amendment relating to an appropriation and spending limit (art. IX, sec. 16) first applies to appropriations made for fiscal year 2006 and applies thereafter. The 2004 amendment relating to deposits to the budget reserve fund (art. IX, sec. 17(d)) first applies at the end of fiscal year 2005 and applies thereafter.

* Sec. 4. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

23-LS0296V
Cook
3/3/04

CS FOR SENATE JOINT RESOLUTION NO. 3()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR DYSON

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to an
2 appropriation limit and a spending limit, and to deposits into the budget reserve fund.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article IX, sec. 16, Constitution of the State of Alaska, is repealed and
5 readopted to read:

6 Section 16. Appropriation and Spending Limit. (a) Appropriations made
7 for a current fiscal year shall not exceed the amount appropriated for the fiscal year
8 two years immediately preceding that current fiscal year by more than the sum of the
9 following:

10 (1) ninety percent of the average annual percentage rate of change in
11 the Consumer Price Index for all urban consumers for the Anchorage metropolitan
12 area compiled by a federal agency for the two calendar years preceding the calendar
13 year during which the immediately preceding fiscal year began; plus

14 (2) seventy-five percent of the average annual percentage rate of
15 change in the State population for the two calendar years preceding the calendar year
16 during which the immediately preceding fiscal year began compiled by a State

1 by a State department.

2 (b) Calculations made under (a) of this section shall not include appropriations

3 (1) to the Alaska permanent fund established in Section 15 of this
4 article;

5 (2) of Alaska permanent fund income for payments of permanent fund
6 dividends to State residents;

7 (3) of money from donations, gifts, or grants to the State for purposes
8 specified by the terms of those donations, gifts, or grants;

9 (4) of State general obligation bond, revenue bond, and certificates of
10 participation proceeds;

11 (5) required to pay obligations under revenue bonds;

12 (6) of money received from the federal government;

13 (7) of money received as tuition by the University of Alaska; and

14 (8) made under (c) of this section.

15 (c) An appropriation that exceeds the limit under (a) of this section may be
16 made for any public purpose identified by the governor in a declaration of emergency
17 upon affirmative vote of at least two-thirds of the members of each house of the
18 legislature. Appropriations under this subsection may be made only for a fiscal year
19 identified in the declaration of emergency.

20 (d) If appropriations for a fiscal year exceed the amount validly appropriated
21 under (a) - (c) of this section, the governor shall reduce expenditures by the executive
22 branch for its operation and administration to the extent necessary to avoid spending
23 more than the amount validly appropriated.

24 * Sec. 2. Article IX, sec. 17(d), Constitution of the State of Alaska, is amended to read:

25 (d) The [IF AN APPROPRIATION IS MADE FROM THE BUDGET
26 RESERVE FUND, UNTIL THE AMOUNT APPROPRIATED IS REPAID, THE]
27 amount of money in the general fund available for appropriation at the end of each
28 succeeding fiscal year shall be deposited in the budget reserve fund. The legislature
29 shall implement this subsection by law.

30 * Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new
31 section to read:

1 Section 30. Application. The 2004 amendment relating to an appropriation
2 and spending limit (art. IX, sec. 16) first applies to appropriations made for fiscal year
3 2006 and applies thereafter. The 2004 amendment relating to deposits to the budget
4 reserve fund (art. IX, sec. 17(d)) first applies at the end of fiscal year 2005 and applies
5 thereafter.

6 * Sec. 4. The amendments proposed by this resolution shall be placed before the voters of
7 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
8 State of Alaska, and the election laws of the state.

CS FOR SENATE JOINT RESOLUTION NO. 3(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/15/03

Referred: Finance

Sponsor(s): SENATOR DYSON

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to an
2 appropriation limit and a spending limit.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article IX, sec. 16, Constitution of the State of Alaska, is repealed and
5 readopted to read:

6 Section 16. Appropriation and Spending Limit. (a) Appropriations made
7 for a fiscal year shall not exceed the amount appropriated for the fiscal year two years
8 preceding the fiscal year for which the appropriations are made by more than the
9 percentage equal to one-half of the product of the annual percentage rate of change in
10 the Consumer Price Index for all urban consumers for the Anchorage metropolitan
11 area compiled by the Bureau of Labor Statistics, United States Department of Labor,
12 for the calendar year preceding the beginning of the fiscal year for which the
13 appropriations are made multiplied by one-fourth of the annual percentage change in
14 the statewide population as of July 1 of that calendar year. This subsection does not
15 apply to an appropriation

16 (1) to the Alaska permanent fund;

1 (2) of Alaska permanent fund income for payments of permanent fund
2 dividends to State residents;

3 (3) to meet a state of disaster declared by the governor as prescribed by
4 law;

5 (4) for the Alaska Railroad;

6 (5) of State general obligation and revenue bond proceeds;

7 (6) required to pay obligations under general obligation bonds, revenue
8 bonds, and certificates of participation issued by the State;

9 (7) of money received from the federal government;

10 (8) of money for expenditure by a State agency to provide services to
11 another State agency that has also received an appropriation of the same money;

12 (9) of money received by the University of Alaska;

13 (10) of money received by the Alaska Vocational Technical Center; or

14 (11) made under (b) of this section.

15 (b) An appropriation that exceeds the limit under (a) of this section may be
16 made for any public purpose upon affirmative vote of at least three-fourths of the
17 members of each house of the legislature. The total amount of appropriations under
18 this subsection made for a fiscal year may not exceed two percent of the amount
19 appropriated for the fiscal year two years preceding the fiscal year for which the
20 appropriations are made.

21 (c) If appropriations for a fiscal year exceed the amount validly appropriated
22 under (a) and (b) of this section, the governor shall reduce expenditures by the
23 executive branch for its operation and administration to the extent necessary to avoid
24 spending more than the amount validly appropriated under (a) and (b) of this section.

25 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of
26 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
27 State of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 3
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR DYSON

Introduced: 1/21/03
Referred: Judiciary, Finance

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to an
2 appropriation limit and a spending limit.

3 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. Article IX, sec. 16, Constitution of the State of Alaska, is repealed and
5 readopted to read:

6 Section 16. Appropriation and Spending Limit. (a) Appropriations made
7 for a fiscal year shall not exceed by more than four percent the amount appropriated
8 for the fiscal year two years preceding the fiscal year for which the appropriations are
9 made. This subsection does not apply to an appropriation

- 10 (1) to the Alaska permanent fund;
- 11 (2) of Alaska permanent fund income for payments of permanent fund
12 dividends to State residents;
- 13 (3) to meet a state of disaster declared by the governor as prescribed by
14 law;
- 15 (4) for the Alaska Railroad;
- 16 (5) of State general obligation and revenue bond proceeds;

1 (6) required to pay obligations under general obligation bonds, revenue
2 bonds, and certificates of participation issued by the State;

3 (7) of money received from the federal government;

4 (8) of money for expenditure by a State agency to provide services to
5 another State agency that has also received an appropriation of the same money; and

6 (9) made under (b) or (c) of this section.

7 (b) An appropriation that exceeds the limit under (a) of this section may be
8 made for any public purpose upon affirmative vote of at least two-thirds of the
9 members of each house of the legislature. The total amount of appropriations under
10 this subsection made for a fiscal year may not exceed two percent of the amount
11 appropriated for the fiscal year two years preceding the fiscal year for which the
12 appropriations are made.

13 (c) An appropriation that exceeds the limit under (a) and (b) of this section
14 may be made for any public purpose upon affirmative vote of at least three-fourths of
15 the members of each house of the legislature. The total amount of appropriations
16 under this subsection made for a fiscal year may not exceed two percent of the amount
17 appropriated for the fiscal year two years preceding the fiscal year for which the
18 appropriations are made.

19 (d) If appropriations for a fiscal year exceed the amount that may be
20 appropriated under (a) - (c) of this section, the governor shall reduce expenditures by
21 the executive branch for its operation and administration to the extent necessary to
22 avoid spending more than the amount that may be appropriated under (a) - (c) of this
23 section.

24 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
25 section to read:

26 Section 30. Reconsideration of Appropriation and Spending Limit. If the
27 2004 amendment relating to an appropriation and spending limit (art. IX, sec. 16) is
28 adopted, the lieutenant governor shall place the ballot title and proposition for the
29 amendment on the ballot again at the general election in 2012 and every eight years
30 thereafter unless it is rejected. If the majority of those voting on the proposition
31 rejects the amendment, Section 16 of Article IX is repealed on the date the election is

1 certified.

2 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of
3 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
4 State of Alaska, and the election laws of the state.

Differences Between Current Limit and that Proposed by SJR 3

	Current Limit	SJR 3
Base Year	\$2,500,000	Authorized Appropriations of Fiscal Year two years immediately preceding
Escalation Factor Formula	Cumulative change in population and inflation since July 1, 1981.	Sum of: 90% average annual rate of change of inflation plus 75% of annual percentage rate of change of population for calendar years corresponding to base year
Exemptions	<ul style="list-style-type: none"> • Permanent fund dividends • Revenue bond proceeds • Principal and interest on general obligation bonds • Money received from a non-State source in trust for a specific purpose 	<ul style="list-style-type: none"> • Permanent fund • Permanent fund dividends • Specified gifts/donations/grants • Proceeds of General Obligation Bonds, Revenue Bonds & Certificates of Participation • Revenue Bond debt service • Money from federal government • Tuition received by University of Alaska
Special capital budget provision	1/3 reserved for capital projects and loan appropriations	Provision deleted
Exceeding the limit	Only for appropriations to the Permanent Fund and capital projects if legislative bill approved by governor and passed by 3/4 vote of legislature and approved by voters; or for disaster declared by governor.	Declaration of emergency by governor and approval by 2/3 vote of each house of legislature only for specified purpose and year.
Unexpended & unappropriated funds	Invested by governor at competitive rates	Deposited in CBR
CBR		Art IX, Sec 17(d) amended so that all excess funds go to CBR regardless of whether non-repaid draws exist.

Submitted By Senator Fred Dyson

Revised: 3/16/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SJR3
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
Title Constitutional Amendment relating to RDU Elections
an appropriation and spending limit Component Elections
Sponsor Senator Dyson
Requester Senate Finance Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. If this measure requires the printing of an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Leonard G. Jones
Division: Division of Elections
Approved by: Laura A. Glaiser, Director
Agency: Office of the Lt. Governor, Division of Elections

Phone 465-3051
Date/Time 1/28/04 9:49 AM
Date 1/28/2004

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SJR 3
(S) Publish Date: 5/15/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Const Am: Appropriation/Spending Lir BRU _____
Sponsor Senator Dyson Component _____
Requester Senate Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: SENATE JUDICIARY COMMITTEE Phone 465-2327
Division _____ Date/Time 5/15/03 12:02 PM
Approved by: /s/Senator Seekins, Chair Date 5/15/2003
Agency _____

Differences In the Various Versions

	Current Limit	SJR 3
Base Year	\$2,500,000	Authorized Appropriations of Fiscal Year two years immediately preceding
Escalation Factor Formula	Cumulative change in population and inflation since July 1, 1981.	½ the sum of average annual rate of change of inflation and annual percentage rate of change of population for calendar years corresponding to base year
Exemptions	<ul style="list-style-type: none"> • Permanent fund dividends • Revenue bond proceeds • Principal and interest on general obligation bonds • Money received from a non-State source in trust for a specific purpose 	<ul style="list-style-type: none"> • Permanent fund • Permanent fund dividends • General obligation bond, revenue bond or certificates of participation proceeds • Requirements to pay obligations under revenue bonds • Money received from the federal government • Money received as tuition by the University of Alaska
Special capital budget provision	1/3 reserved for capital projects and loan appropriations	Provision deleted
Busting the limit	Only for appropriations to the Permanent Fund and capital projects if legislative bill approved by governor and passed by ¾ vote of legislature and approved by voters; or for disaster declared by governor.	Declaration of emergency by governor and approved by 2/3 vote of legislature for specific purpose and current year only.
Unexpended & unappropriated funds	Invested by governor at competitive rates	Deposited in CBR
CBR		Art IX, Sec 17(d) amended so that all excess funds go to CBR whether draws have been made or not.
Reconsideration		Placed before voters every 6 years

Differences In the Various Versions

Option: Three-year smoothed base year		Base calculated as average of fiscal years 2, 3 and 4 years preceding current fiscal year.
Option: Smoothed formula components		Average of three years of inflation and population.
Option: Limiting state mandates		State shall not shift responsibility to local governments in an attempt to circumvent the limit
Option: No "ratchet down"		If calculation of the limit factor results in a negative number the limit will not be reduced, but will remain the same as the previous year.

Points of Consideration for Amendment to CS SJR 3 (JUD)

1. What factors should be used in the formula to determine the allowable change (increase or decrease) to be applied to the appropriations or expenditures?
 - A. Tied to population increases or decreases?

We need to answer the question: "What portions of the state's budget change directly when the population grows (or decreases)? The school foundation formula and people seeking government assistance and the PFD do increase linearly with population. How does this tie to our aging population or increases (or decreases) in school age children?"
 - B. Tied to per capita income?

Should growing personal wealth equate to expanding government? Do people need more government assistance when their income decreases? Does the need for more government decrease with more personal wealth, and if so, by how much?
 - C. Budget increases tied to Consumer Price Index (CPI)?

If tied to CPI, how reasonable is it to use what OMB calls the "CPIU Anchorage" (Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States Department of Labor)? We should answer the question: "What portions of the operating budget are affected or unaffected by inflation, and how are such portions affected? Leases, long term contracts, etc. are typically not affected by yearly inflation.
 - D. It's the opinion of Legislative Finance that all of these factors have advantages and disadvantages. We need to understand these factors, perhaps consider other factors, and craft the most valid and reasonable formula.

2. We'd like to make the formula state that the limit will be based on the previous appropriation or actual expenditures, whichever is less.
 - A. Legislative Legal staff says that actual expenditures would always be less because not all appropriations are spent by the end of the fiscal year.
 - B. Some moneys are put in trust and are not expended.
 - C. Some moneys go to purposes that do not lapse at the end of the year.
 - D. How can we delineate or define such "expenditures" so that we can incorporate this concept?

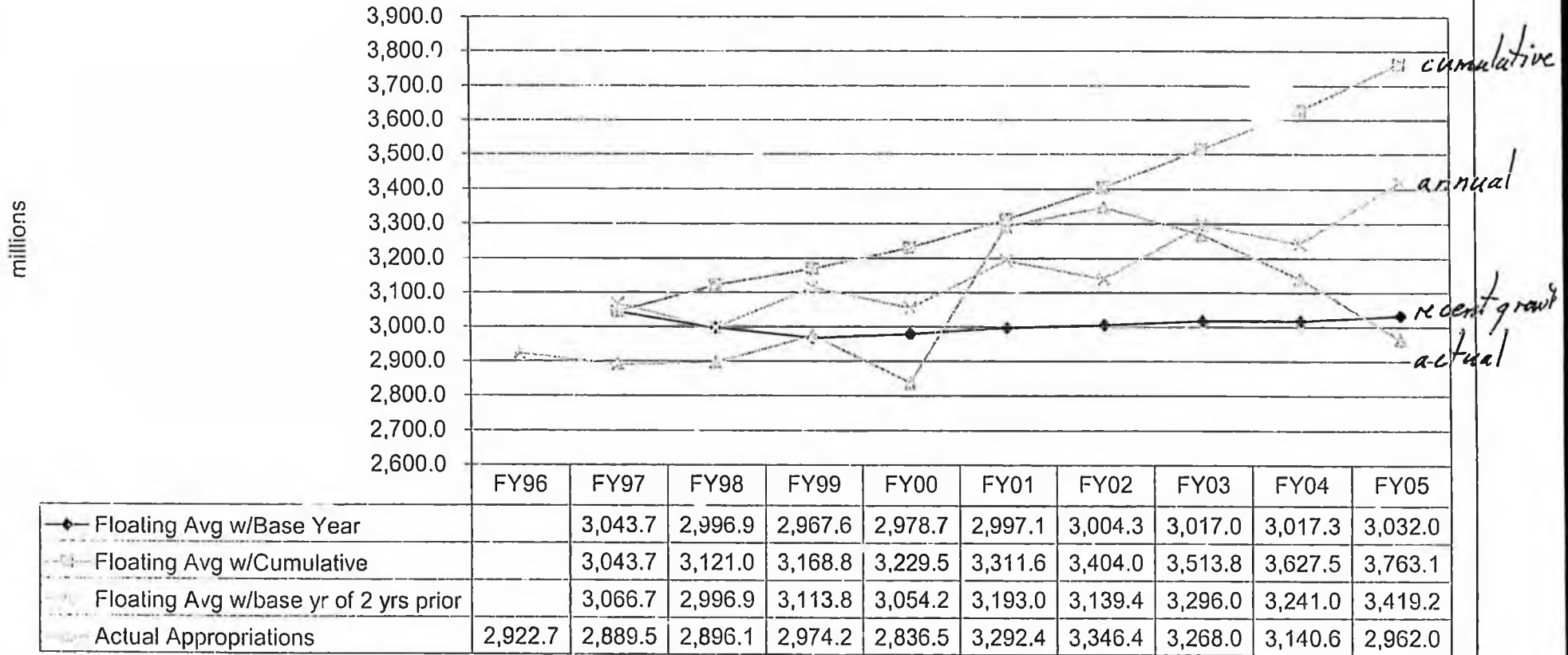
Points of Consideration for Amendment to CS SJR 3 (JUD)

3. What exemptions should be made? The Office of Management and Budget are recommending that we eliminate the following that were in the Donley Constitutional spending Amendment:
 - A. Railroad? On the one hand it increases the overall appropriation, thereby increasing the amount represented by the limit calculated. On the other hand, to exclude it may mean they aren't limited like those Government exemptions that are not exempted and are thus not subjected to the same constitutional discipline.
 - B. University and Alaska Vocational Technical Center? Only a portion of their funds come from state appropriations. Some of their revenue comes from tuitions and other sources. Should the general fund contributions to these institutions be limited like other state government functions, and if so, how?
4. Should the number of legislators required to approve exceeding the limit formula be 2/3 or 3/4?
 - A. If the party in power wants to spend more money irresponsibly, are we giving enough power to the responsible minority to stop the spending spree?
 - B. If we give too much power to the legislators who claim to want to limit the expansion of the operating budget or the minority, will they be able to hold the majority hostage and demand personal or irresponsible special interest pork, when good public policy would necessitate increased spending to meet unusual circumstances?
5. Should we keep the 2% limit on spending increase beyond the limit set by the formula? Is 2% the right absolute limit to exceed the formula limited increases?
 - A. Should it be higher or lower?
 - B. Under what circumstances would we want to override the escalation formula limit?
 - B. Should this limit apply also to capital projects?
6. This proposal eliminates the current wording that 1/3 of appropriations should go to capital projects. Do we want to agree to that?

Points of Consideration for Amendment to CS SJR 3 (JUD)

7. Should we keep the requirement that the governor reduce expenditures as necessary after the legislature approves a 2% increase over the formula limit?
8. What do we do with excess funds above the two tiered operating budget limits? What funds do we consider (general funds, other)?
 - A. The constitution currently says, "The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury." [Last sentence of Art. IX, Sec. 16]. Does depositing the unappropriated funds into the CBR meet this requirement?
 - B. Should the governor be required to deposit such funds to the Constitutional Budget Reserve?
 - C. The constitution says that if funds have been withdrawn from the CBR (as is currently the case), that unexpended money in the general fund, available for appropriation at the end of the year, will be deposited in the CBR. What about when we have paid back the CBR and no longer "owe" the CBR? [Article IX, Section 17(d).]?

Draft - Spending Limit Proposals



- 1) A wide range of funds could be included or excluded depending on the proposed bill. For this exercise exemptions include federal funds, dedicated funds (school fund), trust funds (MHTAAR), debt service.
- 2) The limit factor is based on 50% of the average annual percent change over the last 3 of 4 years in personal income plus the average percent change in population over the last 3 of 4 years.

Provided by
Legislative Finance 1/28/04



SENATOR FRED DYSON

SJR 3

Sponsor Statement

"A Resolution Proposing an Appropriation and Spending Limit"

Updated: March 3, 2004

Contact: Senator Fred Dyson at (907) 465-2199

The adoption of an effective, reasonable constitutional spending limit is an integral step in the development of any effective long-range fiscal plan for the state. Senate Joint Resolution 3 (SJR 3) would amend Article IX, section 16 of Alaska's Constitution by establishing a new appropriations limit in a manner that more tightly constrains budget growth than does the existing appropriation limit, and is more closely aligned to Alaska's current revenue picture. Passage of SJR 3 would ensure that the state has a long-term, predictable spending plan that helps the state control spending in good times so that we have the necessary funds to care for the people of Alaska when times are not so good.

The existing constitutional appropriation limit, adopted by voters in 1981, has not worked as anticipated and, as a result, has not been effective in restraining state spending. One primary reason for its failure is that the base upon which the limit was set was too high at \$2.5 billion. Another is that the escalator factor, based on population and inflation, was cumulative year after year resulting in a limit that eventually became so high as to effectively not be a limit. In fact, given the increases in inflation and population over the last 19 years, our "limit" is currently about \$6 billion, which is about \$3 billion more than general fund spending for Fiscal Year 2002. SJR 3 will amend the existing appropriation limit to more accurately reflect current budgeting and spending while making sure we provide for increased costs due to inflation and a growing population.

While this resolution sets a more effective limit, it's realistic in that it provides mechanisms for addressing unforeseeable emergencies. Should the need arise for additional funds because of a natural disaster or terrorist event, additional funds can be appropriated beyond the limit if the governor declares an emergency and both houses of the legislature approve the additional funding by a two-thirds vote of both houses. However, to make sure we don't get carried away, the additional funds can only be used for the purpose specified and only for the year in which they are appropriated.

Another change is the removal of an existing provision that requires us to reserve one-third for capital projects and loan appropriations, whether we need them or not. Over the years, several attorney general opinions have been written on the meaning of the constitutional limit. Those opinions counter the plain English meaning of the language and have allowed the legislature and the administration to avoid this requirement. The resolution removes this arbitrary and superfluous requirement.

Without a meaningful constitutional amendment in place; one that limits the amount of state expenditures, there is absolutely no guarantee that the state will restrain, let alone reduce, spending. This resolution would limit state spending, without impacting the receipt and use of federal funds. It is a key component of any new long-range plan to ensure Alaska's long-term fiscal health.

Table 1

Type of Bonds

The following table reflects which aspects of bonds are proposed for inclusion under the Appropriations Limit, and which are excluded.

<u>Bond</u>	<u>As Pertains to Limit</u>	
	<u>Proceeds</u>	<u>Debt Service</u>
General Obligation	Excluded	Included
Revenue	Excluded	Excluded
Certificates of Participation	Excluded	Included
School Debt Reimbursement	N/A	Included

Provided by Sen. Dyson

LEGISLATIVE RESEARCH REPORT

FEBRUARY 11, 2003



REPORT NUMBER 03.100

STATE CONSTITUTIONAL SPENDING LIMITS

PREPARED FOR SENATOR RALPH SEEKINS

BY DONALD M. BULLOCK JR., LEGISLATIVE ANALYST

You asked whether any other state has a constitutional appropriation limit similar to the limit proposed in Senate Joint Resolution No. 3.

Senate Joint Resolution No. 3 (SJR 3) proposes a constitutional amendment to limit appropriations for a fiscal year to four percent above the amount appropriated two years preceding that fiscal year. The limit may be expanded by up to an additional two percent above the base year upon a vote of at least two-thirds of the members of each house of the legislature. The limit may be expanded up to four percent above the base year upon a vote of at least three-fourths of the members of each house of the legislature.

According to the National Conference of State Legislatures (NCSL), sixteen states, including Alaska, have constitutional appropriation limitations.¹ Only one state—Oklahoma—determines its limitation by a fixed percentage applied to a prior year's appropriations, a method similar to that proposed in SJR 3.

The Oklahoma Constitution limits appropriations for any fiscal year to the sum of "the amounts appropriated from all funds in the preceding fiscal year, plus twelve percent (12%), adjusted for inflation for the previous calendar year." Surpluses—defined as amounts accruing to the general fund over the amount of the Board of Equalization's revenue estimate—are deposited into Oklahoma's Constitutional Reserve Fund. Up to half of the amount in the fund can be appropriated when estimated revenues decrease, but the amount appropriated cannot exceed the difference between the estimates for the current fiscal year and the following year. Up to half of the amount in the fund may also be appropriated if the governor declares an emergency and the legislature concurs by a two-thirds vote. Should the Speaker of the House and the President

¹ Mandy Rafool compiled the NCSL table, which is published on NCSL's web site, <http://www.ncsl.org>. Although the table was last updated in 1998, Ms. Rafool informed us that the information is still current.

Provided by Sen. Dyson

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Pro Tempore of the Senate jointly declare an emergency, up to half of the fund can be appropriated if the legislature concurs with a three-fourths vote.²

The remaining states limit state appropriations based on changes in economic growth, population, projected revenue, or state personal income.

- ◆ Alaska's present constitutional limit is adjusted by using "the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981." Although Alaska's cap takes into consideration inflation and population growth, Alaska's cap is determined based on a fixed amount—\$2.5 billion—rather than the amount of the appropriations for a recent year.³
- ◆ Eight states—California, Colorado, Connecticut, Hawaii, Louisiana, South Carolina, Tennessee, and Texas—limit appropriations by limiting year-to-year increases based on the rates of change for factors such as cost of living, state population, growth of personal income, and state economic growth.
- ◆ Five states—Delaware, Florida, Michigan, Missouri, and Rhode Island—limit appropriations based on state revenue. Delaware and Rhode Island limit appropriations to 98% of the taxes each state expects to collect; Florida, Michigan, and Missouri limit appropriations by limiting tax increases, thereby limiting the funds available for appropriation.
- ◆ One state—Arizona—limits appropriations to seven percent of the total personal income of the state for that fiscal year. The constitution requires the establishment of an "economic estimates commission" to estimate the total state personal income for use by the legislature in determining the limit on appropriations.

We are including information from NCSL's table of states with constitutional limits as Table 1. We supplemented the information from NCSL by providing a citation to the constitutional authority for the limitation in the listed states.⁴

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

² Oklahoma Constitution, Article X, Section 23. The same section also limits appropriations to 95% of the revenues projected by the state's Board of Equalization. Section 23 is published on the Internet at <http://oklegal.onenet.net/okcon/X-23.html>.

³ Alaska Const. Art. IX, §16.

⁴ The Public Interest Institute, an organization favoring limiting the power of government, summarizes state limitations on tax and expenditures on the Internet at <http://www.limitodgovernment.org/TELS.html>. That Internet page has links to the relevant state laws providing for the limitations.

State	Year of Adoption	Limit Applicability	Provision in State's Constitution	Limit	Provisions for Waiver
Alaska	1982	State appropriations	Alaska Const. Art. IX §16	Yearly growth of appropriations may not exceed percentage increase in population and inflation.	In the event of decreased revenues, an appropriation may be made from the Budget Reserve Fund.
Arizona	1978	Appropriations of state tax revenues	Ariz. Const., Art. 9, §17	Appropriations of state tax revenues shall not exceed 7.23 percent of state personal income.	Requires two-thirds legislative approval for specific additional appropriations.
California	1979	Appropriations of state tax revenues	Cal. Const. Art. XIII B	Yearly growth in appropriations limit shall not exceed percentage increase in population and per capita personal income.	In the event of an emergency, the appropriations limit may be exceeded provided increased expenditures are compensated for by reduced expenditures over three following years; alternatively, the limit may be changed by voters but the change is operative for only four years.
Colorado	1992	All state spending and tax increases	Colo. Const. Art. X, §§ 11, 20	Spending can only increase based on population growth and increase in CPI; no change in taxes or tax policy without voter approval; current spending limits cannot be weakened without voter approval.	Any vote-approved increases; General Assembly can declare emergency by two-thirds vote and raise emergency taxes subject to vote approval.
Connecticut	1991, 1992	State appropriations (excludes debt service, state grants to distressed municipalities, first year expenditures for federal mandates or court orders, and expenditures from the Budget Reserve Fund)	Conn. Const. Art. XXVIII	Appropriations shall not increase by more than the increase in personal income in the state (average of the annual increase for each of the preceding five years) or the increase in inflation (CPI-University, preceding 12-month period), whichever is greater.	Governor can declare an emergency or the existence of extraordinary circumstances, which must be approved by three-fifths of both House and Senate.
Delaware	1978	State general fund appropriations	Del. Const. Art. VIII, §6	98 percent of estimated general fund revenue and prior year's unencumbered funds.	Declaration of an emergency and three-fifths vote of each chamber.
Florida	1994	All state revenues including taxes, fees, licenses and charges	Fla. Const. Art. VII, §§1, 5; Art. XI, §7	Prior year's revenue plus growth, defined as a five-year rolling average of personal income growth.	Two-thirds vote of the Legislature.
Hawaii	1978	State general fund appropriations	Haw. Const. Art. VII, §9	General fund appropriations shall not exceed the average rate of growth of state personal income for three previous years.	Specific appropriations over the limit require two-thirds approval in both chambers.
Louisiana	1993	State general fund appropriations	La. Const. Art. VII, §10	State spending limited to 1992 appropriations plus per capita personal income growth.	Two-thirds vote by the Legislature.
Michigan	1978	All state revenues less federal aid; expenses of state government	Mich. Const. Art. IX, §§25-28	For any fiscal year, state revenue may not exceed 9.49 percent of total personal income for the prior year.	Governor must first specify an emergency; then the Legislature must concur by two-thirds vote in each chamber.

State	Year of Adoption	Limit Applicability	Provision In State's Constitution	Limit	Provisions for Waiver
Missouri	1980, 1996	Total state revenue, state expenses, new taxes	MO. Const. Art. X, §§18, 20	Revenue shall not exceed the ratio of FY 1980-81 state revenue to 1979 state personal income, multiplied by the greater of state personal income in any calendar year or the average state personal income over the previous three calendar years. Voter approval required for any tax or fee increase that will produce revenues greater than 1) \$50 million adjusted annually by the percentage change in state personal income for the second previous fiscal year, or 2) one percent of the state revenues for the second fiscal year prior to the Legislature's action, whichever is less.	Governor must first specify an emergency; then the Legislature must concur by two-thirds vote in each chamber.
Oklahoma	1985	Appropriated revenues, revenues	Okla. Const. Art. X, §§23, 33	1) 12 percent yearly increase (adjusted for inflation) or 2) 95 percent of certified revenue.	None.
Rhode Island	1992	State general fund appropriations	R.I. Const. Art. IX, §16	98 percent of estimated general fund revenue and prior year's unencumbered funds.	None.
South Carolina	1980, 1984	State appropriations approved by General Assembly	S.C. Const. Art. X, §7	Yearly growth in state appropriations shall not exceed average growth of personal income over three preceding years or 9.5 percent of total state personal income, whichever is greater. Also, the number of state employees is tied to state population.	Limit may be exceeded for one year by a two-thirds vote of the Legislature if it first declares a financial emergency. Also, every five years the Legislature can review the composition of the limit.
Tennessee	1978	Appropriations of state tax revenue	Tenn. Const. Art. II, §24	Growth in state appropriations shall not exceed growth in state personal income.	Specific additional amount may be approved by majority vote of the Legislature.
Texas	1978	Appropriations of state tax revenues not dedicated by the state constitution	Tex. Const. Art. VIII, §22	Growth of biennial appropriations shall not exceed rate of growth of state personal income.	Specific additional amount may be approved by majority vote of the Legislature if it first adopts a resolution that an emergency exists.

Sources: National Conference of State Legislatures, *State Tax and Expenditure Limits* (March 1998), Appendix C; available on the Internet on NCSL's web site, <http://www.ncsl.org>; Public Interest Institute, *Limitations on Government by Issue, State Tax and Expenditure Limitation (TELS)* (Last modified March 25, 2000), based on NCSL survey of state fiscal officers (April 1996), available on the Internet at http://www.limitedgovernment.org/limit_on_gov/TELS.html.



National Center for Policy Analysis

The Sad Case of Alaska

When Alaska realized a windfall from oil on its North Slope, most of the money that flowed into its treasury flowed right back out to fund a bewildering array of special-interest programs.

- State spending nearly doubled between 1969, when lease sales revenue started flowing in, and 1971.
- It increased by another 46 percent in 1972 as the legislature began gearing expenditures to expectations of revenues from the Trans-Alaska Oil Pipeline.

Construction delays pushed the pipeline's completion back to 1977, but rapid growth in government spending continued. To bridge the gap between current government spending and expected oil revenues, the state raised severance taxes on oil again and enacted a "reserves tax" in 1976, with a rebate provision which really made the tax a forced loan from the oil companies.

With the Iranian revolution and an increase in worldwide oil prices in 1980, state revenues increased dramatically - and state spending went higher still. From 1981 through 1988 Alaska's state spending increased nearly 20-fold.

As oil revenues soared, the taxes paid by Alaskan residents plummeted. The individual income tax and several other state taxes were repealed in 1979-80. As a result, real taxes paid to the state by individual Alaskans after 1980 were only 14 to 16 percent of the real taxes they paid during fiscal year 1976. However, taxes on the oil industry have increased 11 times since 1955. Currently, Alaska's tax rates on oil producers are the highest in the United States.

By 1990, per capita state spending was almost four times the national average and more than two and one-half times higher than that of Wyoming, the next highest spender per capita.

Because the state slashed taxes for everybody except the oil companies as the oil revenues poured in, the vast increases in spending met little public opposition. However, oil production has declined by more than 15 percent since 1989 and is expected to drop to half of its current level by the year 2004, creating the prospect of painful adjustments and dislocations for the Alaskan economy. For example:

- In towns and cities throughout the state, enormous sums have been spent building performing arts centers, convention centers and sports arenas that will have to be maintained.
- State spending now accounts for more than 33 percent of the jobs and three of every ten dollars of personal income.

If the state had allowed real per capita spending to grow at a rate equal to the U. S. average and had deposited the excess revenue in Alaska's Permanent Fund, that fund would have contained \$66.7 billion by the end of 1993. At the fund's historic rate of return of 5.15 percent, it would have produced \$3.4

Provided by Sen. Dyson

<http://www.ncpa.org/ca/easo94/easo94h.html>

1/19/2004

billion each year to finance state spending, or 17 percent more than total state spending in 1993.

Source: Stephen L. Jackstadt and Dwight R. Lee, "Economic Sustainability in Theory and Practice: The Sad Case of Alaska," Contemporary Issue Series 66, July 1994, Center for the Study of American Business, Washington University, Campus Box 1208, One Brookings Drive, St. Louis, MO 63130, (314) 935-5630.

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SENATOR FRED DYSON

SJR 3

Sponsor Statement

"A Resolution Proposing an Appropriation and Spending Limit"

Updated: January 27, 2004

Contact: Senator Fred Dyson's office at (907) 465-2199

The adoption of an effective, reasonable constitutional spending limit is an integral step in the development of any effective long-range fiscal plan for the state. Senator Dyson's Resolution 3 (SJR 3) would amend Article IX, sec 16 of Alaska's Constitution by establishing a new formula for limiting appropriations in a manner that more tightly constrains budget growth than does the existing appropriation limit. The new formula is also more closely aligned to Alaska's current revenue picture. Passage of SJR 3 would thus ensure a limit on the growth of state government and force the state to prioritize its needs to ensure that attention is more critically focused.

The existing constitutional appropriation limit, adopted by voters in 1981, has not worked as anticipated and has not been effective in restraining state spending. A primary reason for its failure is that the starting amount of \$2.5 billion was too high. Another is that its escalator factor, based on population and inflation, was too liberal. As a result, given the increases in inflation and population over the last 19 years, the general fund spending limit imposed by Article IX, Section 16 is over \$6 billion. Such "limit" is about \$3 billion more than general fund spending for Fiscal Year 2002. SJR 3 more accurately reflects today's spending by amending the existing appropriation limit.

The resolution proposes a formula for limiting future appropriations. Any increase beyond the amounts calculated via this formula would require a three-fourths vote of both houses. This resolution is also written such that when increases beyond the calculated limit are approved, such increases will not be cumulative. Finally, increases are limited to no more than 2% of the amount appropriated for the fiscal year two years prior. If the amount appropriated exceeds the limit, the governor shall reduce expenditures by the executive branch for its operation and administration in order to bring expenditures back in line with the constitutional limit.

The existing provision that one-third of the budget be appropriated for capital expenditures is also removed in SJR 3. Over the years, several attorney general opinions have been written on the meaning of the constitutional limit; those opinions counter the plain English meaning of the language and have allowed the legislature and the administration to avoid this requirement. The resolution removes this arbitrary and superfluous requirement.

Without a meaningful constitutional amendment in place; one that limits the amount of state general fund expenditures, there is absolutely no guarantee that the state will restrain, let alone reduce, spending. This resolution would limit state spending and is a key component of any new long-range plan to ensure Alaska's long-term fiscal health.

Existing Alaska Constitution
(To be repealed and replaced by SJR 3)

Section 9.16 - Appropriation Limit.

Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds, 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. Within this limit, at least one-third shall be reserved for capital projects and loan appropriations. The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations for capital projects, whether of bond proceeds or otherwise, if each bill is approved by the governor, or passed by affirmative vote of three-fourths of the membership of the legislature over a veto or item veto, or becomes law without signature, and is also approved by the voters as prescribed by law. Each bill for appropriations for capital projects in excess of the limit shall be confined to capital projects of the same type, and the voters shall, as provided by law, be informed of the cost of operations and maintenance of the capital projects. No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law. The governor shall cause any unexpended and unappropriated balance to be invested so as to yield competitive market rates to the treasury.

State Tax and Expenditure Limits

*By Mandy Rafool
Fiscal Affairs Program*

Executive Summary

Tax and expenditure limits (TEs) are designed to curtail growth in government spending by placing constitutional or statutory restrictions on the amount a government entity can spend or tax its citizens. Limits may be imposed on both state and local governments; only state limits, however, are discussed in this report.

Traditionally, state TEs have limited revenues, expenditures or appropriations. Questions regarding the effectiveness of these traditional limits have led to additional measures such as voter approval requirements or legislative supermajority requirements that also limit state revenue and expenditure options. The restrictiveness of all these limits varies considerably depending upon their design. Variations in TEs make it difficult to categorize them, but generally they fall into one of the categories described below:

- **Revenue limits.** Revenue limits tie yearly increases in revenue to personal income or some other type of index such as inflation or population.
- **Expenditure limit.** This is the most common type of state TE. Expenditure limits, like revenue limits, are typically tied to personal income or some other index. However, expenditure limits curb state appropriations and are generally not as restrictive as revenue limits because it is easier for states to control spending levels.
- **Appropriations limited to a percentage of revenue estimate.** This type of limit simply ties appropriations to a level below projected revenues. It does not establish an absolute limit or tie growth to a measurable index.
- **Voter approval requirement.** This is the most restrictive type of limit since all tax increases or tax increases over a specified amount must receive voter approval.
- **Supermajority requirement.** Supermajority requirements dictate either a two-thirds, three-fourths or three-fifths majority vote in both chambers to pass tax increases or new taxes.
- **Hybrid.** States have also combined components of various limits.

Provided by Senator Dyson

Tax and expenditure limits have different characteristics that affect their restrictiveness. Some limits are constitutional, some are initiated by citizen groups, some only apply to general budget funds and some formulas are designed to produce a very high limit.

Most studies conclude that state limits have not been as effective as proponents envisioned. This is primarily due to the way they are designed and how easily state governments can circumvent the limits. Some fiscal policy experts believe that voter approval and supermajority requirements place tighter constraints on state governments than traditional revenue and expenditure limits.

State Tax And Expenditure Limits

"Government spending is out of control." "My taxes are way too high." "There must be some way to control the growth of government." Frequently uttered comments like these illustrate much of the sentiment driving the tax and expenditure (TEs) movement in the

Tax and expenditure limits have evolved to keep government spending in check by placing constitutional or statutory restrictions on the amount a government entity can spend or tax its citizens.

states. Tax and expenditure limits have evolved to keep government spending in check by placing constitutional or statutory restrictions on the amount a government entity can spend or tax its citizens. Some states have multiple limits in place. Although almost every state has some type of tax or expenditure limitation on local governments, this report discusses only state limits.

As the anti-tax movement grows, so do the number of states with tax and expenditure limits—particularly susceptible are those states with citizen initiative procedures. To help policymakers sort out the various types of tax and expenditure limits, this paper provides a comprehensive look at state limits and recent state activity. The following sections describe different limits, examine the impact these limits have on state government and provide detailed case studies in selected states as well as an overview of all state limits.

Types Of Tax And Expenditure Limitations

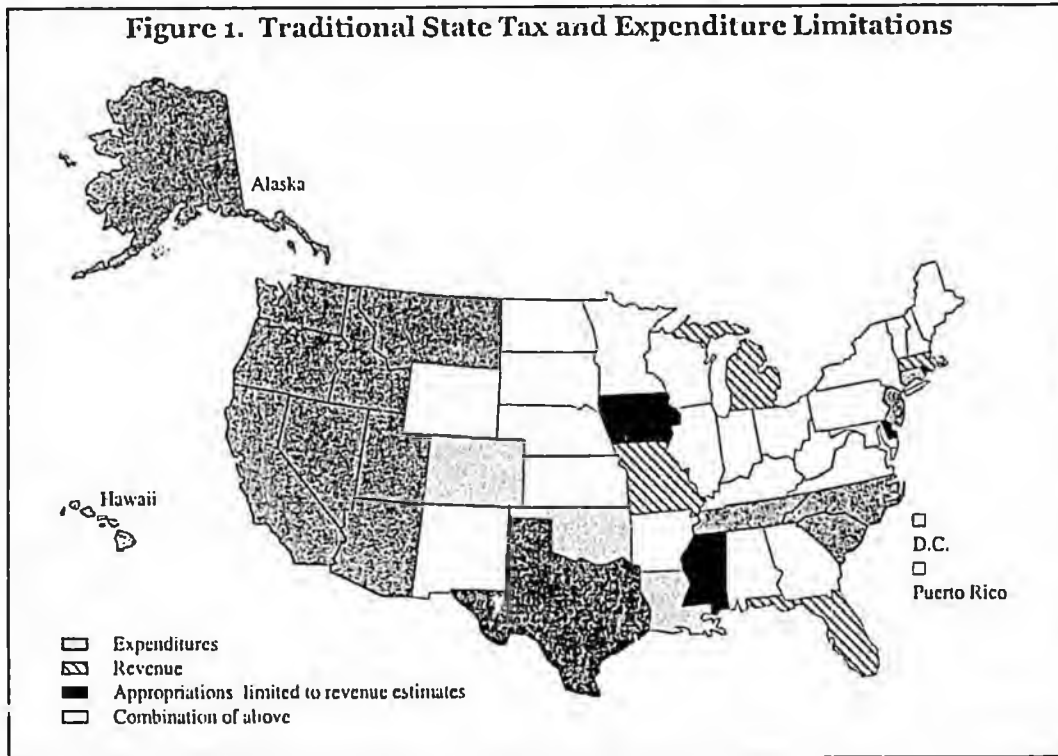
Mechanisms to limit state taxes and expenditures vary considerably. They range from "traditional" limits that restrict revenues, expenditures or appropriations to provisions that require voter approval or supermajority legislative votes.

Traditional Limits

Traditional limits refer to revenue, expenditure or appropriation limits. The features and restrictiveness of these limits varies considerably. Such variations make it difficult to categorize state TEs, but generally, they fall into one of the categories described below:

Revenue limits. Revenue limits tie yearly increases in revenue to personal income or some other type of index such as inflation or population. Only six states utilize revenue limits: Colorado, Florida, Louisiana, Massachusetts, Michigan and Missouri. The limit in each of these states provides for the refund of excess revenues to taxpayers.

Expenditure limits. This is the most common type of state TEL. Expenditure limits, like revenue limits, are typically tied to personal income or a growth index. However, expenditure limits curb state appropriations and generally are not as restrictive as revenue limits because it is easier for states to control spending levels than to anticipate incoming revenues accurately. The impact of expenditure limits on state government depends upon the limit parameters. In some states, like Colorado, where increases in



appropriations are limited to 6 percent of the previous year's appropriations, the limit can be restrictive. But in most states, particularly those where the limit is tied to a growth index and the economy is expanding, the limit remains high enough to have little effect. Somewhat more restrictive are expenditure limits with refund provisions if revenues exceed the authorized spending level. States with refund provisions include California and Hawaii.

Appropriations limited to a percentage of revenue estimates. This type of limit simply tie appropriations to expected revenues. It does not establish an absolute limit or tie growth to a measurable index. Delaware, Iowa, Mississippi, Oklahoma and Rhode Island have this type of appropriation limit in place.

Hybrids. States also have combined components of various limits. For example, Oregon has a state spending limit tied to personal income growth, with a provision requiring refunds if revenues are more than 2 percent above the revenue forecast. This law limits spending and, in a sense, limits revenues by tying them to the forecasted amount.

Other Tax And Expenditure Limitations

A number of states operate under voter approval and supermajority requirements that are not tax or expenditure limitations in the traditional sense; however, they can limit state revenue and expenditure options. Therefore, they are discussed here as a type of limitation. Often these measures are more restrictive than traditional limits.

Voter approval requirements. This is the most restrictive type of limit since all tax increases or tax increases over a specified amount must receive voter approval. Only three states have adopted voter approval requirements. Currently Colorado requires voter approval for all tax increases, and Missouri and Washington require voter approval for tax increases over a certain amount.

Supermajority requirements. Twelve states now use supermajority requirements to restrict legislative fiscal power. Supermajority requirements dictate either a two-thirds, three-fourths or three-fifths majority vote in both chambers to pass tax increases or new taxes.

Table 1. Supermajority Requirements and Other Constitutional Restrictions on Legislative Tax Power

State	Adopted	Referendum or Voter Initiative	Legislative Majority Required	Applies To
Arizona	1992	I	2/3	All taxes
Arkansas	1934	R	3/4	All taxes except sales and alcohol
California	1979	I	2/3	All taxes
Colorado	1992	I	2/3	All taxes *
Delaware	1980	R	3/5	All taxes
Florida	1971	R	3/5	Corporate income tax **
Louisiana	1966	R	2/3	All taxes
Mississippi	1970	R	3/5	All taxes
Nevada	1996	I	2/3	All taxes
Oklahoma	1992	I	3/4	All taxes
Oregon	1996	R	3/5	All taxes
South Dakota	1996	R	2/3	All taxes
Washington	1993	I	2/3	All taxes ***

* Tax increases automatically sunset unless approved by the voters at the next election.

** The constitution limits the corporate income tax rate to 5 percent; 3/5 vote is needed to increase beyond 5 percent.

*** Tax increases producing revenue that do not exceed the spending limit must be approved by 2/3 legislative majority and by the voters; tax increases that produce revenue over the limit, must be approved by 2/3 legislative majority and by the voters.

Source: NCSL survey of state fiscal officers, April 1996

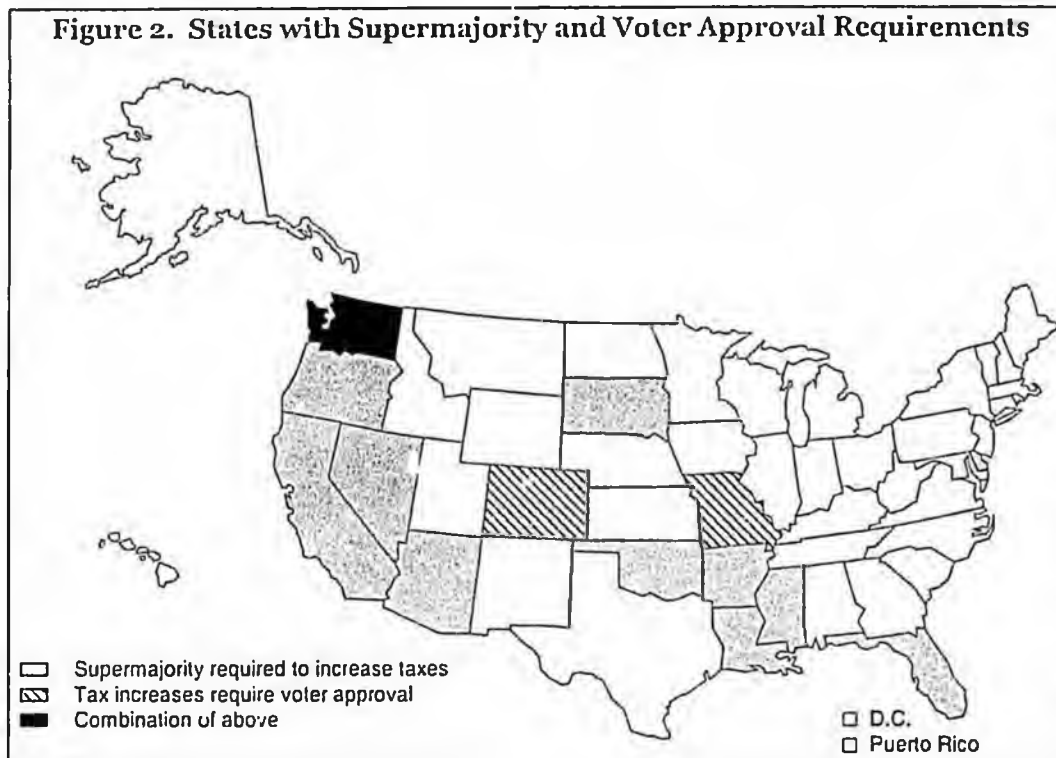
Arkansas was the first state in 1934 to require that tax increases be approved by an extraordinary majority. Arkansas courts have interpreted the supermajority requirement to apply only to taxes on the books when it was adopted, so sales taxes and alcohol excise taxes enacted after 1934 are exempt from the requirement. Louisiana, Mississippi and Florida followed with supermajority requirements. The Louisiana and Mississippi measures apply to all tax increases. The Florida measure applies only to bills that increase the corporate income tax above a constitutional cap of 5 percent.

Citizens took up the cause in the late 1970s in California and South Dakota, passing initiatives to require supermajority votes. Delaware's General Assembly referred the issue to the ballot itself and voters passed it in 1980.

Another wave of supermajority requirement initiatives surfaced in the early 1990s. Measures in Arizona, Colorado, Oklahoma, Oregon, Nevada and Washington have passed. Except for Oregon, all of these recent supermajority requirements are the result of citizen initiatives. Voters in South Dakota recently expanded their supermajority requirement from sales and income taxes to all taxes.

Features Of Tax And Expenditure Limitations

States laws and constitutions prescribe various methods and formulas to determine the limits on taxes and expenditures. These include both absolute limits on revenue and spending and limits on the size of revenue and expenditure increases. Expenditure or revenue growth may be tied to a certain growth percentage as in North Carolina where the spending limit is equal to 7 percent of state personal income. Limits also may be tied to



the rate of growth in personal income or some other index like population growth or inflation as in Utah and Washington. Some states, like Missouri and Michigan, tie limits to a personal income ratio (total state revenues to personal income in the base year) from a specific year. Finally, some states limit appropriations to a percentage of the revenue estimate or forecast.

Obviously different limit characteristics promote different

results. Some of the variables are listed below, and all these factors contribute to the restrictiveness of state tax and expenditure limits.

- How was the limit initiated? Was it by citizen initiative or the legislature? Generally citizen initiated limits are more restrictive.
- Is it statutory or constitutional? Constitutional amendments are usually more difficult to change than statutes.
- Is it a limit on revenues or expenditures? As previously discussed, spending is easier for state governments to control.
- What is the basis of the limit? In many cases, the base year chosen to limit expenditures—often the late 70s or early 80s—was a high water mark for state spending. A high base year makes it less likely that a limit will be triggered.
- How much of the budget is limited? Often the TEL only applies to the general fund. How much of the budget does that really limit? How are earmarked funds treated?
- What are the provisions for change? Most states build in flexibility by providing provisions for emergencies or long-run changes in basic economic characteristics such as a declining population or ongoing recession.
- What are the provisions in the TEL for shifting program responsibility? Can government entities shift programs to one another?
- How are surplus funds treated? Surplus funds in most states go into “rainy day” or other special funds; a number of states, however, require refunds of surplus revenues.

Table 2 summarizes state tax and expenditure limits.

Reasons For Tax And Expenditure Limits

State	Adopted	Constitutional or Statutory	Limit Applies to	Nature of Limit
Alaska	1982	Constitutional	Appropriations	Growth of population and inflation
Arizona	1978	Constitutional	Appropriations	7.23 percent of personal income
California	1979	Constitutional	Appropriations	Personal income growth & population
Colorado	1991	Statutory	Appropriations	General fund appropriations limited to 6% of prior year's appropriations
	1992	Constitutional	Expenditures & Revenue	Spending limited to growth of population and inflation, tax increases require voter approval
Connecticut	1992	Constitutional	Appropriations	Greater of personal income growth or inflation
Delaware	1978	Constitutional	Appropriations	98% of estimated revenue
Florida	1994	Constitutional	Revenue	5 year average personal income growth
Hawaii	1978	Constitutional	Appropriations	3 year average personal income growth
Idaho	1980	Statutory	Appropriations	5.33 percent of personal income
Iowa	1992	Statutory	Appropriations	99% of adjusted general fund receipts
Louisiana	1979	Statutory	Revenue	Ratio to personal income in 1979
	1993	Constitutional	Appropriations	Per capita personal income growth
Massachusetts	1986	Statutory	Revenue	Growth of wages and salaries
Michigan	1978	Constitutional	Revenue	9.49% of prior year's personal income
Mississippi	1982	Statutory	Appropriations	98% of projected revenues
Missouri	1980	Constitutional	Revenue	5.64% of prior year's personal income
	1996	Constitutional	Revenue	Voter approval required for tax increase over \$50 million or 1 percent of state revenues
Montana	1981	Statutory	Appropriations	Personal income growth
Nevada	1979	Statutory	Expenditures	Growth of population and inflation
New Jersey	1990	Statutory	Appropriations	Personal income growth
North Carolina	1991	Statutory	Appropriations	7 percent of state personal income
Oklahoma	1985	Constitutional	Appropriations	12 percent adjusted for inflation; 95% of certified revenue
Oregon	1979	Statutory	Appropriations	Personal income growth
Rhode Island	1992	Constitutional	Appropriations	98% of projected revenue
South Carolina	1980, 1984	Constitutional	Appropriations	Personal income growth
Tennessee	1978	Constitutional	Appropriations	Personal income growth
Texas	1978	Constitutional	Appropriations	Personal income growth
Utah	1988	Statutory	Appropriations	Growth in population and inflation
Washington	1993	Statutory	Expenditures	Growth in population and inflation; tax increases beyond limit need voter approval

Source: NCSL Survey of Legislative Fiscal Officers, April 1996.

Fiscal constraints are not new to state governments. Many states are constrained legally from incurring debt and many state governments are required by constitution or statutes to adopt a balanced budget. However, over time, these requirements have not effectively stemmed the rapid growth of the public sector. There are three basic factors that influence the TEL movement.

Hidden tax increases. Taxes increase over time without a change in tax laws. At the state level, this occurs primarily with income taxes. If the state does not index income tax liability to inflation, over time incomes increase, pushing people into higher brackets. A greater proportion of income goes to pay taxes without any real increase in purchasing power.

Overemphasis on a particular type of tax. Overreliance on one tax is usually not a significant motivating factor behind state limits, although at the local level, heavy reliance on property taxes has resulted in local property tax limits. However, in a few states like Florida (sales) or Oregon (income), heavy reliance on a particular tax may cause concern among taxpayers.

General opposition to government expansion. Many taxpayers simply feel state governments are too big and too inefficient. They believe that public sector growth should be constrained, and that TELs, by making governments more accountable for expenditures and to voters, are a way to accomplish that goal. In addition, public support for state legislatures is very low as evidenced by the growing number of states with term limits. People are cynical about government and insecure about their economic well being. These things combine to make taxpayers distrustful of government fiscal policy.

There are numerous arguments in favor of state tax and expenditure limitations. For example, limits are said to:

- Make government more accountable;
- Force more discipline over budget and tax practices;
- Make government more efficient;
- Make governments think of creative ways to generate revenues—for example, advertising on state-owned facilities;
- Control the growth of government—growth based on personal income or inflation plus population seems reasonable;
- Enable citizens to vote on tax increases and determine their desired level of government service;
- Force government to evaluate programs and prioritize services;
- Raise questions about some functions provided by state government—are some of these functions more suited to the private sector;
- Help citizens feel empowered and result in more taxpayer satisfaction;
- Help diffuse the power of special interests;
- Offer a way to deny special programs;
- Possibly result in taxpayer refunds.

There are arguments against state tax and expenditure limitations as well. For example, limits are said to:

- Shift fiscal decision making away from elected representatives;
- Cause disproportional cuts for non-mandated or general revenue fund programs;
- Fail to account for disproportionate growth of intensive government service populations like the elderly and school age children;
- Make it harder for states to raise new revenue so that scarce resources may be shifted between programs;
- Cause a "ratchet-down-effect" where the limit causes the spending base to decrease so that maximum allowable growth will not bring it up to the original level;
- Result in excess revenues that are difficult to refund in an equitable manner;
- Result in declining government service levels over time;
- Fail to provide enough revenues to meet continuing levels of spending in hard economic times;
- Shift the state tax base away from the income tax to the more popular (but regressive) sales tax if voter approval is required;
- Shift the tax base away from broad taxes (property, sales and income) to narrowly defined sources such as lotteries and user fees.

Have Tax and Expenditure Limits Been Successful?

Most studies conclude that traditional state TELs have not been as effective as proponents envisioned. (They are much more effective when combined with local limits). This is primarily due to the way they are designed and how easily state governments can circumvent the limits.

Supporters of TELs usually specify that controlling the growth of government is the limit's primary objective, and several studies have attempted to measure the effectiveness of achieving that objective. It is difficult to determine if TELs make a difference, according to a study by Philip Joyce and Daniel Mullins in *Public Administration Review*. Significant differences may exist over time in revenue and expenditure structures between those states in which there are limitations and the average state. It is not entirely clear, however, whether these are the continuation of trends existing before the enactment of a particular TEL or whether the TEL itself made a difference. There may be a difference in the mood of states that enact TELs versus other states. The study found state limits to have less effect than local limits, probably due to the wide array of methods available to states to circumvent the limit.¹ In a new study by Mullins and Joyce, published in 1996, the authors found that the existence of state tax and expenditure limits without local limits has no significant negative effect on the size of the public sector.²

Newly published research on tax and expenditure limits includes a study by Ronald J. Shadbegian that appeared in the January 1996 edition of *Contemporary Economic Policy* and a study by James M. Poterba, published in the *Journal of Political Economy*, 1994. The Shadbegian study looked at the impact of tax and expenditure limitations adopted in the 1970s and 1980s on the size and growth of state government. He found that tax and expenditure limitation laws, as they currently are written, allow states with high income growth to keep increasing the size of the public sector. Meanwhile, they prevent states with low income growth from doing likewise. While TELs restrict government size and

growth in states with below average income, in general they have no significant effect on the size or growth of government.³ The Poterba study focused mostly on state balanced budget requirements, but he did find that states with tax limitations raise taxes by a lesser amount in response to an adverse deficit shock than states without such limits. While states without tax and expenditure limits are predicted to raise taxes by \$1.03 in response to each \$1.00 of unexpected deficit, the adjustment for states with tax limitations is only \$0.47.⁴ There is no evidence that spending cuts are any larger in states with tax and expenditure limits. This indicates limits have been somewhat successful in constraining the rate at which taxes are increased. It is also worth noting that some of the most potentially binding state TELs have passed since 1990 and have not been analyzed in any of the empirical studies discussed.

Another measure of a TEL's effectiveness is how often the state triggers the limit and what happens if it does. In most states, particularly those in which the limit is tied to a growth index and the economy is expanding, the limit remains high enough to have little effect. But in some states where increases in appropriations are limited to a percentage of the previous year's appropriation, the limit can be restrictive. In addition, a few states have provisions requiring taxpayer refunds if the state hits the limit. California, Missouri and Oregon have had to rebate excess revenues. Although taxpayer's share of rebates is usually small, it is an effective way to control government growth, since to avoid facing refunds, state legislatures may reduce taxes to lower the revenue base. When it appeared that revenues in Michigan would exceed the limit in FY 1995, the Legislature cut state income taxes by 2 percent. In anticipation of triggering the limit in FY 1997-98, the Colorado General Assembly adopted a number of measures in the 1996 session to reduce revenues, including a child care tax credit, a decrease in the insurance tax rate and a sales/use tax exemption on manufacturing tools. This strategy, however, can create problems in slow growth years because the base is now at a lower level.

Many fiscal policy experts believe that voter approval and supermajority requirements have placed tighter constraints on state governments than traditional revenue and expenditure limits.

Many fiscal policy experts believe that voter approval and supermajority requirements have placed tighter constraints on state governments than traditional revenue and expenditure limits. Requiring voter approval for state tax increases is a fairly new practice that only exists in three states. As a result, they do not have much of a track record. In 1992, Colorado was the first state to require voter approval on all tax increases and new taxes. Washington and Missouri also require voter approval on tax increases over a specific level (refer to the case studies for details). A simple way to measure the effectiveness of voter approval requirements is to look at the voter approval record. By using defeat as a measure, one can argue that the requirement is effective when voters say no to new taxes or tax increases. This happened in Colorado when voters said no to extending the tourism tax that supported the state travel office and tourism promotion. Many people felt that there was no need for a tourism tax and that they did not benefit from the revenues, so when given the opportunity, they voted it down.

An interesting observation related to the perceived ineffectiveness of tax and expenditure limits, is the number of states that have adopted legislative supermajority requirements. Such requirements are thought by many tax reformers to be a more effective tool to slow the growth of government and control spending than traditional TELs.

The restrictiveness of supermajority requirements depends upon the make-up of the legislature and on the state's tax system. In states with one predominant party, the

majority party traditionally has enough votes to approve tax increases. In other states, the requirement can be very restrictive. Legislative staff from supermajority states report that diligent consensus building by legislative leaders is necessary to gain approval of most tax increases.

The spread of supermajority requirements is probably more likely in the states, mostly in the West, with the voter initiative process. They are just one of a number of "tax revolt" measures that may be favored by anti-tax or anti-government groups, although the recent debate in Congress over supermajority requirements may spur a renewed interest in the states.

When analyzing the impact of all the various limits, it is important to look at not only whether the limit has led to less government, but also the quality of government services. The following questions may be helpful when analyzing the effects of tax and expenditure limits:

- Is the level of service at a desirable level?
- Has government accountability improved?
- Has government efficiency improved?
- Have the changes in revenue sources been positive?
- Has there been a shift in the responsibility of government functions?

Strategies to Manage State Tax and Expenditure Limitations

The past 20 years demonstrate that state governments have managed to live with TELs and that many of the early gloom and doom prophecies have not been realized. Listed below are several strategies that states may use to help manage limits.

- Build up the state's rainy day fund so money is available for slow growth years.
- Shift responsibility to local governments if permitted.
- Go to voters only in cases of emergency.
- Maintain the revenue base during slow growth years by planning on one-time tax refunds rather than reducing the revenue base permanently.
- Earmark new taxes, when needed, for a popular program to encourage voter approval.
- Prioritize spending and try to spend less, perhaps some government functions can be met through the private sector.
- Index fees and increase them on a gradual basis so that there won't be a need for a large increase at one time.

Although these strategies are not necessarily considered good fiscal policy, they are tactics to help states manage under tax and expenditure limits.

As state policymakers contemplate different tax and expenditure limits, it is helpful to review experiences in similar states. Therefore, state experiences in Colorado, Missouri, Michigan and Washington are included as Appendix A. Appendices B and C provide a comprehensive look at all state tax and expenditure laws in both tabular and narrative formats.

Summary

Broadly defined, state tax and expenditure limits include revenue limits, expenditure limits, appropriations limits, voter approval requirements and supermajority requirements. Some states operate under a combination of limits. Limits range from very restrictive voter approval requirements to more lenient appropriations limits, and they all have different characteristics that influence the way in which they work.

State tax and expenditure limits have been around for close to 20 years, but through the early years, they were not found to be very effective in controlling the growth of government. More restrictive limits have since been adopted, but few of these limits have been triggered due to strong economic conditions in most states. Furthermore, limits adopted since 1990 have not been analyzed in empirical studies. It remains to be seen how states will fare under the more restrictive limits in hard economic times.

In addition to traditional tax and expenditure limits, many states require a supermajority vote in the legislature or a vote of the people to increase or pass new taxes. These requirements are thought to be more effective in slowing down the rate of government spending. Twelve states now use supermajority requirements and five of those states have adopted them since 1992. Three states currently require voter approval for tax increases and in all three, the requirement was adopted after 1991.

Regardless of whether or not tax and expenditure limits achieve the desired outcome, more than half the states have some type of limit in place and it appears that they are here to stay. Anti-government sentiment remains strong and tax reform crusaders are quick to promote TELs as a way to tie the hands of government. □

Notes

1. Philip G. Joyce and Daniel R. Mullins, "The Changing Fiscal Structure of the State and Local Public Sector: The Impact of Tax and Expenditure Limitations," *Public Administration Review* 51, no. 3 (May/June 1991): 251.
2. Philip G. Joyce and Daniel R. Mullins, "Tax and Expenditure Limitations and State and Local Fiscal Structure: An Empirical Assessment," *Public Budgeting and Finance* 16, no. 1 (Spring 1996): 84.
3. Ronald J. Shadbegian, "Do Tax and Expenditure Limitations Affect the Size and Growth of State Government?" *Contemporary Economic Policy* XIV (January 1996): 34.
4. James M. Poterba, "State Responses to Fiscal Crises: The Effects of Budgetary Institutions and Politics," *Journal of Political Economy* 102, no. 4 (1994): 815.

Selected References

- Stansel, Dean. *Taming Leviathan: Are Tax and Spending Limits the Answer?* Washington, D.C.: CATO Institute, 1994.
- Howard, Marcia A. *State Tax and Expenditure Limitations: There Is No Story.* Washington, D.C.: National Association of State Budget Officers, 1988.

Wright, J. Ward. *Tax and Expenditure Limitations: A Policy Perspective*. Lexington, Ky.: The Council of State Governments, 1981.

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APPENDIX A. CASE STUDIES

The following illustrations present state tax and expenditure limits in more detail. The discussion focuses on experiences in Colorado, Missouri, Michigan and Washington.

Colorado

Background

Controlled government growth is not a new concept to Colorado residents. In 1977, Colorado was one of the first states to adopt a state general fund appropriations limit. And in 1992, voters approved the most restrictive state tax and expenditure limitation in any of the states.

Colorado, like many Western states, has a history of dramatic "boom/bust" type economic cycles. During the 1970s, the state economy boomed and residents became concerned about skyrocketing property values and containing growth. Legislation enacted in 1977 limited state appropriations increases to 7 percent over the previous year's general fund appropriations. Due to expire after the 1982-83 fiscal year, the law was amended in 1979 and extended indefinitely.

The mid-to-late 1980s proved to be a "bust" time in Colorado as the state suffered an economic downturn largely due to the collapse of the energy and construction industries. Citizens frustrated by what they believed to be government inefficiency and the perceived inequities of the state tax system, started a grassroots tax reform effort for state and local government. Tax and expenditure ballot initiatives appeared before the voters in 1986, 1988 and 1990, failing by progressively narrower margins each time. But the Taxpayer Bill of Rights (TABOR) amendment (also known as Amendment One) passed in 1992 and added Article X, Section 20 to the state constitution.

Arveschoug-Bird Legislation

Before the passage of Amendment One, the Colorado General Assembly adopted a statutory general fund appropriations limit. The legislation, adopted in 1991 as SB91-1262, set a limit on state general fund expenditure increases and is known as the Arveschoug-Bird limit. It limits annual increases in general fund appropriations to 6 percent of the state general fund expenditures for the previous year or 5 percent of Colorado personal income two years prior to the fiscal year, whichever is less. However, if the state significantly restructures education finance, the limit may be modified. The limit does not include the following:

- Any general fund appropriation that is the result of any requirement of federal law that is made for any new program or service or increase in level of program or service.
- Any general fund appropriation that is result of any requirement of a final state or federal court order that is made for any new program or service or increase in level.
- Any general fund appropriation of money that is derived from any increase in the rate or amount of any tax or fee that is approved by voters.

Amendment One

On November 3, 1992, Colorado voters adopted Amendment One. This amendment added Section 20 to Article X of the Colorado Constitution and generally serves to limit all spending of state and local governmental revenues. State general fund and cash fund spending (it defines spending as equal to revenues) can only increase based on population growth and increases in the Boulder/Denver Consumer Price Index (CPI). No increase in taxes or change in tax policy is permitted without voter approval. In addition, prior spending limits cannot be weakened without voter approval. Although the Arveschoug-Bird legislation is an appropriations limit--not a spending limit--it has generally been interpreted that the limit on general fund

appropriations may not be weakened. The end result is that voters must approve all tax increases and all spending increases over the limit. Elections can only be held during state general elections in even-numbered years, and during November in odd-numbered years, and during regularly scheduled biennial local elections.

Any revenues collected over the limit must be refunded to the taxpayers, unless voters allow the government to keep the excess revenue. Governments can use any "reasonable method" to make the refunds, but the amendment does not suggest or define what those methods might be.

The General Assembly may declare an emergency by a two-thirds vote of both chambers and raise emergency taxes. (Emergencies include natural disasters and other unforeseen events. They cannot be economic conditions, revenue shortfalls, or salary and fringe benefit increases.) Any such increase must be approved by voters at the next election.

The amendment also states that a local government can reduce or end its subsidy for any state mandated program except K-12 education. Ninety days' notice is required and adjustment can occur in a maximum of three equal annual installments. Local taxes supporting these programs must be reduced accordingly.

Impact on State-Local Relationships

A provision in the TABOR Amendment that permits localities to give back to the state any state-mandated program has been put to the test and failed according to the Colorado Supreme Court. Two counties attempted to give some social service programs back to the state, but the Supreme Court ruled that the counties were political subdivisions of the state and had a duty to perform state jobs.

At the same time, however, some local responsibility has shifted to the state. Local property tax revenues have leveled out because TABOR also limits the ability of local government and school districts to adjust the mill levy without voter approval (local property tax limits were already in place when TABOR was adopted and the local limits are calculated differently than the state limit). Mill levies can no longer float to make up for lost revenues from lower assessment rates. This has shifted more of the education burden onto the state.

Impacts of Colorado's Tax and Expenditure Limitations

It is difficult to predict what the broad fiscal impacts of Amendment One will be since the state has not hit the limit since it was adopted. The limit is indexed to population and inflation and Colorado's population has been steadily increasing. The true test will come when the state's economy slows down. The 6 percent appropriations limit outlined in the Arveschoug-Bird legislation has been more restrictive so far. However, there were ways to circumvent the Arveschoug-Bird limit by transferring general funds to other special revenue funds not subject to limit. Amendment One specifically states that current limits may not be weakened.

The Arveschoug-Bird legislation was written so that it could be amended at any time by a legislative supermajority for a fiscal emergency. Because it only limited general fund appropriations and could be amended by the legislature, it was not considered to be too restrictive. But now, in combination with Amendment One, Colorado may face a more restrictive tax and expenditure limitation.

Economic projections for FY 1997-98 put Colorado over the revenue limit by about 0.1 percent or \$8 million. If this happens, the state must refund the excess to taxpayers or seek voter approval to retain the surplus. To offset excess revenues, the General Assembly passed a child care tax credit in 1996 expected to reduce state revenues by \$8.4 million in FY 1997. Other legislative measures such as lowering the insurance tax rate and a sales/use tax exemption on manufacturing tools reduced revenues as well.

If the legislature does not want to seek voter approval for retaining the surplus, they can provide for a refund. However, this is not as simple as it may seem. The state constitution does not specify how to provide the refund, and it has proven difficult in other states to provide a refund in an equitable way. Many states with

revenue limits link the refund to income tax liability, but this raises some concerns about equity since not everyone pays income tax. Other options, like sales tax adjustments, or property tax reductions are not very feasible. Two Denver metropolitan special districts collected revenues in excess of the spending limit and were forced to refund the surplus through monthly utility bills.

Another option is to reduce revenues to avoid exceeding the limit. However, this may permanently lower the revenue base which can make for difficult times in years of slow growth.

Despite the concern and rhetoric surrounding the adoption of Amendment One, it has not yet proven to be a problem for Colorado at the state level. However, the provisions under the limit will undoubtedly become more difficult for state policymakers once economic growth slows down.

Missouri

Overview

Missouri's revenue limit is known as the Hancock Amendment. It was approved by the voters in 1980 and became Article X, Section 16-24 of the Missouri Constitution. The Hancock Amendment, which established a state revenue limit, was modeled after a similar amendment in Michigan. The limit is the ratio of total state revenues to personal income in FY 1981, which is 5.6395 percent.

In addition to placing a limit on the general fund revenues, the amendment also limits earmarked revenue sources like motor fuel taxes, cigarette taxes, and motor vehicle registration and drivers license fees. Federal funds are excluded. As interpreted by the Missouri Supreme Court in *Goode vs. Bond* (1983), the Hancock Amendment gave citizens the ability to selectively exclude increased taxes, fees or other revenues from the limit, by a majority vote at a general or special election called for that purpose. Many supporters of the revenue limit are convinced that this decision significantly weakened the limit.

In 1993, the General Assembly passed legislation (SB 380) to increase taxes by \$310 million to cover school financing without going to a vote of the people. The tax increase did not trigger the Hancock limit because it kept revenues under the limit. However, the action ignited a new tax reform effort by citizen groups to tighten the state revenue limit with a more restrictive constitutional amendment, known as Hancock II.

Hancock II

Hancock II would have imposed stricter voter approval requirements for tax increases and a rollback of existing tax increases. Supporters of Hancock II claimed that the Hancock I amendment initially restrained the growth of state taxes and spending, but over time its effectiveness had been eroded as legislators, aided by sympathetic court rulings, discovered ways to evade the restrictions by exempting certain revenues from the cap. Hancock II was designed to provide a more precise definition of total state revenue. In November 1994, Missouri voters defeated the Hancock II measure by a wide margin.

Amendment 4

The tax reform movement did not stop with the defeat of Hancock II. On April 2, 1996, Missouri voters, by a margin of more than 2 to 1, approved another state revenue limit. Constitutional Amendment 4 requires a statewide vote on all tax or fee increases that produce new annual revenues greater than either: 1) \$50 million adjusted annually by the percentage change in Missouri personal income for the fiscal year two years prior to the current year; or 2) 1 percent of the state revenues for the fiscal year two years prior to the current legislative action, whichever is less. In the event of an emergency the General Assembly may increase taxes, licenses or fees beyond the limit for one year. This amendment does not affect the basic Hancock amendment.

Impacts of the Revenue Limits

For the first time since its implementation in 1980, the Hancock I revenue limit was exceeded in FY 1995. The limit is tied to personal income, but there is significant lag time between the fiscal year and the personal income calculation. So in 1995, which was a good economic year for Missouri, tax revenues were above average. However, due to the lag time, 1995 revenues were compared to 1993 personal income, which was low, largely due to summer flooding. As a result, the state exceeded the 5.64 percent revenue limit in FY 1995 and is required by law to refund surplus revenues to taxpayers based on their income tax liability. The state is planning to provide \$147 million through the income tax as specified in the state constitution.

Controversy and claims of inequity surround the refund because not everyone pays income tax, even though they may have contributed to state revenues. (As of October, refunds were still held up pending the outcome of a court case on this issue). In addition, because the refund is based on income tax liability, corporations will benefit more. Because 1996 revenues are on track to exceed the limit and a second refund is likely, the state is exploring ways to prevent future refunds. Possibilities include reducing the sales tax or a partial roll back on the food tax. Neither proposal has been greeted with much enthusiasm in the legislature.

Overall, Hancock I has not proven to be a very restrictive limitation. Without the robust economic growth of recent years and the floods of 1993, it may never have affected the state. Now with the adoption of a new amendment requiring voter approval for tax increases, some fiscal flexibility is lost and the two measures combined should prove to be more restrictive.

Michigan

Overview

In 1978, a citizen initiative known as the Headlee Amendment was approved and became Article IX, Section 25-34 of the Michigan Constitution. The Headlee limit applies to all state revenues, except federal aid, and prohibits the state from collecting more than 9.49 percent (the ratio of 1978-79 revenue to 1977 state personal income) of personal income in tax revenues for any fiscal year.

To exceed the limit, the governor must first specify an emergency; then the Legislature must concur by two-thirds vote in each chamber. This override provision has never been used.

In addition, the following provisions apply: 1) the limit may be adjusted if a constitutional amendment results in the transfer of program responsibility from one level of government to another; 2) the state is prohibited from reducing the current proportion of local services financed through state aid; 3) no new program shall be required of local governments unless funded by the state; and 4) the proportion of total state spending paid to all units of local government as a group shall not be reduced below the proportion for FY 1978-79

If revenues exceed the 9.49 percent limit by more than 1 percent, the entire amount of the surplus must be refunded to taxpayers in the following year through both business tax and individual income tax refunds. If the limit is exceeded by less than 1 percent, the surplus may be deposited into the Budget Stabilization Fund.

The following table compares the revenue limit with the actual level of state government revenues for each fiscal year since the limit was adopted. In most of the 14 years from FY 1979-80 to FY 1992-93, state government revenue has been well under the revenue limit. In fact, in 1991-92, the state was below the limit by as much as \$3.7 billion. The state came close to the revenue limit in FY 1984-85, when revenues fell short of the limit by a mere \$6.1 million. This close call was due to a rapid growth in revenues resulting from strong economic growth as Michigan's economy continued to pull out of the 1980-82 recession. In addition, the growth in revenue was further accelerated by a temporary increase in the income tax to help close a budget

deficit and improve a serious cash-flow problem. This growth in revenue outpaced the growth in personal income during calendar year 1983, which was the first year of the economic recovery in Michigan.

Michigan's Revenue Limit: FY 1979-80 to FY 1996-97 (millions)			
1979-80	\$6,870.1	\$7,396.8	\$526.7
1980-81	7,043.0	8,215.7	1,172.7
1981-82	7,348.9	8,763.0	1,414.1
1982-83	8,104.5	9,424.9	1,321.4
1983-84	9,243.5	9,488.1	244.6
1984-85	9,861.6	9,867.7	6.1
1985-86	10,492.8	10,857.3	373.5
1986-87	10,891.9	11,736.6	844.7
1987-88	11,472.3	12,822.2	1,349.9
1988-89	12,087.9	13,439.5	1,351.6
1989-90	12,363.1	14,513.4	2,150.3
1990-91	12,311.9	15,351.4	3,039.5
1991-92	12,540.6	16,228.2	3,687.6
1992-93	13,435.3	16,583.8	3,148.5
1993-94	15,286.0	17,534.0	2,248.0
1994-95	18,585.4	18,475.8	(109.6)
1995-96 Est.	19,381.4	19,982.0	600.6
1996-97 Est.	20,179.9	21,323.9	1,144.0

Source: Table compiled by Michigan Senate Fiscal Agency

Impact of the Revenue Limit

In March 1994, Michigan voters approved changes in the way public schools would be financed. While the school finance reform generated an overall tax reduction for Michigan's taxpayers, the large reduction in local school property taxes was partially offset by an increase in certain state taxes. As a result, state revenues were expected to exceed the revenue limit for the very first time in FY 1994-1995. The legislature had already been considering tax cuts and the threat of hitting the revenue limit created a good opportunity to implement them. As a result, taxes were reduced by over \$300 million, but it still appeared that revenues would exceed the limit by more than \$184 million. This would have required refunds to individuals and businesses since the state would have been exceeding the revenue limit by more than 1 percent. To avert this situation, the Legislature enacted a one-time 2 percent cut in 1995 individual income taxes. As a result, the revenue limit was exceeded by \$109.6 million and the limit was not triggered.

Washington

Overview

The first tax and expenditure limit in Washington was adopted in 1979 as Initiative 62. The state suffered from a recession soon after it was enacted, and it never became much of a constraint since the base was then higher than the state could spend. In fact, the 1993 Legislature was able to pass a \$1 billion tax increase to balance the FY 1994-95 budget and remain within the limit. It was this tax increase that provided the impetus for two citizen initiatives that limited taxes to appear on the ballot in November 1993.

Initiative 602 was the more extreme measure. It would have rolled back nearly all the \$1 billion in tax and fee increases, in addition to imposing a limit on state revenues. It was defeated at the polls.

The other initiative (601), passed by less than 1 percent of the vote. Initiative 601 imposes limitations on state tax and fee increases and limits state general fund expenditures. It is statutory in nature since citizens in Washington are not authorized to initiate constitutional amendments. The initiative establishes two new fiscal reserve funds and repeals the state's current Budget Stabilization Account (known as the "rainy day fund").

Beginning with FY 1996, a limitation was placed on general fund expenditures. The rate of growth in expenditures may not exceed the state's average rate of inflation and population change for the prior three fiscal years. The base year for calculating the expenditure limitation is FY 1991. The base FY 1991 expenditure limitation was adjusted for subsequent changes in inflation and population to determine the initial expenditure limitation for FY 1996.

All general fund revenue in excess of the amount the state is allowed to spend under the expenditure limitation is deposited in an Emergency Reserve Fund. Appropriations may be made from this fund only with a two-thirds vote of each house of the Legislature, and only if the appropriation does not cause spending to exceed the expenditure limitation. If the balance of the emergency fund exceeds 5 percent of biennial general fund revenues, the excess is deposited in an Education Construction Fund. Money in this fund may be appropriated by majority vote of the Legislature for capital construction projects for higher education and the K-12 school system. If approved by the voters and two-thirds of each house of the Legislature, money in the Education Construction Fund may be appropriated for any other purpose.

Any action by the Legislature that increases state revenue or makes revenue-neutral tax shifts requires a two-thirds vote of each house. If the action will result in expenditures in excess of the expenditure limitation, then the legislative action will not take effect until approved by the voters at a November general election.

The limit may be exceeded on a temporary basis in the case of a natural disaster. Such an expenditure may be made only pursuant to a declaration of emergency enacted by a law approved by two-thirds of each house of the Legislature and signed by the governor. Any taxes required for such an emergency may be temporarily imposed only if the Education Construction Fund has been depleted. Such taxes expire at the next general election unless approved by the voters.

The Legislature is prohibited from imposing on local governments any responsibility for new programs (or increased levels of service under existing programs) unless the Legislature fully reimburses the local government for the cost of the program.

Impact of the Expenditure Limit

The supplemental budget passed in 1994 as the first post-initiative spending plan demonstrated good planning by the Washington Legislature. The goal was to make state government ready for 1995 when the initiative went into effect. The following actions were taken:

- Targeted cuts of \$59 million were made--mostly in administration, social services and prisons--to save more than \$120 million in the new biennium.
- Spending increases were of a one-time-only nature for items like highways and school construction, so those expenditures would be off the budget in July 1995. As a result, the budget base was not swollen from previous spending levels and would be easier to sustain in the new biennium.
- Some programs were directed to begin planning for cuts. As a prime example, public colleges were directed to trim expenses by \$39 million to help pay for faculty and staff pay raises.
- A reserve of about \$290 million was left unspent.

So far, the state has not come close to triggering the limit. For the 1995-97 biennium, the state budget is approximately \$360 million below the limit. The Legislature has taken steps to cut taxes when it appears that revenues are coming in high. To date, no money has gone into the surplus fund.

Some fiscal experts have expressed concern that the limit may prove to be constraining as the need grows to spend more in specific areas like higher education as enrollment increases and on welfare as the federal reforms take effect. The limit may also prove to be constraining when disproportionate population growth occurs among some sectors of society that consume a greater proportion of services. In Washington, for example, the population of school age children and the elderly is increasing faster than the population rate on which the expenditure limit is based.

Others question whether a statute can limit the constitutional powers of the Legislature to raise and spend money to run government. The initiative is untested in court. One of the biggest challenges will be for the Legislature to stay below the limit and avoid a court battle.

APPENDIX B. SUMMARY OF STATE TAX AND EXPENDITURE LIMITS

Alaska

In 1982, Alaska adopted Article IX, Section 16 of the Alaska Constitution, which limits state appropriations to population growth and inflation; a vote for reconsideration of the limit in 1986 continued the provision. The yearly growth of appropriations may not exceed \$2.5 billion by more than the cumulative percentage increase in population and inflation since 1981. Within the limit at least one-third of state spending shall be reserved for capital projects and loan applications. However, this provision may be disregarded when economic conditions impose a more restrictive limit. In the event of decreased revenues, an appropriation may be made from the Budget Reserve Fund.

Arizona

In 1978, Article 9, Section 17 amended the Arizona Constitution to limit government spending to state personal income. Arizona law now specifies that appropriations of state tax revenues shall not exceed 7.23 percent of state personal income. To waive the provision, two-thirds approval of each house of the Legislature is required on specific additional appropriations. The Legislature may provide for adjustments to the limit if a court order or legislative enactment transfers responsibility between state and local governments or between federal and state governments.

California

In 1979, the California Constitution (Article XIII B) was amended by a citizen initiative known as the Gann Amendment. Originally, the Gann Amendment imposed a state spending limit that tied appropriations to increases in population and inflation. The formula was modified in 1988 to include per capita income. In the event of an emergency, the appropriations limit may be exceeded provided that increased expenditures are compensated for by reduced expenditures over three following years. Alternatively, the limit may be changed by voters but the change is operative for only four years.

The limit also provides for the transfer of responsibility for government programs: 1) the appropriations limit shall be altered if program responsibility is transferred from one government entity to another, from government to private entity, or from funding through general revenues to funding through special revenues; 2) the state shall provide the funding when it requires local government to provide a program; and 3) appropriations required for the purpose of complying with federal requirements are not under the limit.

If revenues exceed the spending limit, one-half of all surplus revenues shall be returned to taxpayers by revision of tax rates or fee schedules within the next two fiscal years; and one-half shall be allocated to K-14 school districts.

Colorado

State government in Colorado operates under two different tax and expenditure limits. The first was imposed by the legislature as SB 91-1262 and established a limit on the increase in state general fund appropriations. Called the Arveschoug-Bird limit, state general fund appropriations are limited to the state money necessary for reappraisal of any class or classes of taxable property for property tax purposes plus the lesser of 1) 5 percent of Colorado state income; or 2) 6 percent over the total state general fund appropriation for the previous fiscal year.

The second limit in Colorado is both a tax and expenditure limit. It was adopted by Colorado voters in 1992 as the result of a citizen initiative and is known as Amendment One or the Taxpayers Bill of Rights (TABOR). Amendment One added Section 20 to Article X of the Colorado Constitution. It generally serves to limit spending of state and local government revenues and restricts government's ability to raise taxes without voter

approval in advance. Spending can only increase based on population growth and increases in CPI; government cannot change taxes or tax policy without voter approval and current spending limits cannot be weakened without voter approval. These restrictions may be waived by any voter-approved increases. In addition, the General Assembly can declare an emergency by two-thirds vote and raise emergency taxes subject to voter approval.

According to the law, local government can reduce or end its subsidy for any state-mandated program except K-12 education. Ninety days' notice is required and adjustment can occur in a maximum of three equal annual installments. Local taxes supporting these programs must be reduced accordingly. However, the Colorado Supreme Court ruled that counties are "instrumentalities of the state"; therefore, they may not turn back mandated programs.

If the state exceeds either limit, excess revenues must be refunded to the citizens.

Connecticut

In 1991, the Connecticut Legislature adopted a statute to limit state spending as well as a resolution calling for a constitutional amendment to limit state spending. The amendment was adopted in 1992 and amends Article XXVIII of the state constitution. It will not go into effect until the Legislature defines the terms with a three-fifths vote. Therefore, the state continues to operate under the 1991 statute (Conn. Gen. Stat. 2-33a).

The limit applies to state appropriations (but excludes debt service, state grants to distressed municipalities, first year expenditures for federal mandates or court orders and expenditures from the Budget Reserve Fund). Appropriations shall not increase by more than the increase in personal income in the state (average of the annual increase for each of the preceding five years) or the increase in inflation (the consumer price index for urban consumers during the preceding 12 month period), whichever is greater. To waive the limit, the governor can declare an emergency or the existence of extraordinary circumstances, plus approval by three-fifths of both House and Senate.

Surplus revenues are to be used as follows: 1) add to the Budget Reserve Fund (rainy day fund); 2) reduce bonded indebtedness; or 3) for any purpose authorized by at least three-fifths of both House and Senate.

Delaware

A Constitutional amendment (Article VIII, Section 6) adopted by Delaware in 1980 limits state appropriations. State general fund appropriations are limited to 98 percent of estimated general fund revenue and the prior year's unencumbered funds. The limit may be waived by the declaration of an emergency and three-fifths vote of each legislative chamber. Surplus revenues go into the Budget Reserve Account and are subject to the provisions governing that fund.

Florida

Florida voters in November 1994, endorsed the Legislature's proposal to limit the rate of growth of state revenues. The provision requires that the amount of money the state takes in from most revenue sources is limited by the growth rate of personal income in Florida. The revenue limit is determined by multiplying the average annual growth rate in Florida personal income over the previous five years by the maximum amount permitted under the cap the previous year. If more revenue is collected than permitted by the limit, it will be placed in the Budget Stabilization Fund unless, by a two-thirds vote of both houses, the Legislature decides otherwise. When the fund reaches the statutory maximum, the excess is to be rebated to taxpayers.

The proposal does not limit the imposition of any tax nor does it repeal any existing tax levy (although the constitution prohibits a personal income tax). It does limit the amount of money the state may collect (except

from certain funds) and has no impact on local taxation. By statute, the Legislature can adjust the limit to reflect transfers in funding responsibilities between state and local governments.

Hawaii

Hawaii's state spending limit was adopted at a constitutional convention in 1978 as Article VII-Section 9 of the state constitution. The amendment limits the growth of state general fund appropriations to the average rate of growth of state personal income for the three previous years. Specific appropriations over the limit require two-thirds approval in both legislative chambers.

Article VII-Section 6 on the constitution specifies that if the state general fund balance in each of two successive years exceeds 5 percent of general fund revenues, the Legislature must provide for a tax refund or tax credit in the following fiscal year (no specific amount is stated).

In addition, Article VIII-Section 5 specifies that the state must share the cost of any new program or service increase required of local government by the Legislature.

Idaho

The Idaho Legislature adopted a state spending limit in 1980 (Statute cite 67-6803). The law limits state general fund appropriations to 5.33 percent of state personal income. The statute may be amended with a majority vote of the Legislature and the limit was modified in 1994 to exclude one-time expenditures. Adjustments to the limit shall be made if a court order or legislative enactment transfers responsibility between state and local governments or between federal and state governments.

Iowa

In 1992, the Iowa legislature adopted a statutory appropriations limit. The statute (Iowa Code Section 8.54) limits state general fund appropriations to 99 percent of adjusted general fund receipts. The limit is reduced to 95 percent for any new revenue source for the first year that the new revenue source is in place. Excess revenues go first to the Cash Reserve Fund, then to the Rebuild Infrastructure Account, and then to the Economic Recovery Fund.

Louisiana

State government in Louisiana operates under both a revenue and expenditure limit. The revenue limit was passed by the Legislature as a statutory restriction in 1979 (RS 47:5001-11) and the expenditure limit was adopted as a constitutional amendment (Article 7, Section 10) in 1993.

According to the revenue limit, tax revenue shall not exceed the ratio of FY 1978-79 tax revenue to 1977 state personal income, and expenditures for any given year shall not exceed anticipated state revenues for that year. The statute may be amended by vote of the Legislature. State tax revenue in excess of limit shall be deposited in the Tax Surplus Fund; appropriations from that fund may only be made for paying tax refunds.

The constitutional amendment limits state spending to 1992 appropriations plus per capita personal income growth. The limit may be waived by a two-thirds vote of the Legislature and surplus revenues may only be used to retire debt in advance of maturity.

Massachusetts

Massachusetts has two limits on the books. In 1986, a citizen initiative limiting state revenue collections passed in Massachusetts. It created a revenue limit equal to the average growth of wages and salaries of the

previous three years. The law requires surplus revenues to be refunded as a personal income tax credit; however, the statute may be amended by a majority vote of the legislature.

The other limit was imposed by the legislature. In anticipation of the citizen imposed limit, the state legislature created a budget stabilization fund. If the balance of the state general budget exceeds 0.5 percent of tax revenue for the fiscal year, the excess is to be transferred to the Commonwealth Budget Stabilization Fund. This fund is allowed to grow only to 5 percent of the state tax revenue for that year. If the surplus is greater, then it must be refunded as stated in the initiative law.

Michigan

In 1978, a citizen initiative known as the Headlee Amendment resulted in a state revenue limit and adoption of Article IX, Section 25-34 of the Michigan Constitution. The limit applies to all state revenues less federal aid and prohibits the state from collecting more than 9.49 percent (the ratio of 1978-79 revenue to 1977 state personal income) of personal income in tax revenues for any fiscal year. If revenues exceed the 9.49 percent limit by more than 1 percent, the entire amount of the surplus must be refunded to taxpayers in the following year through both business tax and individual income tax refunds. If the limit is exceeded by less than 1 percent, the surplus may be deposited into the Budget Stabilization Fund.

To exceed the limit, the governor must first specify an emergency; then the Legislature must concur by two-thirds vote in each chamber. In addition, the following provisions apply: 1) the limit may be adjusted if a constitutional amendment results in program responsibility being transferred from one level of government to another; 2) the state is prohibited from reducing the current proportion of local services financed through state aid; 3) no new program shall be required of local governments unless funded by the state; and 4) the proportion of total state spending paid to all units of local government as a group shall not be reduced below the proportion for FY 1978-79

Mississippi

The Mississippi Legislature adopted a statutory appropriations limit in 1992. The limit applies to budget recommendations and appropriations, and limits spending to 98 percent of projected revenues. One-half of any year-end surplus remains in the general fund and one-half goes into a working cash/stabilization reserve fund up to the 7.5 percent ceiling, then the remainder goes into a special education fund.

Missouri

In 1980, Missouri voters adopted a citizen initiative revenue limitation as an amendment to the state constitution (Article X, Section 16-24). The amendment is commonly referred to as the Hancock Amendment and it limits state revenue to the ratio of fiscal year 1980-81 state revenue to 1979 state personal income, multiplied by the greater of state personal income in any calendar year or the average state personal income over the previous three calendar years. To exceed the limit, the governor must first specify an emergency; then the legislature must concur by two-thirds vote in each chamber. There are provisions for the transfer of government responsibility as follows: 1) the limit may be adjusted if program responsibility is transferred from one level of government to another; 2) the state is prohibited from reducing the current proportion of local services financed through state aid; and 3) no new program shall be required of local governments unless funded by the state. Revenues exceeding the limit by 1 percent or more shall be used for tax refunds in proportion to income tax liability. Excess less than 1 percent may be transferred to the general revenue fund. In addition to the Hancock amendment, Missouri voters adopted a new constitutional amendment in April 1996 that tightens the state revenue limit. Amendment 4 requires voter approval for any tax or fee increase that will produce revenues greater than: 1) \$50 million adjusted annually by the percentage change in state personal income for the year two years prior to the current fiscal year; or, 2) 1 percent of the state revenues for the fiscal year two years prior to the current legislature's action, whichever is less. To waive the limit, the

governor must first specify an emergency; then the legislature must concur by two-thirds vote in each chamber.

Montana

In 1981, the Montana Legislature adopted a state spending limit (Montana Revised Statutes, Section 17-8-105) where state biennial appropriations shall not exceed state appropriations for the preceding biennium plus the product of the preceding biennial appropriations and the growth percentage. The growth percentage is the difference between average state personal income for three calendar years immediately preceding the next biennium and the average state personal income for the three calendar years immediately preceding the current biennium. To waive the limit, the governor must declare an emergency and the Legislature must then approve specific additional expenditures by two-thirds vote of each chamber.

Nevada

In 1979, the state Legislature adopted a statutory expenditure limitation (Nev. Rev. Stat. 353.213) that applies to the governor's proposed general fund expenditures. The limit ties state expenditures to population growth and inflation using the 1975-76 biennium as the base. There are no provisions to exceed the limit since it only applies to the recommended budget and is non-binding.

New Jersey

The New Jersey Legislature adopted a statutory expenditure limit in 1990 (New Jersey Revised Statutes 52:9H-26). The limit applies to general fund state appropriations less exemptions for debt service, state aid, grants-in-aid and capital construction. State appropriations are not to exceed the average state per capita annual income of the prior three years. The limit may be waived with a two-thirds vote of the Legislature. In addition, an adjustment to limit shall be made if program responsibility is transferred between state and local governments.

North Carolina

In 1991, the North Carolina state legislature adopted a statutory expenditure limitation (Statute 143-15.4). The law limits the fiscal year operating budget to 7 percent or less of the projected total state personal income for that fiscal year. The limit may be exceeded to the extent that Medicaid, prison operations or state health insurance increases exceed increases in state personal income. Revenue surpluses are reverted to the general fund credit balance.

Oklahoma

In 1985, an amendment was added to the Oklahoma state constitution (Article 10, Section 23) that limits state expenditures. The law limits spending to a 12 percent yearly increase (adjusted for inflation) and limits appropriations to 95 percent of certified revenue. Revenues to the general fund in excess of the official estimate (up to 10 percent) shall be deposited in a rainy day fund until that fund hits its 10 percent cap.

Oregon

In 1979, the Oregon legislature adopted a statute (ORS 291.355) that limits the rate of growth of appropriations in each biennium to the rate of growth of state personal income in the two prior calendar years. The statute may be amended at any time by a legislative majority and adjustments to the limit shall be made if program funding is transferred from general fund to non-general fund sources or vice-versa.

In addition, revenue exceeding close-of-session revenue forecast by 2 percent or more shall be used for tax refunds proportional to income tax liability.

Rhode Island

Rhode Island adopted a constitutional amendment (Article 9, Section 16) in 1992 that limits state appropriations. State general fund appropriations are limited to 98 percent of estimated general fund revenue and the prior year's unencumbered funds. Excess revenues between 98 percent and 100 percent of estimated revenues must be put into the rainy day fund. Revenues above 100 percent of the forecast must be used to reduce state indebtedness, pay debt service or fund capital projects.

South Carolina

Article X, Section 7 of the South Carolina Constitution limits state government spending. The South Carolina law, adopted in 1984, provides that state appropriations in any fiscal year are limited to the greater of: 1) the state appropriation authorized by the spending limit for the previous fiscal year increased by the average growth of personal income over the three preceding years, or 2) 9.5 percent of total state personal income for the previous year. Also, the number of state employees is tied to state population. Expenditures included under the spending limit are those from the general fund, Highway Trust Fund and the Education Improvement Act. The limit may be exceeded for one year by a two-thirds vote of the legislature if it first declares a financial emergency. Also, every five years the legislature can review the composition of the limit. Excess revenues may be spent to match federal programs, for debt purposes, tax relief or transferred to the reserve fund.

Tennessee

Tennessee's 1978 constitutional amendment (Article II, Section 24) was adopted at a state constitutional convention and limits the growth in state appropriations to the growth in state personal income. Specific additional amounts may be approved by a majority vote of the legislature. If the state increases expenditure requirements of local government, it must share in the cost.

Texas

Article VIII, Section 22 of the Texas Constitution was adopted in 1978 and limits spending of state tax revenues not dedicated by the state constitution. The growth of biennial appropriations shall not exceed the rate of growth of state personal income.

If the Legislature adopts a resolution that an emergency exists, additional spending may be authorized by a majority vote of the Legislature.

Utah

In 1989, the Utah Legislature adopted a state spending limit (Statute 59-17A-104). The limit ties yearly growth in appropriations to population growth and inflation. To waive the limit, an emergency must be declared by the governor and confirmed by two-thirds of both houses of the Legislature. The law allows for the following adjustments: 1) an adjustment to the limit shall be made if program responsibility is transferred between state and local governments; and 2) an adjustment to the limit shall be made if program funding is transferred from general fund to non-general fund sources or vice-versa.

Washington

In November 1993, voters in Washington approved citizen Initiative 601. I-601 limits state expenditures by statute according to a three year rolling average of inflation and population growth. To waive the limit, an emergency must be declared and approved with a two-thirds vote of the Legislature. If revenue produced by a tax increase remains within the expenditure limit, only two-thirds legislative approval is required for the

increase. If revenues will exceed the limit, voter approval is needed. The law prohibits the state from imposing new mandates on local governments unless fully reimbursed.

Excess revenue goes into an Emergency Reserve Fund; if the fund exceeds 5 percent of general fund revenue, the additional surplus is placed in the Education Construction Fund.

Source: NCSL survey of state fiscal officers, April 1996

APPENDIX C. STATE TAX AND EXPENDITURE LIMITS

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
Alaska 1982 Constitutional Expenditure Legislative Referendum	State appropriations	Yearly growth of appropriations may not exceed percentage increase in population and inflation	In the event of decreased revenues, an appropriation may be made from the Budget Reserve Fund	None	None
Arizona 1978 Constitutional Expenditure Legislative Referendum	Appropriations of state tax revenues	Appropriations of state tax revenues shall not exceed 7.23 percent of state personal income	Requires two-thirds legislative approval for specific additional appropriations	Legislature shall provide for adjustments to limit if court order or legislative enactment transfers responsibility between state and local governments or between federal and state governments	None

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
California 1979 Constitutional Expenditure Citizen Initiative	Appropriations of state tax revenues	Yearly growth in appropriations limit shall not exceed percentage increase in population and per capita personal income	In the event of an emergency, the appropriations limit may be exceeded provided increased expenditures are compensated for by reduced expenditures over three following years. Alternatively, the limit may be changed by voters but the change is operative for only four years	1) The appropriations limit shall be altered if program responsibility is transferred from one government entity to another, from government to private entity, or from funding through general revenues to funding through special revenues. 2) The state shall provide the funding when it requires local government to provide a program. 3) Appropriations required for purpose of complying with federal requirements are not under limit	One-half of all surplus revenues shall be returned to taxpayers by revision of tax rates or fee schedules within next two fiscal years; one-half shall be allocated to K-14 school districts.
Colorado 1991 Statutory Expenditure Legislative Vote	State general fund appropriations	6 percent of prior year's appropriation	Legislative majority	None	None

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
California 1979 Constitutional Expenditure Citizen Initiative	Appropriations of state tax revenues	Yearly growth in appropriations limit shall not exceed percentage increase in population and per capita personal income	In the event of an emergency, the appropriations limit may be exceeded provided increased expenditures are compensated for by reduced expenditures over three following years. Alternatively, the limit may be changed by voters but the change is operative for only four years	1) The appropriations limit shall be altered if program responsibility is transferred from one government entity to another, from government to private entity, or from funding through general revenues to funding through special revenues. 2) The state shall provide the funding when it requires local government to provide a program. 3) Appropriations required for purpose of complying with federal requirements are not under limit	One-half of all surplus revenues shall be returned to taxpayers by revision of tax rates or fee schedules within next two fiscal years; one-half shall be allocated to K-14 school districts.
Colorado 1991 Statutory Expenditure Legislative Vote	State general fund appropriations	6 percent of prior year's appropriation	Legislative majority	None	None

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
1992 Constitutional Expenditure Revenue Citizen Initiative	All state spending and tax increases	Spending can only increase based on populations growth and increase in CPI; no change in taxes or tax policy without vote approval; current spending limits cannot be weakened without voter approval	Any vote-approved increases; General Assembly can declare emergency by two-thirds vote and raise emergency taxes subject to vote approval	Locals can reduce or end its subsidy for any state- mandated program except K-12 education; 90 days notice required and adjustment can occur in a maximum of three equal annual installments. Local taxes supporting these programs must be reduced accordingly	Excess revenues must be refunded to the citizens
Connecticut 1991-Statutory (Resolution For A Constitutional Amendment) 1992-Constitutional Expenditure Legislative Vote-1991 Legislative Referendum-1992	State appropriations (but excludes debt service, state grants to distressed municipalities, first year expenditures for federal mandates or court orders, and expenditures from the Budget Reserve Fund)	Appropriations shall not increase more than the increase in personal income in the state (average of the annual increase for each of the preceding five years) or the increase in inflation (CPI-University, preceding 12-month period), whichever is greater	Governor can declare an emergency or the existence of extraordinary circumstances, plus approval by three-fifths of both House and Senate	None	1) Budget Reserve Fund (Rainy Day Fund) 2) Reduction of bonded indebtedness 3) Any purpose authorized by at least three-fifths of both House and Senate
Delaware 1978 Constitutional Expenditure Legislative Referendum	State general fund appropriations	98 percent of estimated general fund revenue and prior year's unencumbered funds	Declaration of an emergency and three- fifths vote of each chamber	None	Goes into an accumulative cash balance and is available for appropriations in ensuing fiscal year
Florida 1994 Constitutional Revenue Legislative Referendum	All state revenues including taxes, fees, licenses and charges	Prior year's revenue plus growth, defined as a five- year rolling average of personal income growth	Two-thirds vote of the Legislature	Legislature by statute can adjust the limit to reflect transfers in funding responsibilities between state and local governments	Excess revenues go to the budget stabilization fund. When the fund reaches statutory maximum, the excess is rebated to taxpayers

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
Hawaii 1978 Constitutional Expenditure Constitutional Convention	State general fund appropriations	General fund appropriations shall not exceed the average rate of growth of state personal income for three previous years	Specific appropriations over the limit require two-thirds approval in both chambers	The state must share the cost of any new program or service increase required of local governments by the Legislature	If the state general fund balance in each of two succeeding years exceeds 5 percent of general fund revenues the Legislature will provide for a tax refund
Idaho 1980 Statutory Expenditure Legislative Vote	State general fund appropriations (modified in 1994 to exclude one- time expenditures)	Appropriations shall not exceed five and one-third percent of state personal income	No provision	Adjustments to limit shall be made if court order or legislative enactment transfers responsibility between state and local governments or between federal and state governments	No provision
Iowa 1992 Statutory Expenditure Legislative Vote	State general fund appropriations	Appropriations can be 99 percent of adjusted general fund receipts	None	None	Excess goes to Cash Reserve Fund, then to the Rebuild Infrastructure Account, then to Economic Recovery Fund
Louisiana 1979 Statutory Revenue Legislative Vote	State tax revenue	Tax revenue shall not exceed the ratio of FY 1978-79 tax revenue to 1977 state personal income. Expenditures for any given year shall not exceed anticipated state revenues for that year	Statute may be amended by vote of the Legislature	None	State tax revenue in excess of limit shall be deposited in the Tax Surplus Fund; appropriations from that fund may be made for paying tax refunds
1993 Constitutional Expenditure Legislative Referendum	State general fund appropriations	State spending limited to 1992 appropriations plus per capita personal income growth	Two-thirds vote by the Legislature	None	Surplus may only be used to retire debt in advance of maturity

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
Massachusetts 1986 Statutory Revenue Legislative Vote	State revenue	General fund balance may not exceed one-half of 1 percent of the year's tax revenue	Statute may be amended by vote of the legislature	Vote of legislature	Excess revenues transferred to a budget stabilization fund which is only allowed to grow to 5 percent of the state tax revenue; if the fund grows by more, the excess goes back to the taxpayers as an income tax credit Proportional personal income tax credit
Michigan 1978 Constitutional Revenue Citizen Initiative	All state venues less federal aid	For any fiscal year, state revenue may not exceed 9.49 percent of total personal income for the year prior	Governor must first specify an emergency; then the Legislature must concur by two-thirds vote in each chamber	1) Limit may be adjusted if program responsibility is transferred from one level of government to another by means of a s constitutional amendment 2) State is prohibited from reducing current proportion of local services financed through state aid 3) No new program shall be required of local governments unless funded by state 4) The proportion of total state spending paid to all units of local government as a group shall not be reduced below proportion for FY 1978- 79	Revenues exceeding limit by 1 percent or more shall be used for tax refunds set in proportion to income tax liability. Excess less than 1 percent may be transferred to the State Budget Stabilization Fund

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
Mississippi 1992 Statutory Expenditure Legislative Vote	Budget recommendations and appropriations	Budget and appropriations are limited to 98 percent of projected revenues	None	None	One half of year-end surplus remains in the general fund and one half goes into a working cash/stabilization reserve fund up to the 7.5 percent ceiling, then remainder goes into a special education fund
Missouri 1980 Constitutional Revenue Citizen Initiative	Total state revenue	Revenue shall not exceed the ratio of FY 1980-81 state revenue to 1979 state personal income, multiplied by the greater of state personal income in any calendar year or the average state personal income over the previous three calendar years	Governor must first specify an emergency; then the legislature must concur by two-thirds vote in each chamber	1) Limit may be adjusted if program responsibility is transferred from one level of government to another. 2) State is prohibited from reducing current proportion of local services financed through state aid. 3) No new program shall be required of local governments unless funded by state.	Revenues exceeding limit by 1 percent or more shall be used for tax refunds set in proportion to income tax liability. Excess less than 1 percent may be transferred to the general revenue fund

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
1996 Constitutional Revenue Citizen Initiative	Total state revenue	Voter approval required for any tax or fee increase that will produce revenues greater than: 1) \$50 million adjusted annually by the percentage change in state personal income for the second previous fiscal year, or 2) one percent of the state revenues for the second fiscal year prior to the legislature's action, whichever is less	Governor must first specify an emergency; then the legislature must concur by two-thirds vote in each chamber	None	Does not affect 1980 amendment-same as above
Montana 1981 Statutory Expenditure Legislative Vote	State appropriations	State biennial appropriations shall not exceed state appropriations for the preceding biennium plus the product of preceding biennial appropriations and the growth percentage. The growth percentage is the difference between average state personal income for three calendar years immediately preceding the next biennium and the average state personal income for the three calendar years immediately preceding the current biennium	Governor must declare an emergency. Legislature must then approve specific additional expenditures by two-thirds vote of each chamber	None	No provision

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
Nevada 1979 Statutory Expenditure Non-Binding Legislative Vote	Governor's proposed general fund expenditures	State expenditures are tied to population growth and inflation using the 1975-76 biennium as the base	Not applicable because non-binding	None	No provision
New Jersey 1990 Statutory Expenditure Legislative Vote	General fund state appropriations less exemptions for debt service, state aid, grants- in-aid and capital construction	Appropriations shall not exceed the average prior three years of state per capita annual income	Two-thirds vote of the Legislature	Adjustment to limit shall be made if program responsibility is transferred between state and local governments	No provision, but the state has a rainy day fund
North Carolina 1991 Statutory Expenditure Legislative Vote	State appropriations	Fiscal year operating budget shall not be greater than 7 percent of the projected total state personal income for that fiscal year	Limit may be exceeded to the extent that Medicaid, prison operations or state health insurance increases exceed increases in state personal income	None	Revert to general fund credit balance
Oklahoma 1985 Constitutional Expenditure Legislative Referendum	Appropriated revenues	1) 12 percent yearly increase (adjusted for inflation) 2) 95 percent of certified revenue	None	None	Revenue to general fund in excess of estimate (up to 10 percent) shall be deposited in a rainy day fund
Oregon 1979 Statutory Expenditure Legislative Vote	State appropriations	The rate of growth of appropriations in each biennium shall not exceed rate of growth of state personal income in the two prior calendar years	Legislative majority	Adjustment to limit shall be made if program funding is transferred from general fund to non-general fund sources or vice-versa	Revenue exceeding close of session revenue forecast by 2 percent or more shall be used for tax refunds proportional to income tax liability

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
Rhode Island 1992 Constitutional Expenditure Legislative Referendum	State general fund appropriations	98 percent of estimated general fund revenue and prior year's unencumbered funds	None	None	2 percent must be put into rainy day fund
South Carolina 1980, 1984 Constitutional Expenditure Legislative Referendum	State appropriations approved by General Assembly	Yearly growth in state appropriations shall not exceed average growth of personal income over three preceding years or 9.5 percent of total state personal income, whichever is greater. Also, the number of state employees is tied to state population	Limit may be exceeded for one year by a two- thirds vote of the legislature if it first declares a financial emergency. Also, every five years the legislature can review the composition of the limit	None	Excess revenues may be spent to match federal programs, for debt purposes, tax relief, or transferred to reserve fund
Tennessee 1978 Constitutional Expenditure Constitutional Convention	Appropriations of state tax revenue	Growth in state appropriations shall not exceed growth in state personal income	Specific additional amount may be approved by majority vote of the legislature	State must share in cost if it increases expenditure requirements of local government	No provision
Texas 1978 Constitutional Expenditure Legislative Referendum	Appropriations of state tax revenues not dedicated by the state constitution	Growth of biennial appropriations shall not exceed rate of growth of state personal income	Specific additional amount may be approved by majority vote of the Legislature if it first adopts a resolution that an emergency exists	None	No provision

State Year Of Adoption— Type Of Limit— Method Of Approval	Limit Applies to	The Limit is	Provisions for Waiver	Provisions in the Case of Transfer of Responsibility for Government Program	Treatment of Surpluses
Utah 1989 Statutory Expenditure Legislative Vote	State appropriations	Yearly growth in appropriations tied to population growth and inflation	Emergency must be declared by governor and confirmed by more than two-thirds of both houses of the Legislature	1) Adjustment to limit shall be made if program responsibility is transferred between state and local governments 2) Adjustment to limit shall be made if program funding is transferred from general fund to non-general fund sources or vice-versa	No provision
Washington 1993 Statutory Expenditure Citizen Initiative	State expenditures	State expenditures are tied to a three year rolling average of inflation and population growth	An emergency must be declared and approved with two-thirds vote of the Legislature. Revenue increases need two-thirds legislative approval if within expenditure limit, voter approval needed to exceed limit	Prohibits state from imposing new mandates on local governments unless fully reimbursed	Excess revenue goes into Emergency Reserve Fund; if fund exceeds five percent of general fund revenue, the additional surplus is placed in the Education Construction Fund

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SENATE COMMITTEE REPORT First Committee of Referral

DATE: 1/21/03

FURTHER: Finance

Date of 5-Day Notice: 3/13/03
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 5/15/03

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 3

SJR 3 CONST AM: APPROPRIATION/SPENDING LIMIT

Proposing amendments to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit.

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
S. JUD	5/15		✓	1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		Do PASS	Do NOT PASS	No REC	AMEND
French	<i>[Signature]</i>			X	
Therriault	<i>[Signature]</i>			X	
Vice-CHAIR	<i>[Signature]</i>			X	