

LEG. FINANCE - BILLS 1983 - 1984 1871

CSHB 298

1871

# COMMITTEE REPORT

## SENATE

FURTHER:

5/2/33

Date 5-2-33

Mr. President

The Committee on FINANCE considered CS 2807 (1933)

establishing a National Petroleum Reserve, Alaska, Special Revenue Fund;

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for \_\_\_\_\_
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

V. T. ...  
...  
...  
...  
...  
...

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Chairman

Chairman recommendation

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revisio<sup>n</sup> Date 5/10/84

REQUEST (Resources)  
Bill/Resolution No: SCS CS HB 298  
Title: National Petroleum Reserve  
Special Revenue Fund  
Sponsor: Senate Resources  
Requestor: Senate Finance  
Date of Request: May 10, 1984

FISCAL DETAIL  
Agency Affected: Department of Revenue  
Program Category Affected: \_\_\_\_\_  
BRU, Program of Subprogram(s) Affected:  
Treasury

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker *MB*  
Division: Treasury

Phone: 465-2350  
Date: May 10, 1984

Approved by Commissioner: *Robert D. Heath*  
Agency: Revenue

Date: 5/10/84

Distribution (by Agency preparing fiscal note):

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

The only possible revenues known to the State at this time which would be subject to appropriation under the terms of HB 298 are those from a July 20, 1983 National Petroleum Reserve in Alaska lease sale. Although high bids totaled \$16.7 million, leases will not be awarded until challenges of the sale by the State of Alaska and the City of Barrow/Alaska Legal Services are resolved.

Offered: 5/15/84  
Referred: Finance

Original sponsor: Adams

IN THE SENATE

BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 298 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing a National Petroleum Reserve, Alaska, special revenue fund; and providing for an effective date."

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

\* Section 1. FINDINGS. The legislature finds that

(1) the United States Congress, by 43 U.S.C. 1337 (P.L. 96-514), provided that the state shall receive 50 percent of receipts derived from competitive leasing of oil and gas in the National Petroleum Reserve in Alaska;

(2) virtually all of the National Petroleum Reserve in Alaska lies within the corporate limits of the North Slope Borough, a home rule political subdivision of the state; and

(3) because of the continuing nature of the congressional appropriation a special revenue fund should be established to comply with the directive of the federal Act.

\* Sec. 2. NATIONAL PETROLEUM RESERVE, ALASKA, SPECIAL REVENUE FUND.

(a) The National Petroleum Reserve, Alaska, special revenue fund is established. The fund shall consist of money received by the state from the federal government under 43 U.S.C. 1337 (P.L. 96-514).

(b) The commissioner of revenue shall manage the special revenue fund in accordance with AS 37.10.070.

(c) The commissioner of revenue shall pay to the subdivisions of the state that are most directly or severely impacted by development of oil and gas leased under 43 U.S.C. 1337 the amount appropriated by the legislature

from the fund for that purpose. It is the intent of the legislature that the amount appropriated for payment to subdivisions equal 50 percent of the amount received from the federal government under 43 U.S.C. 1337 and that this percentage be reviewed annually, by the legislature.

(d) Amounts received by the state under (a) of this section and not paid under (c) of this section shall be used by the state for the following activities and services:

- (1) planning;
- (2) construction, maintenance, and operation of essential public facilities; and
- (3) other necessary public services.

(e) Amounts paid to subdivisions of the state under (c) of this section shall be used by the subdivisions only for the following activities and services in conjunction with development of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve:

- (1) planning;
- (2) construction, maintenance, and operation of essential public facilities by the subdivisions; and
- (3) other necessary public services provided by the subdivisions.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).



Official Business

# Alaska State Legislature

## House of Representatives

Al Adams  
Chairman  
Committee on Finance

WHILE IN SESSION  
Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3706

OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3320  
1024 W. 6th  
Anchorage, Alaska 99501  
(907) 274-0615

### MEMORANDUM

TO: Senate Finance Committee Members

FROM: Representative Al Adams *ABA*

DATE: May 9, 1984

SUBJECT: House Bill 298

In 1980, Congress passed legislation requiring that fifty percent of revenues received from oil and gas leasing in the National Petroleum Reserve-Alaska (NPR-A) be passed on to the State of Alaska. The bill further specified that the priority use for these funds would be for the state's political subdivisions that are most directly impacted by the development of oil and gas in the NPR-A. HB 298 assures that the state complies with the federal law.

SCS CS HB 298 (RES) establishes the NPR-A special reserve fund in the Department of Revenue for receipt of this money from the federal government. The commissioner is directed to pay the eligible subdivisions the amount appropriated by the legislature from the fund. The bill states that it is the legislature's intent that 50% of the amount received by the state from the federal government go to these subdivisions. This percentage would be reviewed annually. Money received must be used for planning, construction, maintenance and operation of essential public facilities and any other necessary public services.

The attorney general presented the Senate Resources Committee with two amendments to the bill. These amendments were both adopted by the committee. All references to "subdivision" were changed to "subdivisions" so that the bill more closely conforms with the federal law. Also, a phrase was added to section 2(d) of the bill to make it clear that this subsection deals only with funds paid to the state that are not turned over to the subdivisions.

Though the committee moved adoption of both these amendments, a drafting error resulted in the second amendment not being incorporated into the printed version of the committee substitute. I support both these amendments and would not object if you incorporated the second amendment in to a Senate Finance committee substitute for the bill.

Please inform me if I can assist you in any way as you analyze this

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate Committee on Resources

### MEMORANDUM

TO: SENATOR JOHN SACKETT  
SENATOR DON BENNETT  
CO-CHAIRMAN  
SENATE FINANCE COMMITTEE

FROM: SENATOR BETTYE FAHRENKAMP  
CHAIRMAN  
SENATE RESOURCES COMMITTEE

RE: CSHB 298, "AN ACT ESTABLISHING A NATIONAL PETROLEUM RESERVE, ALASKA,  
SPECIAL REVENUE FUND."

DATE: MAY 10, 1984

---

During the Senate Resources Committee's consideration of HB 298, an amendment was adopted which was unfortunately not included in the Resources Committee substitute.

To correct this drafting omission by our legal services division, I am requesting that you include this technical amendment during the Finance Committee's deliberation on HB 298. A copy of the omitted amendment is attached for your information. Thank you for your assistance.



Official Business

# Alaska State Legislature

Senate

*adopted*

Pouch V  
State Capito  
Juneau, Alaska

## AMENDMENT #2

On page 2, line 5 add the following language:

"(d) Amounts received by the state under (a) of this section and not paid under (c) of this section shall be"

Offered: 5/8/84  
Referred: Finance

Original sponsor: Adams

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILJ. NO. 298 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILJ.

6 For an Act entitled: "An Act establishing a National Petroleum Reserve,  
7 Alaska, special revenue fund; and providing for an  
8 effective date."

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

10 \* Section 1. FINDINGS. The legislature finds that

11 (1) the United States Congress, by 43 U.S.C. 1337 (P.L. 96-514),  
12 provided that the state shall receive 50 percent of receipts derived from  
13 competitive leasing of oil and gas in the National Petroleum Reserve in  
14 Alaska;

15 (2) virtually all of the National Petroleum Reserve in Alaska  
16 lies within the corporate limits of the North Slope Borough, a home rule  
17 political subdivision of the state; and

18 (3) because of the continuing nature of the congressional appro-  
19 priation a special revenue fund should be established to comply with the  
20 directive of the federal Act.

21 \* Sec. 2. NATIONAL PETROLEUM RESERVE, ALASKA, SPECIAL REVENUE FUND.

22 (a) The National Petroleum Reserve, Alaska, special revenue fund is estab-  
23 lished. The fund shall consist of money received by the state from the  
24 federal government under 43 U.S.C. 1337 (P.L. 96-514).

25 (b) The commissioner of revenue shall manage the special revenue fund  
26 in accordance with AS 37.10.070.

27 (c) The commissioner of revenue shall pay to the subdivisions of the  
28 state that are most directly or severely impacted by development of oil and  
29 gas leased under 43 U.S.C. 1337 the amount appropriated by the legislature

1 from the fund for that purpose. It is the intent of the legislature that  
2 the amount appropriated for payment to subdivisions equal 50 percent of the  
3 amount received from the federal government under 43 U.S.C. 1337 and that  
4 this percentage be reviewed annually, by the legislature.

5 (d) Amounts received by the state under (a) of this section shall be  
6 used by the state for the following activities and services:

7 (1) planning;

8 (2) construction, maintenance, and operation of essential public  
9 facilities; and

10 (3) other necessary public services.

11 (e) Amounts paid to subdivisions of the state under (c) of this  
12 section shall be used by the subdivisions only for the following activities  
13 and services in conjunction with development of the National Petroleum  
14 Reserve in Alaska and a program of competitive leasing of oil and gas from  
15 that reserve:

16 (1) planning;

17 (2) construction, maintenance, and operation of essential public  
18 facilities by the subdivisions; and

19 (3) other necessary public services provided by the subdivi-  
20 sions.

21 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
22 10.070(c).

23

SECTIONAL ANALYSIS OF SCS CS HB 298 (RESOURCES)

Title: Establishing a National Petroleum Reserve-Alaska (NPR-A) Special Revenue Fund and providing for an effective date.

Section 1: FINDINGS.

(1) Congress provided by law (PL 96-514) that Alaska shall receive 50% of royalties from oil and gas lease sales in the NPR-A.

(2) Virtually all of the NPR-A is within the boundaries of the North Slope Borough.

(3) Because of the continuing nature of the congressional appropriation, the bill establishes a special fund to comply with the federal directive.

Section 2: NPR-A SPECIAL REVENUE FUND.

(a) Establishes the NPR-A special revenue fund consisting of money received from the federal government under PL 96-514.

(b) Provides that Commissioner of Revenue will manage the fund.

(c) Provides that the commissioner will pay to the subdivisions most directly or severely impacted by NPR-A development any amount appropriated by the legislature from the fund for that purpose. The legislature's intent is that 50% of what is received from the federal government will go to the subdivisions, however, this percentage will be reviewed annually.

(d) and (e) Provide that money received must be used by both the state and the subdivisions for planning; construction, maintenance and operation of essential public facilities; and other necessary public services.

Section 3: IMMEDIATE EFFECTIVE DATE.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date 5/10/84

REQUEST (Resources)  
 Bill/Resolution No: SCS CS HB 298  
 Title: National Petroleum Reserve  
Special Revenue Fund  
 Sponsor: Senate Resources  
 Requestor: Senate Finance  
 Date of Request: May 10, 1984

FISCAL DETAIL  
 Agency Affected: Department of Revenue  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program of Subprogram(s) Affected:  
Treasury

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker *MB*  
 Division: Treasury

Phone: 465-2350  
 Date: May 10, 1984

Approved by Commissioner: *Robert D. Heath*  
 Agency: Revenue

Date: 5/10/84

Distribution (by Agency preparing fiscal note):

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

The only possible revenues known to the State at this time which would be subject to appropriation under the terms of HB 298 are those from a July 20, 1983 National Petroleum Reserve in Alaska lease sale. Although high bids totaled \$16.7 million, leases will not be awarded until challenges of the sale by the State of Alaska and the City of Barrow/Alaska Legal Services are resolved.

Bureau of Land Management

# Energy Quarterly



RECEIVED  
ALASKA DEPARTMENT OF REVENUE

JUN 23 1983

OF THE COMMISSIONER

JUNE 1983

U.S. DEPARTMENT OF THE INTERIOR 701 C STREET ANCHORAGE ALASKA 99513

## THIRD NPR-A OIL AND GAS LEASE SALE SCHEDULED FOR ANCHORAGE

The BLM will offer approximately 2 million acres in 84 tracts at the third NPR-A oil and gas lease sale July 20. Sale 831 will be held in the Howard Rock Ballroom at the Sheraton Anchorage Hotel, with bid opening at 10:00 a.m. Bids will be accepted from 8:00 a.m. to 9:00 a.m. at the Sheraton the morning of the sale, and in the Public Room in the Federal Building up to the day of the sale.

Tracts 3, 4 and 5 (see map) containing approximately 76,373 acres will be deleted from this sale. Under proposed legislation the North Slope Borough would receive the subsurface rights to all minerals within the Barrow gas field which encompass these tracts. Those interested in bidding on tracts 6 through 16 should be aware that the pending legislation would transfer control of the hydrocarbons on the lands immediately north and west of these tracts to the North Slope Borough.

The offering is part of a five-year leasing plan to make certain lands within NPR-A available for competitive leasing. A fourth offering of NPR-A lands is scheduled for July, 1984. To date 37 leases totaling approximately 900,000 acres have been issued by BLM within the reserve.

## GRAVEL SOURCES FROM NPR-A CANNOT BE USED OUTSIDE THE RESERVE

The Department of the Interior's Solicitors Office has reaffirmed that gravel mined within the bounds of the National Petroleum Reserve cannot be used for offshore development or for projects outside the reserve's boundary. Inquiries as to the availability of the gravel lead to the opinion. According to the Naval Petroleum Reserve Production Act of 1976 gravel within NPR-A can only be used for local Native municipal purposes or for development of federal leases on the reserve.

CONTACT: GEORGE GERWIS (907) 271-5555

MARCH 1984 REVENUE SOURCE BOOK

Serry System-Southwest	4,000	4,000	4,000	4,500
Other	5,500	6,000	6,000	6,000
<u>Service Related Charges</u>				
Court System	4,200	4,500	4,500	4,500
Other	5,900	6,000	6,500	7,000
Total State Resources Revenues	<u>1,552,400</u>	<u>1,376,400</u>	<u>1,327,900</u>	<u>1,378,000</u>
<u>Miscellaneous Revenues</u>	<u>10,900</u>	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>
<u>Total Unrestricted Revenues</u>	<u>3,631,000</u>	<u>3,418,400</u> (14)	<u>3,418,200</u>	<u>3,565,700</u>

(1) AS 43.21 was repealed pursuant to Ch. 116 SLA 1981 effective January 1982, and thereby all multistate corporations were subject to various apportionment methods specified in AS 43.20. Due to the number of inquiries requesting information, collections are separated between those oil/gas corporations filing under AS 43.20.072 and those corporations filing otherwise.

(2) The upward adjustment in FY 84 is due to recent finalized litigation in favor of the state on past years' gross receipts (i.e. prior to 1979). Other cases are pending and as such this number is subject to change.

(3) The downward revisions in FY 85 and FY 86 reflect recent court decisions disallowing states' taxing of banks' interest income on U.S. securities. These projections also reflect current law under AS 43.70.

(4) The January forecast for FY 84 assumed the 30 percent case; however, the FY 84 March estimates have been changed to reflect the mean or average case. If the 30 percent case had been utilized for FY 84, the aforementioned numbers would change to \$1,334.2 million for production taxes and to \$978.4 million for royalties. The forecasted numbers for FY 85 and FY 86 continue to assume the 30 percent case; however, if the mean case had been utilized for FY 85 and FY 86, the production taxes would change to \$1,448.5 million and \$1,509.4 million, respectively. The royalty figures would change to \$1,092.4 million and \$1,158.6 million, respectively.

(5) The figures reflect only the net amount to the state's General Fund.

(6) Estimates reflect the following increased liquor taxes per Ch. 46 SLA 1983 effective July 9, 1983: malt beverages (from \$0.25 to \$0.35 per gallon); wines (from \$0.60 to \$0.85 per gallon); and hard liquor (from \$4.00 to \$5.60 per gallon).

(7) In FY 83, large fuel purchases were made from a consortium, and application for refund of airline jet fuel tax was applied for when the fuel was used for foreign flights. These refunds were taken from the highway fuel tax account as prescribed in AS 43.40.010(h), thereby reducing net highway fuel taxes. Recent changes in statute allow for exemption from the tax at purchase (AS 43.40.010(k)(1)); therefore reducing taxable jet fuel purchases and increasing projected net highway fuel taxes over previous estimates.

(8) Net Permanent Fund contribution by Ch. 18 SLA 1980.

(9) The FY 83 figure reflects NPR-A lease sales of \$57.1 million held January 27, 1982, and \$9.7 million held May 26, 1982, with the total amount of the lease sale split equally between the state and federal government. The state's share (\$33.4 million) is further equally divided between the General Fund and the Permanent Fund. The FY 84 estimate does not include any revenues shared (50/50 basis) with the federal government from the NPR-A lease sale held July 20, 1983. Although high bids totaled \$16.7 million, leases have not been awarded until challenges of the sale by the State of Alaska and the City of Barrow/Alaska Legal Services are resolved.

(10) Reflects state lease sales of \$32.5 million held May 26, 1982 (Sale 36--Beaufort Sea), \$0.7 million held August 25, 1982 (Sale 37--Tanana and Copper River Basins and Sale 37A--Chakok River), \$26.7 million held September 28, 1982 (Sale 34--Prudhoe Bay Uplands), \$21.0 million held May 17, 1983 (Sale 39--Beaufort Sea), and \$3.2 million held September 28, 1983 (Sale 40--Upper Cook Inlet). Due to the timing of collections, some receipts from the May 1982 and May 1983 lease sales are shown as FY 83 revenue and FY 84 revenue, respectively. FY 83 and FY 84 figures represent the General Fund's 50 percent share with the remaining 50 percent deposited in the Permanent Fund.

(11) The Department of Natural Resources projects the following state lease sales to be held in 1984, 1985, and 1986: FY 84 (Sale 43--Beaufort Sea); FY 85 (Sale 41--Bristol Bay Uplands, Sale 46--Holitna Basin, Sale 47--Kuparuk Uplands); and FY 86 (Sale 45--Hope Basin, Sale 48--Kuparuk Uplands, Sale 49--Cook Inlet). However, bonus bids are impossible to anticipate prior to sales and, therefore, no estimates are included.

(12) FY 83 includes that transition portion transferred (\$109,535,000) from the Permanent Fund to the General Fund per Ch. 81 SLA 1982. FY 84, FY 85, and FY 86 reflect only General Fund investment earnings since Permanent Fund earnings will be not only transferred to provide Permanent Fund dividends, but will be distributed between the Permanent Fund principal and the undistributed income account per Ch. 81 and Ch. 102 SLA 1982.

(13) Estimates reflect increased construction of roads and drilling pads as projected by the Department of Natural Resources.

(14) The state, per AS 38.05.180, will be granting incentive credits against royalties, severance taxes, and rentals to the oil companies for drilling exploratory wells. The anticipated deduction for FY 84 is approximately \$12 million which has not been subtracted from the forecasted FY 84 revenue.

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

May 4, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

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

The Honorable Bettye Fahrenkamp  
Chairwoman  
Senate Resources Committee  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Re: CSHB 298(Jud) establishing an  
NPR-A special revenue fund

Dear Senator Fahrenkamp:

We understand that Committee Substitute for House Bill 298(Jud) has been read for the first time in the Senate and has been referred to the Senate Natural Resources Committee. In reviewing the bill, we have discovered some minor legal problems which we believe should be brought to the committee's attention.

CSHB 298(Jud) would establish a special National Petroleum Reserve-Alaska (NPR-A) revenue fund. It is in many respects similar to CSSB 835(Fin) am H passed by the Twelfth Alaska Legislature and ultimately vetoed by then-Governor Hammond. For your information, we are attaching two letters addressing SB 835 in the Twelfth Alaska Legislature which commented on various legal aspects of that bill.

For the most part, CSHB 298(Jud) avoids the problems which we pointed out with respect to the original SB 835 in the Twelfth Alaska Legislature. However, there are a few relatively minor items which present legal problems.

In subsection 2(c), p. 1, l. 27, the bill provides that the commissioner of revenue shall pay funds appropriated by the legislature to "the subdivision" of the state most directly impacted by leasing and NPR-A. The problem with authorizing payment to only one subdivision is that the federal legislation under which the state would receive revenues from leasing in NPR-A provides specifically "that in the allocation of such funds, the State shall give priority to use by subdivisions of the state most directly or severely impacted by development of oil and gas"

in NPR-A. (Emphasis added.) In other words, the United States Congress, in authorizing the state to receive a proportion of the revenues derived from leasing in NPR-A, specifically provided that consideration is to be given to more than one political subdivision.

To avoid any conflict with the federal law, we suggest that subsection 2(c) (p. 1, l. 27) be amended to provide that the commissioner of revenue is to pay funds appropriated for that purpose to "those subdivisions" most directly impacted, not just one subdivision. Conforming changes would be required on p. 2, lines 2, 11, 12, 18 and 19 (changing "subdivision" to "subdivisions"), on p. 1, l. 28 (changing "is" to "are"), and on p. 2, l. 2 (changing "amount" to "amounts" and "equals" to "equal").

These changes would ensure that the bill does not conflict with the federal law under which the state receives the funds. On the other hand, nothing would prohibit the legislature from concluding on an annual basis that the North slope Borough was the only political subdivision impacted by leasing activities in NPR-A, and limiting appropriations to that one subdivision. However, there are other political subdivisions within the exterior boundaries of NPR-A (Barrow and Wainwright) which could be impacted, and major development in NPR-A could impact other political subdivisions outside its boundaries (e.g., Fairbanks, Nome, etc.) as a result of new transportation corridors, etc. These changes would remove any limitation on the legislature's power to determine annually which political subdivisions are impacted by NPR-A leasing activities, as well as conforming it to the federal law.

Subsection 2(d) provides that amounts received by the state shall be used "by the state" for certain purposes. However, funds appropriated to political subdivisions under subsection 2(c) cannot be used "by the state;" under subsection 2(d), they must be used by the political subdivision(s) for certain purposes. This ambiguity could be cured by inserting the phrase "and not paid under (c) of this section" on p. 2, l. 5 between the words "section" and "shall."

With those amendments, we believe the bill would present no other legal problems.

The Honorable Bettye Fahrenkamp

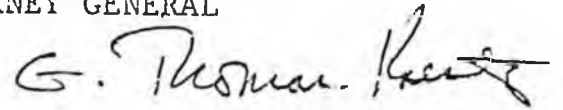
May 4, 1984  
Page 3

If we can be of further assistance, please call on us  
at your convenience.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:



G. Thomas Koester  
Assistant Attorney General

GTK:dln

Attachments

cc: Honorable Albert P. Adams

Honorable Barbara Lacher

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

3  
JAY S. HAMMOND, GOVERNOR

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

April 26, 1982

Honorable Bettye Fahrenkamp  
Chairwoman, Senate Resources Committee  
Alaska State Senate  
Twelfth Legislature  
Pouch V  
Juneau, Alaska 99811

Re: SB 835 (National Petroleum Reserve-Alaska  
Trust Fund). Our File No. 366-619-82

Dear Senator Fahrenkamp:

SB 835, which would establish a trust fund account for revenues the state receives from the federal government from federal oil and gas leasing in the National Petroleum Reserve-Alaska, presents a number of serious legal questions in its current form.

The first question is raised under Article IX, Section 7 of the Alaska Constitution, which provides in pertinent part: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs." The Department of Law and the Legislative Counsel have disagreed over the reach of this prohibition. Our department has construed the prohibition broadly to apply to all "public revenues" (e.g., taxes, license fees, revenues from the sale or disposition of natural resources, etc.); the Legislative Counsel has interpreted it narrowly as reaching only tax and license revenues. On April 23, 1982, the Alaska Supreme Court adopted the Department of Law's broader interpretation in State v. Alex, \_\_\_ P.2d \_\_\_, Op. No. 2488 (Alaska, April 23, 1982). See Slip Op. at p. 20. As a result, we believe the revenues which the bill addresses -- i.e., those that the state would receive from the federal government as the result of federal oil and gas leasing in NPR-A -- are subject to the prohibition.

However, there is an exception to the dedicated fund prohibition "when required by the federal government for state participation in federal programs." The pertinent portion of

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P.L. 96-514, 94 Stat. 2964, which directs payment of the money to the state, attaches certain conditions to the state's receipt of that money: The state may use it "for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." In other words, the funds received from the federal government must be dedicated to planning, construction, maintenance, and operation of essential public facilities, and other necessary provisions of public service. In addition, impacted political subdivisions must be given priority in the allocation of the funds.

We believe the establishment of a trust fund into which all the federal revenues are placed immediately upon receipt from the federal government is both permissible under Article IX, Section 7 of the Alaska Constitution and desirable in that it will ease the administrative task of demonstrating to the federal government that the funds received have been expended for the purposes and in the manner required by the federal Act. However, it also is our opinion that the explicit provisions of the law establishing the trust fund cannot impose conditions on the use of the money which exceed those "required by the federal government for state participation" in the federal program -- i.e., those in the federal Act. Since it is only the federal conditions which exempt the funds from the general dedicated fund prohibition, we believe the only conditions which may be attached to the funds are those required by the federal Act.

As a result, we believe the directive in Section 2(c) of SB 835 to pay a minimum of 50 percent of amounts in the fund to the North Slope Borough violates the dedicated fund prohibition because the federal Act does not require it for state participation. In addition, the directive in Section 2(d) that remaining amounts in the fund may be spent only "in conjunction with the exploration of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve" also violates the prohibition, again because the federal Act does not require it. The federal Act simply does not impose these restrictions on the use of the funds received by the state.

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Another question raised by SB 835 stems from Article II, Section 19 of the Alaska Constitution, which provides in pertinent part: "The legislature shall pass no local or special act if a general act can be made applicable." The problem here is that SB 835 specifically names the North Slope Borough as a recipient of amounts from the fund established. However, nothing in the federal Act requires that the North Slope be named, and it is obvious that a general act can be made applicable and satisfy the terms of the federal Act simply by "giv[ing] priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." That is the language of the federal Act, so using that language would satisfy that condition of the federal Act. It is language of general applicability to all subdivisions which might be impacted by NPR-A development, and therefore would be a general (not local or special) act within the meaning of the Alaska Constitution. (We also would point out that the North Slope Borough may not be the only political subdivision impacted by oil and gas leasing in NPR-A. In the reserve, Barrow is a first class city and Wainwright and Nuiqsuit are second class cities. Moreover, development in NPR-A may have an impact on other political subdivisions along the pipeline corridor or, it is conceivable, any other route chosen to transport the oil and gas produced -- i.e., Nome, etc. This potential impact on other political subdivisions demonstrates the advisability of couching the bill in terms of a general act, not a local or special act directed only to the North Slope Borough.)

Another problem stems from Article II, Section 13 of the Alaska Constitution, which provides in pertinent part: "Bills for appropriations shall be confined to appropriations." The problem in SB 835 is the Section 2(c) directive to pay money to the affected subdivisions (in the bill's current form, only the North Slope Borough). Specifically, Section 2(d) describes that directive as an appropriation. If it is an appropriation, it is an appropriation in a general act and not in a bill confined to appropriations as required by the Constitution. This conclusion is reinforced by the provision in Section 2(d) that amounts remaining in the fund after the payment to the subdivisions cannot be expended without appropriation by the legislature. To avoid this problem, the bill could be amended simply to require appropriation by the legislature prior to any expenditure of funds in the trust account, giving the legislature discretion to appropriate funds to impacted subdivisions or for other purposes permitted under the federal Act.

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Following my testimony on SB 835 at the Senate Resources Committee meeting on April 23, 1982, I met with Tom Smythe and Robert DuPere, representing the North Slope Borough, and Resa King of the Committee staff. We seemed to reach general agreement that some minor modifications to the bill would satisfy the constitutional concerns while remaining true to the basic thrust of the proposed bill. My notes indicate that the following changes were contemplated:

1. Page 1, lines 12-15 should be amended to read (material to be deleted is capitalized and in brackets; new material is underlined): "(1) The United States Congress, by P.L. 96-514 (94 Stat. 2964, December 12, 1980), [APPROPRIATED \$107,001,000 FOR A PROGRAM OF] provided that the state shall receive 50 percent of receipts derived from competitive leasing of oil and gas in the National Petroleum Reserve in Alaska." This change would eliminate any confusion regarding the \$107,001,000 federal appropriation which is for administration of the leasing program, not an appropriation to the state. The state will only receive money under the federal Act after the program begins generating lease revenues.

2. Page 1, lines 24-26 should be amended to read: "The fund shall consist of funds [APPROPRIATED TO IT BY THE LEGISLATURE EQUAL TO THE AMOUNT OF FUNDS] received by the state from the federal government under P.L. 96-514." This would establish the constitutionally-permissible dedicated fund.

3. Subsection (c) of Section 2, which begins on page 1, line 29, and continues to page 2, line 4, should be deleted in its entirety and replaced with the following:

(c) The commissioner of revenue shall pay to the subdivisions of the state most directly or severely impacted by development of oil and gas leased under the federal Act the amount appropriated by the legislature from the fund for that purpose. It is the intent of the legislature that the amount appropriated for payment to the subdivisions equal 50 percent of the amount received from the federal government under the federal Act, and that this percentage be reviewed every five years following passage of this Act.

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This would indicate the legislative intent of sharing the revenues with impacted political subdivisions without violating the dedicated fund prohibition by imposing conditions beyond those required by the federal Act. It also avoids the local and special legislation problem, as well as the problem regarding an appropriation in a bill not confined to appropriations.

4. Page 2, lines 5-10 should be amended to read: "(d) Amounts received by the state under (a) of this section [WHICH ARE NOT APPROPRIATED IN ACCORDANCE WITH (c) OF THIS SECTION] shall be used by the state, subject to appropriation by law, for the following activities and services [IN CONJUNCTION WITH THE EXPLORATION OF THE NATIONAL PETROLEUM RESERVE IN ALASKA AND A PROGRAM OF COMPETITIVE LEASING OF OIL AND GAS FROM THAT RESERVE]:" This avoids any dedicated fund problem by eliminating those conditions which exceed those required by the federal Act.

5. Subsection (e) of Section 2, appearing on page 2, lines 15-20, should be deleted in its entirety.

6. Subsection (f), beginning on page 2, line 21, and ending on page 3, line 1, should be amended to read:

"(f) amounts paid to [THE NORTH SLOPE BOROUGH] subdivisions under (c) of this section shall be used by the [NORTH SLOPE BOROUGH] subdivisions only for the following activities and services in conjunction with [THE EXPLORATION] development on the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve:

"(1) planning;

"(2) construction, maintenance, and operation of essential public facilities by the [NORTH SLOPE BOROUGH] subdivisions; and

"(3) other necessary public services provided by the [NORTH SLOPE BOROUGH] subdivisions."

This change is necessary to avoid the local and special legislation problem.

(1)  
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In addition, it was suggested that a committee letter of intent be drafted to the effect that, at the present time, the North Slope Borough is the only political subdivision of the state which will be most directly or severely impacted by oil and gas leasing in NPR-A.

I believe these comments accurately reflect the consensus of our work group. However, the other individuals present may have some further suggestions for change.

Finally, I must indicate that these comments are not intended to represent the Administration's policy position on this bill. Rather, they are provided in the nature of a drafting service to overcome the constitutional and other legal problems which we believe are presented by the bill in its current form. If we can be of further assistance in this regard, please contact us at your earliest convenience.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By: 

G. Thomas Koester  
Assistant Attorney General

GTK:dlm

cc: Honorable Don Bennett  
Honorable M.E. Dankworth  
Co-Chairmen, Senate Finance Committee

Tom Smythe  
Robert DuPere  
Keith Specking

June 22, 1982

The Honorable Jay S. Hammond  
Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

Re: CSSB.835(Fin) am H  
(National Petroleum Reserve, Alaska, special revenue fund)  
Our File: 388-140-82

Dear Governor Hammond:

At your request, we have reviewed CSSB 835(Fin) am H which establishes a National Petroleum Reserve, Alaska, special revenue fund.

The United States Congress, in P.L. 96-514 (94 Stat. 2964, December 12, 1980), provided that the state is to receive 50 percent of all receipts from competitive oil and gas leasing in the National Petroleum Reserve, Alaska. The federal legislation provides that the state may use these revenues "for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, that in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act."

This bill would establish a fund into which all receipts from the federal government under this program would be deposited, and provides for management of the money deposited. It also provides that the commissioner of revenue is to pay to those subdivisions of the state most directly or severely "impacted" by development of oil and gas in the reserve the amounts appropriated from the fund by the legislature for that purpose. Remaining amounts in the fund may be used by the state, subject to appropriation by the

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legislature, for the activities and services specified in the federal legislation. Amounts paid to subdivisions of the state must also be used only for those purposes. The bill provides that the legislature intends that the amount paid to subdivisions be equal to 50 percent of the amount received from the federal government; however, that percentage would be subject to annual review by the legislature.

An obvious first question presented by the bill is whether it creates an impermissible dedicated fund under art. IX, sec. 7 of the Alaska Constitution, which provides in pertinent part: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs." Following the Alaska Supreme Court's decision in State v. Alex, \_\_\_ P.2d \_\_\_, Op. No. 2488 (Alaska, April 23, 1982), there is no question that the constitutional provision applies to these revenues.

However, under that provision, it is permissible for the state to establish a dedicated fund "when required by the federal government for state participation in federal programs." The federal legislation directing payment of the money to the state attaches conditions to the state's receipt of that money: the funds received from the federal government must be dedicated to (1) planning, (2) construction, maintenance, and operation of essential public facilities, and (3) other necessary provisions of public service. In addition, impacted political subdivisions of the state must be given priority in the allocation of funds. Although the federal Act does not specifically require creation of a fund, it does specify the uses of the money, and our constitutional provision refers to "dedicating" for "any special purpose." Thus, the federal Act does impose a requirement which is exempt from the dedicated fund prohibition.

We believe that the establishment of a trust fund into which these federal revenues are placed immediately upon receipt from the federal government is both permissible under art. IX, sec. 7 of the Alaska Constitution and desirable in that it will ease the administrative task of demonstrating to the federal government that the funds received have been spent for the purposes and in the manner required by the federal Act. In other words, this would be

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June 22, 1982

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a constitutionally permissible dedicated fund.

Another question is whether federal receipts received by the state under the federal legislation are subject to art. IX, sec. 15 of the Alaska Constitution, which provides in pertinent part: "At least twenty-five percent of all . . . federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund. . . ." Since these payments are "federal mineral revenue sharing payments," an argument can be made that twenty-five percent of them must be placed in the permanent fund under the plain language of art. IX, sec. 15.

However, we believe that that provision must be read in conjunction with art. IX, sec. 7. The latter section authorizes the creation of separate dedicated funds "when required by the federal government for state participation in federal programs." Because the federal legislation specifies the purposes for which these federal revenue sharing payments may be spent, and because deposit in the permanent fund is not among those purposes, we believe that the better view is that federal mineral revenue sharing payments from federal oil and gas leasing in the National Petroleum Reserve, Alaska, under P.L. 96-514 are not subject to the requirement in art. IX, sec. 15 that at least twenty-five percent be deposited in the permanent fund. While resolution of the issue is not entirely clear, we believe that this result makes better sense in that it avoids the anomalous situation in which compulsory deposit in the permanent fund under art. IX, sec. 15 could entirely defeat state participation in the federal program because that deposit would be an expenditure of the funds in a manner contrary to the federal legislation authorizing their transmittal to the state in the first place. This result would seem to flow directly from the authorization in art. IX, sec. 7 for separate dedicated funds "when required by the federal government for state participation in federal programs" which, presumably, are funds separate from the permanent fund established in art. IX, sec 15.

As initially introduced, this bill presented several other legal questions. See our letter of April 26, 1982, to the Honorable Bettye Fahrenkamp, Chairwoman, Senate Resources Committee, on this subject (Department of Law file no. 366-619-82). However, those problems appear to have been corrected during the legislative committee work on the

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Jay S. Hammond

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bill. In its current form, it presents no legal problems.

Sincerely,

  
for Wilson L. Condon  
Attorney General

WLC:GTK:11b

EXPLORATION OF NATIONAL PETROLEUM RESERVE IN ALASKA

42 USC 6508.  
42 USC 6504.

43 USC 1712,  
1752

42 USC 6502

43 USC 1337

For necessary expenses of carrying out the provisions of section 104 of Public Law 94-258, and for conducting hereafter and with funds appropriated by this Act and by subsequent appropriation Acts notwithstanding any other provision of law and pursuant to such rules and regulations as the Secretary may prescribe, an expedition program of competitive leasing of oil and gas in the National Petroleum Reserve in Alaska, \$107,001,000, to remain available until expended: *Provided*, That (1) activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska (the Reserve); (2) the provisions of section 202 and section 503 of the Federal Lands Policy and Management Act of 1976 (90 Stat. 2743) shall not be applicable to the Reserve; (3) the first lease sale shall be conducted within twenty months of the date of enactment of this Act: *Provided*, That the first lease sale shall be conducted only after publication of a final environmental impact statement: if such is deemed necessary under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4332); (4) the withdrawals established by section 102 of Public Law 94-258 are rescinded for the purposes of the oil and gas leasing program authorized herein; (5) bidding systems used in lease sales shall be based on bidding systems included in section 205(a)(1) (A) through (F) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629); (6) lease tracts may encompass identified geological structures; (7) the size of lease tracts may be up to sixty thousand acres, as determined by the Secretary; (8) each lease shall be issued for an initial period of up to ten years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities, or as drilling or reworking operations, as approved by the Secretary, are conducted thereon; and (9) all receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this Act shall be paid into the Treasury of the United States: *Provided*, That 50 per centum thereof shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: *Provided further*, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act.

Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the National Petroleum Reserve in Alaska which do not interfere with operations under any contract maintained or granted previously. Any information acquired in such explorations shall be subject to the conditions of 43 U.S.C. 1352(a)(1)(A).

Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve Alaska shall be barred unless brought in the appropriate District Court within 60 days after notice of the availability of such statement is published in the Federal Register. Any proceeding on such action

Judicial review.  
Publication in  
Federal  
Register.



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shall be assigned for hearing at the earliest possible date and shall be expedited by such Court.

The detailed environmental studies and assessments that have been conducted on the exploration program and the comprehensive land-use studies carried out in response to sections 105 (b) and (c) of Public Law 94-253 shall be deemed to have fulfilled the requirements of section 102(2)(c) of the National Environmental Policy Act (Public Law 91-190), with regard to the first two oil and gas lease sales in the National Petroleum Reserve-Alaska: *Provided*, That not more than a total of 2,000,000 acres may be leased in these two sales: *Provided further*, That any exploration or production undertaken pursuant to this section shall be in accordance with section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 304; 12 U.S.C. 6504).

42 USC 6505.

42 USC 4332.

ADMINISTRATIVE PROVISIONS

The amount appropriated for the Geological Survey shall be available for purchase of not to exceed 22 passenger motor vehicles, of which 19 shall be for replacement only; reimbursement to the General Services Administration for security guard services; contracting for the furnishing of topographic maps and for the making of geophysical or other specialized surveys when it is administratively determined that such procedures are in the public interest; construction and maintenance of necessary buildings and appurtenant facilities; acquisition of lands for observation wells; expenses of the U.S. National Committee on Geology; and payment of compensation and expenses of persons on the rolls of the Geological Survey appointed, as authorized by law, to represent the United States in the negotiation and administration of interstate compacts.

BUREAU OF MINES

MINES AND MINERALS

For expenses necessary for conducting inquiries, technological investigations and research concerning the extraction, processing, use and disposal of mineral substances without objectionable social and environmental costs; to foster and encourage private enterprise in the development of mineral resources and the prevention of waste in the mining, minerals, metal and mineral reclamation industries; to inquire into the economic conditions affecting those industries; to promote health and safety in mines and the mineral industry through research; and for other related purposes as authorized by law, \$189,428,000, of which \$107,726,000 shall remain available until expended.

ADMINISTRATIVE PROVISION

The Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to execute projects in cooperation with other agencies, Federal, State, or private: *Provided*, That the Bureau of Mines is authorized during the current fiscal year, to sell directly or through any Government agency, including corporations, any metal or mineral product that may be manufactured in pilot plants operated by the Bureau of Mines, and the proceeds of such sales shall be covered into the Treasury as miscellaneous receipts.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K--STATE CAPITOL  
JUNEAU, ALASKA 99811

April 26, 1982

Honorable Bettye Fahrenkamp  
Chairwoman, Senate Resources Committee  
Alaska State Senate  
Twelfth Legislature  
Pouch V  
Juneau, Alaska 99811

Re: SB 835 (National Petroleum Reserve-Alaska  
Trust Fund). Our File No. 366-619-82

Dear Senator Fahrenkamp:

SB 835, which would establish a trust fund account for revenues the state receives from the federal government from federal oil and gas leasing in the National Petroleum Reserve-Alaska, presents a number of serious legal questions in its current form.

The first question is raised under Article IX, Section 7 of the Alaska Constitution, which provides in pertinent part: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs." The Department of Law and the Legislative Counsel have disagreed over the reach of this prohibition. Our department has construed the prohibition broadly to apply to all "public revenues" (e.g., taxes, license fees, revenues from the sale or disposition of natural resources, etc.); the Legislative Counsel has interpreted it narrowly as reaching only tax and license revenues. On April 23, 1982, the Alaska Supreme Court adopted the Department of Law's broader interpretation in State v. Alex, \_\_\_ P.2d \_\_\_, Op. No. 2488 (Alaska, April 23, 1982). See Slip Op. at p. 20. As a result, we believe the revenues which the bill addresses -- i.e., those that the state would receive from the federal government as the result of federal oil and gas leasing in NPR-A -- are subject to the prohibition.

However, there is an exception to the dedicated fund prohibition "when required by the federal government for state participation in federal programs." The pertinent portion of

P.L. 96-514, 94 Stat. 2964, which directs payment of the money to the state, attaches certain conditions to the state's receipt of that money: The state may use it "for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." In other words, the funds received from the federal government must be dedicated to planning, construction, maintenance, and operation of essential public facilities, and other necessary provisions of public service. In addition, impacted political subdivisions must be given priority in the allocation of the funds.

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As a result, we believe the directive in Section 2(c) of SB 835 to pay a minimum of 50 percent of amounts in the fund to the North Slope Borough violates the dedicated fund prohibition because the federal Act does not require it for state participation. In addition, the directive in Section 2(d) that remaining amounts in the fund may be spent only "in conjunction with the exploration of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve" also violates the prohibition, again because the federal Act does not require it. The federal Act simply does not impose these restrictions on the use of the funds received by the state.

Another question raised by SB 835 stems from Article II, Section 19 of the Alaska Constitution, which provides in pertinent part: "The legislature shall pass no local or special act if a general act can be made applicable." The problem here is that SB 835 specifically names the North Slope Borough as a recipient of amounts from the fund established. However, nothing in the federal Act requires that the North Slope be named, and it is obvious that a general act can be made applicable and satisfy the terms of the federal Act simply by "giv[ing] priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." That is the language of the federal Act, so using that language would satisfy that condition of the federal Act. It is language of general applicability to all subdivisions which might be impacted by NPR-A development, and therefore would be a general (not local or special) act within the meaning of the Alaska Constitution. (We also would point out that the North Slope Borough may not be the only political subdivision impacted by oil and gas leasing in NPR-A. In the reserve, Barrow is a first class city and Wainwright and Nuiqsuit are second class cities. Moreover, development in NPR-A may have an impact on other political subdivisions along the pipeline corridor or, it is conceivable, any other route chosen to transport the oil and gas produced -- i.e., Nome, etc. This potential impact on other political subdivisions demonstrates the advisability of couching the bill in terms of a general act, not a local or special act directed only to the North Slope Borough.)

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Following my testimony on SB 835 at the Senate Resources Committee meeting on April 23, 1982, I met with Tom Smythe and Robert DuPere, representing the North Slope Borough, and Resa King of the Committee staff. We seemed to reach general agreement that some minor modifications to the bill would satisfy the constitutional concerns while remaining true to the basic thrust of the proposed bill. My notes indicate that the following changes were contemplated:

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3. Subsection (c) of Section 2, which begins on page 1, line 29, and continues to page 2, line 4, should be deleted in its entirety and replaced with the following:

(c) The commissioner of revenue shall pay to the subdivisions of the state most directly or severely impacted by development of oil and gas leased under the federal Act the amount appropriated by the legislature from the fund for that purpose. It is the intent of the legislature that the amount appropriated for payment to the subdivisions equal 50 percent of the amount received from the federal government under the federal Act, and that this percentage be reviewed every five years following passage of this Act.

This would indicate the legislative intent of sharing the revenues with impacted political subdivisions without violating the dedicated fund prohibition by imposing conditions beyond those required by the federal Act. It also avoids the local and special legislation problem, as well as the problem regarding an appropriation in a bill not confined to appropriations.

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"(1) planning;

"(2) construction, maintenance, and operation of essential public facilities by the [NORTH SLOPE BOROUGH] subdivisions; and

"(3) other necessary public services provided by the [NORTH SLOPE BOROUGH] subdivisions."

This change is necessary to avoid the local and special legislation problem.

Honorable Bettye Fahrkamp  
Re: SB 835

April 26, 1982  
Page 6

In addition, it was suggested that a committee letter of intent be drafted to the effect that, at the present time, the North Slope Borough is the only political subdivision of the state which will be most directly or severely impacted by oil and gas leasing in NPR-A.

I believe these comments accurately reflect the concensus of our work group. However, the other individuals present may have some further suggestions for change.

Finally, I must indicate that these comments are not intended to represent the Administration's policy position on this bill. Rather, they are provided in the nature of a drafting service to overcome the constitutional and other legal problems which we believe are presented by the bill in its current form. If we can be of further assistance in this regard, please contact us at your earliest convenience.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By: *151*  
G. Thomas Koester  
Assistant Attorney General

GTK:d1m

cc: Honorable Don Bennett  
Honorable M.E. Dankworth  
Co-Chairmen, Senate Finance Committee

Tom Smythe  
Robert DuPere ✓  
Keith Specking

Offered: 4/19/84  
Referred: Finance

Original sponsor: Adams

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 298 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL  
6 For an Act entitled: "An Act establishing a National Petroleum Reserve,  
7 Alaska, special revenue fund; and providing for an  
8 effective date."  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
10 \* Section 1. FINDINGS. The legislature finds that  
11 (1) the United States Congress, by 43 U.S.C. 1337 (P.L. 96-514),  
12 provided that the state shall receive 50 percent of receipts derived from  
13 competitive leasing of oil and gas in the National Petroleum Reserve in  
14 Alaska;  
15 (2) virtually all of the National Petroleum Reserve in Alaska  
16 lies within the corporate limits of the North Slope Borough, a home rule  
17 political subdivision of the state; and  
18 (3) because of the continuing nature of the congressional appro-  
19 priation a special revenue fund should be established to comply with the  
20 directive of the federal Act.  
21 \* Sec. 2. NATIONAL PETROLEUM RESERVE, ALASKA, SPECIAL REVENUE FUND.  
22 (a) The National Petroleum Reserve, Alaska, special revenue fund is estab-  
23 lished. The fund shall consist of money received by the state from the  
24 federal government under 43 U.S.C. 1337 (P.L. 96-514).  
25 (b) The commissioner of revenue shall manage the special revenue fund  
26 in accordance with AS 37.10.070.  
27 (c) The commissioner of revenue shall pay to the subdivision of the  
28 state that is most directly or severely impacted by development of oil and  
29 gas leased under 43 U.S.C. 1337 the amount appropriated by the legislature

1 from the fund for that purpose. It is the intent of the legislature that  
2 the amount appropriated for payment to the subdivision equals 50 percent of  
3 the amount received from the federal government under 43 U.S.C. 1337 and  
4 that this percentage be reviewed annually, by the legislature.

5 (d) Amounts received by the state under (a) of this section shall be  
6 used by the state for the following activities and services:

7 (1) planning;

8 (2) construction, maintenance, and operation of essential public  
9 facilities; and

10 (3) other necessary public services.

11 (e) Amounts paid to the subdivision of the state under (c) of this  
12 section shall be used by the subdivision only for the following activities  
13 and services in conjunction with development of the National Petroleum  
14 Reserve in Alaska and a program of competitive leasing of oil and gas from  
15 that reserve:

16 (1) planning;

17 (2) construction, maintenance, and operation of essential public  
18 facilities by the subdivision; and

19 (3) other necessary public services provided by the subdivision.

20 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
21 10.070(c).

22

Offered: 5/8/84  
Referred: Finance

Original sponsor: Adams

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 SENATE CS FOR CS FOR HOUSE BILL NO. 298 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a National Petroleum Reserve,  
7 Alaska, special revenue fund; and providing for an  
8 effective date."

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

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13 competitive leasing of oil and gas in the National Petroleum Reserve in  
14 Alaska;

15 (2) virtually all of the National Petroleum Reserve in Alaska  
16 lies within the corporate limits of the North Slope Borough, a home rule  
17 political subdivision of the state; and

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24 federal government under 43 U.S.C. 1337 (P.L. 96-514).

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28 state that are most directly or severely impacted by development of oil and  
29 gas leased under 43 U.S.C. 1337 the amount appropriated by the legislature

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2 the amount appropriated for payment to subdivisions equal 50 percent of the  
3 amount received from the federal government under 43 U.S.C. 1337 and that  
4 this percentage be reviewed annually, by the legislature.

5 (d) Amounts received by the state under (a) of this section shall be  
6 used by the state for the following activities and services:

7 (1) planning;

8 (2) construction, maintenance, and operation of essential public  
9 facilities; and

10 (3) other necessary public services.

11 (e) Amounts paid to subdivisions of the state under (c) of this  
12 section shall be used by the subdivisions only for the following activities  
13 and services in conjunction with development of the National Petroleum  
14 Reserve in Alaska and a program of competitive leasing of oil and gas from  
15 that reserve:

16 (1) planning;

17 (2) construction, maintenance, and operation of essential public  
18 facilities by the subdivisions; and

19 (3) other necessary public services provided by the subdivi-  
20 sions.

21 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
22 10 070(c).

23

Alaska State Legislature  
House of Representatives



Official Business

Al Adams  
Chairman  
Committee on Finance

WHILE IN SESSION  
Pouch V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3706  
OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3320  
1024 W. 6th  
Anchorage, Alaska 99501  
(907) 274-0615

MEMORANDUM

TO: Senate Finance Committee Members  
FROM: Representative Al Adams *AAA*  
DATE: May 9, 1984  
SUBJECT: House Bill 298

In 1980, Congress passed legislation requiring that fifty percent of revenues received from oil and gas leasing in the National Petroleum Reserve-Alaska (NPR-A) be passed on to the State of Alaska. The bill further specified that the priority use for these funds would be for the state's political subdivisions that are most directly impacted by the development of oil and gas in the NPR-A. HB 298 assures that the state complies with the federal law.

SCS CS HB 298 (RES) establishes the NPR-A special reserve fund in the Department of Revenue for receipt of this money from the federal government. The commissioner is directed to pay the eligible subdivisions the amount appropriated by the legislature from the fund. The bill states that it is the legislature's intent that 50% of the amount received by the state from the federal government go to these subdivisions. This percentage would be reviewed annually. Money received must be used for planning, construction, maintenance and operation of essential public facilities and any other necessary public services.

The attorney general presented the Senate Resources Committee with two amendments to the bill. These amendments were both adopted by the committee. All references to "subdivision" were changed to "subdivisions" so that the bill more closely conforms with the federal law. Also, a phrase was added to section 2(d) of the bill to make it clear that this subsection deals only with funds paid to the state that are not turned over to the subdivisions.

Though the committee moved adoption of both these amendments, a drafting error resulted in the second amendment not being incorporated into the printed version of the committee substitute. I support both these amendments and would not object if you incorporated the second amendment in to a Senate Finance committee substitute for the bill.

Please inform me if I can assist you in any way as you analyze this

# Alaska State Legislature

BETTYE FAHRENKAMP, Chairman  
ROBERT H. ZIEGLER, SR., Vice Chairman  
DICK ELIASON  
PAUL FISCHER  
VIC FISCHER  
BOB MULCAHY  
ARLISS STURGULEWSKI



POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3834  
(907) 465-3835

## Senate

### Committee on Resources

#### MEMORANDUM

TO: SENATOR JOHN SACKETT  
SENATOR DON BENNETT  
CO-CHAIRMAN  
SENATE FINANCE COMMITTEE

FROM: SENATOR BETTYE FAHRENKAMP  
CHAIRMAN  
SENATE RESOURCES COMMITTEE

RE: CSHB 298, "AN ACT ESTABLISHING A NATIONAL PETROLEUM RESERVE, ALASKA,  
SPECIAL REVENUE FUND."

DATE: MAY 10, 1984

---

During the Senate Resources Committee's consideration of HB 298, an amendment was adopted which was unfortunately not included in the Resources Committee substitute.

To correct this drafting omission by our legal services division, I am requesting that you include this technical amendment during the Finance Committee's deliberation on HB 298. A copy of the omitted amendment is attached for your information. Thank you for your assistance.



Official Business

# Alaska State Legislature

Senate

*adopted*

Pouch V  
State Capitol  
Juneau, Alaska 9

## AMENDMENT #2

On page 2, line 5 add the following language:

"(d) Amounts received by the state under (a) of this section and not paid under (c) of this section shall be"

Offered: 5/8/84  
Referred: Finance

Original sponsor: Adams

1 IN THE HOUSE BY THE RESOURCES COMMITTEE  
2 SENATE CS FOR CS FOR HOUSE BILL NO. 298 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL  
6 For an Act entitled: "An Act establishing a National Petroleum Reserve,  
7 Alaska, special revenue fund; and providing for an  
8 effective date."  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
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12 provided that the state shall receive 50 percent of receipts derived from  
13 competitive leasing of oil and gas in the National Petroleum Reserve in  
14 Alaska;  
15 (2) virtually all of the National Petroleum Reserve in Alaska  
16 lies within the corporate limits of the North Slope Borough, a home rule  
17 political subdivision of the state; and  
18 (3) because of the continuing nature of the congressional appro-  
19 priation a special revenue fund should be established to comply with the  
20 directive of the federal Act.  
21 \* Sec. 2. NATIONAL PETROLEUM RESERVE, ALASKA, SPECIAL REVENUE FUND.  
22 (a) The National Petroleum Reserve, Alaska, special revenue fund is estab-  
23 lished. The fund shall consist of money received by the state from the  
24 federal government under 43 U.S.C. 1337 (P.L. 96-514).  
25 (b) The commissioner of revenue shall manage the special revenue fund  
26 in accordance with AS 37.10.070.  
27 (c) The commissioner of revenue shall pay to the subdivisions of the  
28 state that are most directly or severely impacted by development of oil and  
29 gas leased under 43 U.S.C. 1337 the amount appropriated by the legislature

1 from the fund for that purpose. It is the intent of the legislature that  
2 the amount appropriated for payment to subdivisions equal 50 percent of the  
3 amount received from the federal government under 43 U.S.C. 1337 and that  
4 this percentage be reviewed annually, by the legislature.

5 (d) Amounts received by the state under (a) of this section shall be  
6 used by the state for the following activities and services:

7 (1) planning;

8 (2) construction, maintenance, and operation of essential public  
9 facilities; and

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11 (e) Amounts paid to subdivisions of the state under (c) of this  
12 section shall be used by the subdivisions only for the following activities  
13 and services in conjunction with development of the National Petroleum  
14 Reserve in Alaska and a program of competitive leasing of oil and gas from  
15 that reserve:

16 (1) planning;

17 (2) construction, maintenance, and operation of essential public  
18 facilities by the subdivisions; and

19 (3) other necessary public services provided by the subdivi-  
20 sions.

21 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
22 10.070(c).

23

SECTIONAL ANALYSIS OF SCS CS HB 298 (RESOURCES)

Title: Establishing a National Petroleum Reserve-Alaska (NPR-A) Special Revenue Fund and providing for an effective date.

Section 1: FINDINGS.

(1) Congress provided by law (PL 96-514) that Alaska shall receive 50% of royalties from oil and gas lease sales in the NPR-A.

(2) Virtually all of the NPR-A is within the boundaries of the North Slope Borough.

(3) Because of the continuing nature of the congressional appropriation, the bill establishes a special fund to comply with the federal directive.

Section 2: NPR-A SPECIAL REVENUE FUND.

(a) Establishes the NPR-A special revenue fund consisting of money received from the federal government under PL 96-514.

(b) Provides that Commissioner of Revenue will manage the fund.

(c) Provides that the commissioner will pay to the subdivisions most directly or severely impacted by NPR-A development any amount appropriated by the legislature from the fund for that purpose. The legislature's intent is that 50% of what is received from the federal government will go to the subdivisions, however, this percentage will be reviewed annually.

(d) and (e) Provide that money received must be used by both the state and the subdivisions for planning; construction, maintenance and operation of essential public facilities; and other necessary public services.

Section 3: IMMEDIATE EFFECTIVE DATE.

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date 5/10/84

REQUEST (Resources)  
Bill/Resolution No: SCS CS HB 298  
Title: National Petroleum Reserve  
Special Revenue Fund  
Sponsor: Senate Resources  
Requestor: Senate Finance  
Date of Request: May 10, 1984

FISCAL DETAIL  
Agency Affected: Department of Revenue  
Program Category Affected: \_\_\_\_\_  
BRU, Program of Subprogram(s) Affected:  
Treasury

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB  
Division: Treasury

Phone: 465-2350  
Date: May 10, 1984

Approved by Commissioner: [Signature]  
Agency: Revenue

Date: 5/10/84

Distribution (by Agency preparing fiscal note):

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

The only possible revenues known to the State at this time which would be subject to appropriation under the terms of HB 298 are those from a July 20, 1983 National Petroleum Reserve in Alaska lease sale. Although high bids totaled \$16.7 million, leases will not be awarded until challenges of the sale by the State of Alaska and the City of Barrow/Alaska Legal Services are resolved.

Bureau of Land Management

# Energy Quarterly



RECEIVED  
ALASKA DEPARTMENT OF REVENUE

JUN 23 1983

OF THE COMMISSIONER

JUNE 1983

U.S. DEPARTMENT OF THE INTERIOR 701 C STREET ANCHORAGE ALASKA 99513

## THIRD NPR-A OIL AND GAS LEASE SALE SCHEDULED FOR ANCHORAGE

The BLM will offer approximately 2 million acres in 84 tracts at the third NPR-A oil and gas lease sale July 20. Sale 831 will be held in the Howard Rock Ballroom at the Sheraton Anchorage Hotel, with bid opening at 10:00 a.m. Bids will be accepted from 8:00 a.m. to 9:00 a.m. at the Sheraton the morning of the sale, and in the Public Room in the Federal Building up to the day of the sale.

Tracts 3, 4 and 5 (see map) containing approximately 76,373 acres will be deleted from this sale. Under proposed legislation the North Slope Borough would receive the subsurface rights to all minerals within the Barrow gas field which encompass these tracts. Those interested in bidding on tracts 6 through 16 should be aware that the pending legislation would transfer control of the hydrocarbons on the lands immediately north and west of these tracts to the North Slope Borough.

The offering is part of a five-year leasing plan to make certain lands within NPR-A available for competitive leasing. A fourth offering of NPR-A lands is scheduled for July, 1984. To date 37 leases totaling approximately 900,000 acres have been issued by BLM within the reserve.

## GRAVEL SOURCES FROM NPR-A CANNOT BE USED OUTSIDE THE RESERVE

The Department of the Interior's Solicitors Office has reaffirmed that gravel mined within the bounds of the National Petroleum Reserve cannot be used for offshore development or for projects outside the reserve's boundary. Inquiries as to the availability of the gravel lead to the opinion. According to the Naval Petroleum Reserve Production Act of 1976 gravel within NPR-A can only be used for local Native municipal purposes or for development of federal leases on the reserve.

CONTACT: GEORGE GERWINS (907) 271-5555

MARCH 1984 REVENUE SOURCE BOOK

Ferry System-Southwest	4,000	4,000	4,000	4,500
Other	5,500	6,000	6,000	6,000
<u>Service Related Charges</u>				
Court System	4,200	4,500	4,500	4,500
Other	5,900	6,000	6,500	7,000
Total State Resources Revenues	<u>1,552,400</u>	<u>1,376,400</u>	<u>1,327,900</u>	<u>1,378,000</u>
<u>Miscellaneous Revenues</u>	<u>10,900</u>	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>
<u>Total Unrestricted Revenues</u>	<u>3,631,000</u>	<u>3,418,400</u> (14)	<u>3,418,200</u>	<u>3,565,700</u>

(1) AS 43.21 was repealed pursuant to Ch. 116 SLA 1981 effective January 1982, and thereby all multistate corporations were subject to various apportionment methods specified in AS 43.20. Due to the number of inquiries requesting information, collections are separated between those oil/gas corporations filing under AS 43.20.072 and those corporations filing otherwise.

(2) The upward adjustment in FY 84 is due to recent finalized litigation in favor of the state on past years' gross receipts (i.e. prior to 1979). Other cases are pending and as such this number is subject to change.

(3) The downward revisions in FY 85 and FY 86 reflect recent court decisions disallowing states' taxing of banks' interest income on U.S. securities. These projections also reflect current law under AS 43.70.

(4) The January forecast for FY 84 assumed the 30 percent case; however, the FY 84 March estimates have been changed to reflect the mean or average case. If the 30 percent case had been utilized for FY 84, the aforementioned numbers would change to \$1,334.2 million for production taxes and to \$978.4 million for royalties. The forecasted numbers for FY 85 and FY 86 continue to assume the 30 percent case; however, if the mean case had been utilized for FY 85 and FY 86, the production taxes would change to \$1,448.5 million and \$1,509.4 million, respectively. The royalty figures would change to \$1,092.4 million and \$1,158.6 million, respectively.

(5) The figures reflect only the net amount to the state's General Fund.

(6) Estimates reflect the following increased liquor taxes per Ch. 46 SLA 1983 effective July 9, 1983: malt beverages (from \$0.25 to \$0.35 per gallon); wines (from \$0.60 to \$0.85 per gallon); and hard liquor (from \$4.00 to \$5.60 per gallon).

(7) In FY 83, large fuel purchases were made from a consortium, and application for refund of airline jet fuel tax was applied for when the fuel was used for foreign flights. These refunds were taken from the highway fuel tax account as prescribed in AS 43.40.010(h), thereby reducing net highway fuel taxes. Recent changes in statute allow for exemption from the tax at purchase (AS 43.40.010(k)(1)); therefore reducing taxable jet fuel purchases and increasing projected net highway fuel taxes over previous estimates.

(8) Net Permanent Fund contribution by Ch. 18 SLA 1980.

(9) The FY 83 figure reflects NPR-A lease sales of \$57.1 million held January 27, 1982, and \$9.7 million held May 26, 1982, with the total amount of the lease sale split equally between the state and federal government. The state's share (\$33.4 million) is further equally divided between the General Fund and the Permanent Fund. The FY 84 estimate does not include any revenues shared (50/50 basis) with the federal government from the NPR-A lease sale held July 20, 1983. Although high bids totaled \$16.7 million, leases have not been awarded until challenges of the sale by the State of Alaska and the City of Barrow/Alaska Legal Services are resolved.

(10) Reflects state lease sales of \$32.5 million held May 26, 1982 (Sale 36--Beaufort Sea), \$0.7 million held August 25, 1982 (Sale 37--Tanana and Copper River Basins and Sale 37A--Chakok River), \$26.7 million held September 28, 1982 (Sale 34--Prudhoe Bay Uplands), \$21.0 million held May 17, 1983 (Sale 39--Beaufort Sea), and \$3.2 million held September 28, 1983 (Sale 40--Upper Cook Inlet). Due to the timing of collections, some receipts from the May 1982 and May 1983 lease sales are shown as FY 83 revenue and FY 84 revenue, respectively. FY 83 and FY 84 figures represent the General Fund's 50 percent share with the remaining 50 percent deposited in the Permanent Fund.

(11) The Department of Natural Resources projects the following state lease sales to be held in 1984, 1985, and 1986; FY 84 (Sale 43--Beaufort Sea); FY 85 (Sale 41--Bristol Bay Uplands, Sale 46--Holitna Basin, Sale 47--Kuparuk Uplands); and FY 86 (Sale 45--Hope Basin, Sale 48--Kuparuk Uplands, Sale 49--Cook Inlet). However, bonus bids are impossible to anticipate prior to sales and, therefore, no estimates are included.

(12) FY 83 includes that transition portion transferred (\$109,535,000) from the Permanent Fund to the General Fund per Ch. 81 SLA 1982. FY 84, FY 85, and FY 86 reflect only General Fund investment earnings since Permanent Fund earnings will be not only transferred to provide Permanent Fund dividends, but will be distributed between the Permanent Fund principal and the undistributed income account per Ch. 81 and Ch. 102 SLA 1982.

(13) Estimates reflect increased construction of roads and drilling pads as projected by the Department of Natural Resources.

(14) The state, per AS 38.05.180, will be granting incentive credits against royalties, severance taxes, and rentals to the oil companies for drilling exploratory wells. The anticipated deduction for FY 84 is approximately \$12 million which has not been subtracted from the forecasted FY 84 revenue.

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

May 4, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

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

The Honorable Bettye Fahrenkamp  
Chairwoman  
Senate Resources Committee  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Re: CSHB 298(Jud) establishing an  
NPR-A special revenue fund

Dear Senator Fahrenkamp:

We understand that Committee Substitute for House Bill 298(Jud) has been read for the first time in the Senate and has been referred to the Senate Natural Resources Committee. In reviewing the bill, we have discovered some minor legal problems which we believe should be brought to the committee's attention.

CSHB 298(Jud) would establish a special National Petroleum Reserve-Alaska (NPR-A) revenue fund. It is in many respects similar to CSSB 835(Fin) am H passed by the Twelfth Alaska Legislature and ultimately vetoed by then-Governor Hammond. For your information, we are attaching two letters addressing SB 835 in the Twelfth Alaska Legislature which commented on various legal aspects of that bill.

For the most part, CSHB 298(Jud) avoids the problems which we pointed out with respect to the original SB 835 in the Twelfth Alaska Legislature. However, there are a few relatively minor items which present legal problems.

In subsection 2(c), p. 1, l. 27, the bill provides that the commissioner of revenue shall pay funds appropriated by the legislature to "the subdivision" of the state most directly impacted by leasing and NPR-A. The problem with authorizing payment to only one subdivision is that the federal legislation under which the state would receive revenues from leasing in NPR-A provides specifically "that in the allocation of such funds, the State shall give priority to use by subdivisions of the state most directly or severely impacted by development of oil and gas"

in NPR-A. (Emphasis added.) In other words, the United States Congress, in authorizing the state to receive a proportion of the revenues derived from leasing in NPR-A, specifically provided that consideration is to be given to more than one political subdivision.

To avoid any conflict with the federal law, we suggest that subsection 2(c) (p. 1, l. 27) be amended to provide that the commissioner of revenue is to pay funds appropriated for that purpose to "those subdivisions" most directly impacted, not just one subdivision. Conforming changes would be required on p. 2, lines 2, 11, 12, 18 and 19 (changing "subdivision" to "subdivisions"), on p. 1, l. 28 (changing "is" to "are"), and on p. 2, l. 2 (changing "amount" to "amounts" and "equals" to "equal").

These changes would ensure that the bill does not conflict with the federal law under which the state receives the funds. On the other hand, nothing would prohibit the legislature from concluding on an annual basis that the North slope Borough was the only political subdivision impacted by leasing activities in NPR-A, and limiting appropriations to that one subdivision. However, there are other political subdivisions within the exterior boundaries of NPR-A (Barrow and Wainwright) which could be impacted, and major development in NPR-A could impact other political subdivisions outside its boundaries (e.g., Fairbanks, Nome, etc.) as a result of new transportation corridors, etc. These changes would remove any limitation on the legislature's power to determine annually which political subdivisions are impacted by NPR-A leasing activities, as well as conforming it to the federal law.

Subsection 2(d) provides that amounts received by the state shall be used "by the state" for certain purposes. However, funds appropriated to political subdivisions under subsection 2(c) cannot be used "by the state;" under subsection 2(d), they must be used by the political subdivision(s) for certain purposes. This ambiguity could be cured by inserting the phrase "and not paid under (c) of this section" on p. 2, l. 5 between the words "section" and "shall."

With those amendments, we believe the bill would present no other legal problems.

The Honorable Bettye Fahrenkamp

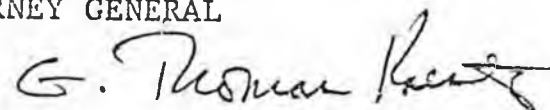
May 4, 1984  
Page 3

If we can be of further assistance, please call on us  
at your convenience.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:



G. Thomas Koester  
Assistant Attorney General

GTK:dln

Attachments

cc: Honorable Albert P. Adams

Honorable Barbara Lacher

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99311

April 26, 1982

Honorable Bettye Fahrenkamp  
Chairwoman, Senate Resources Committee  
Alaska State Senate  
Twelfth Legislature  
Pouch V  
Juneau, Alaska 99811

Re: SB 835 (National Petroleum Reserve-Alaska  
Trust Fund). Our File No. 366-619-82

Dear Senator Fahrenkamp:

SB 835, which would establish a trust fund account for revenues the state receives from the federal government from federal oil and gas leasing in the National Petroleum Reserve-Alaska, presents a number of serious legal questions in its current form.

The first question is raised under Article IX, Section 7 of the Alaska Constitution, which provides in pertinent part: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs." The Department of Law and the Legislative Counsel have disagreed over the reach of this prohibition. Our department has construed the prohibition broadly to apply to all "public revenues" (e.g., taxes, license fees, revenues from the sale or disposition of natural resources, etc.); the Legislative Counsel has interpreted it narrowly as reaching only tax and license revenues. On April 23, 1982, the Alaska Supreme Court adopted the Department of Law's broader interpretation in State v. Alex, \_\_\_ P.2d \_\_\_, Op. No. 2488 (Alaska, April 23, 1982). See Slip Op. at p. 20. As a result, we believe the revenues which the bill addresses -- i.e., those that the state would receive from the federal government as the result of federal oil and gas leasing in NPR-A -- are subject to the prohibition.

However, there is an exception to the dedicated fund prohibition "when required by the federal government for state participation in federal programs." The pertinent portion of

Honorable Bettye Fahrenkamp  
Re: SB 835

April 26, 1982  
Page 2

P.L. 96-514, 94 Stat. 2964, which directs payment of the money to the state, attaches certain conditions to the state's receipt of that money: The state may use it "for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." In other words, the funds received from the federal government must be dedicated to planning, construction, maintenance, and operation of essential public facilities, and other necessary provisions of public service. In addition, impacted political subdivisions must be given priority in the allocation of the funds.

We believe the establishment of a trust fund into which all the federal revenues are placed immediately upon receipt from the federal government is both permissible under Article IX, Section 7 of the Alaska Constitution and desirable in that it will ease the administrative task of demonstrating to the federal government that the funds received have been expended for the purposes and in the manner required by the federal Act. However, it also is our opinion that the explicit provisions of the law establishing the trust fund cannot impose conditions on the use of the money which exceed those "required by the federal government for state participation" in the federal program -- i.e., those in the federal Act. Since it is only the federal conditions which except the funds from the general dedicated fund prohibition, we believe the only conditions which may be attached to the funds are those required by the federal Act.

As a result, we believe the directive in Section 2(c) of SB 835 to pay a minimum of 50 percent of amounts in the fund to the North Slope Borough violates the dedicated fund prohibition because the federal Act does not require it for state participation. In addition, the directive in Section 2(d) that remaining amounts in the fund may be spent only "in conjunction with the exploration of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve" also violates the prohibition, again because the federal Act does not require it. The federal Act simply does not impose these restrictions on the use of the funds received by the state.

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Honorable Bettye Fahrenkamp  
Re: SB 835

April 26, 1982  
Page 3

Another question raised by SB 835 stems from Article II, Section 19 of the Alaska Constitution, which provides in pertinent part: "The legislature shall pass no local or special act if a general act can be made applicable." The problem here is that SB 835 specifically names the North Slope Borough as a recipient of amounts from the fund established. However, nothing in the federal Act requires that the North Slope be named, and it is obvious that a general act can be made applicable and satisfy the terms of the federal Act simply by "giv[ing] priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." That is the language of the federal Act, so using that language would satisfy that condition of the federal Act. It is language of general applicability to all subdivisions which might be impacted by NPR-A development, and therefore would be a general (not local or special) act within the meaning of the Alaska Constitution. (We also would point out that the North Slope Borough may not be the only political subdivision impacted by oil and gas leasing in NPR-A. In the reserve, Barrow is a first class city and Wainwright and Nuiqsut are second class cities. Moreover, development in NPR-A may have an impact on other political subdivisions along the pipeline corridor or, it is conceivable, any other route chosen to transport the oil and gas produced -- i.e., Nome, etc. This potential impact on other political subdivisions demonstrates the advisability of couching the bill in terms of a general act, not a local or special act directed only to the North Slope Borough.)

Another problem stems from Article II, Section 13 of the Alaska Constitution, which provides in pertinent part: "Bills for appropriations shall be confined to appropriations." The problem in SB 835 is the Section 2(c) directive to pay money to the affected subdivisions (in the bill's current form, only the North Slope Borough). Specifically, Section 2(d) describes that directive as an appropriation. If it is an appropriation, it is an appropriation in a general act and not in a bill confined to appropriations as required by the Constitution. This conclusion is reinforced by the provision in Section 2(d) that amounts remaining in the fund after the payment to the subdivisions cannot be expended without appropriation by the legislature. To avoid this problem, the bill could be amended simply to require appropriation by the legislature prior to any expenditure of funds in the trust account, giving the legislature discretion to appropriate funds to impacted subdivisions or for other purposes permitted under the federal Act.

Honorable Bettye Fahrenkamp  
Re: SB 835

April 26, 1982  
Page 4

Following my testimony on SB 835 at the Senate Resources Committee meeting on April 23, 1982, I met with Tom Smythe and Robert DuPere, representing the North Slope Borough, and Resa King of the Committee staff. We seemed to reach general agreement that some minor modifications to the bill would satisfy the constitutional concerns while remaining true to the basic thrust of the proposed bill. My notes indicate that the following changes were contemplated:

1. Page 1, lines 12-15 should be amended to read (material to be deleted is capitalized and in brackets; new material is underlined): "(1) The United States Congress, by P.L. 96-514 (94 Stat. 2964, December 12, 1980), [APPROPRIATED \$107,001,000 FOR A PROGRAM OF] provided that the state shall receive 50 percent of receipts derived from competitive leasing of oil and gas in the National Petroleum Reserve in Alaska;" This change would eliminate any confusion regarding the \$107,001,000 federal appropriation which is for administration of the leasing program, not an appropriation to the state. The state will only receive money under the federal Act after the program begins generating lease revenues.

2. Page 1, lines 24-26 should be amended to read: "The fund shall consist of funds [APPROPRIATED TO IT BY THE LEGISLATURE EQUAL TO THE AMOUNT OF FUNDS] received by the state from the federal government under P.L. 96-514." This would establish the constitutionally-permissible dedicated fund.

3. Subsection (c) of Section 2, which begins on page 1, line 29, and continues to page 2, line 4, should be deleted in its entirety and replaced with the following:

(c) The commissioner of revenue shall pay to the subdivisions of the state most directly or severely impacted by development of oil and gas leased under the federal Act the amount appropriated by the legislature from the fund for that purpose. It is the intent of the legislature that the amount appropriated for payment to the subdivisions equal 50 percent of the amount received from the federal government under the federal Act, and that this percentage be reviewed every five years following passage of this Act.

Honorable Bettye Fahrenkamp  
Re: SB 835

April 26, 1982  
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This would indicate the legislative intent of sharing the revenues with impacted political subdivisions without violating the dedicated fund prohibition by imposing conditions beyond those required by the federal Act. It also avoids the local and special legislation problem, as well as the problem regarding an appropriation in a bill not confined to appropriations.

4. Page 2, lines 5-10 should be amended to read:  
"(d) Amounts received by the state under (a) of this section [WHICH ARE NOT APPROPRIATED IN ACCORDANCE WITH (c) OF THIS SECTION] shall be used by the state, subject to appropriation by law, for the following activities and services [IN CONJUNCTION WITH THE EXPLORATION OF THE NATIONAL PETROLEUM RESERVE IN ALASKA AND A PROGRAM OF COMPETITIVE LEASING OF OIL AND GAS FROM THAT RESERVE]:" This avoids any dedicated fund problem by eliminating those conditions which exceed those required by the federal Act.

5. Subsection (e) of Section 2, appearing on page 2, lines 15-20, should be deleted in its entirety.

6. Subsection (f), beginning on page 2, line 21, and ending on page 3, line 1, should be amended to read:

"(f) amounts paid to [THE NORTH SLOPE BOROUGH] subdivisions under (c) of this section shall be used by the [NORTH SLOPE BOROUGH] subdivisions only for the following activities and services in conjunction with [THE EXPLORATION] development on the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve:

"(1) planning;

"(2) construction, maintenance, and operation of essential public facilities by the [NORTH SLOPE BOROUGH] subdivisions; and

"(3) other necessary public services provided by the [NORTH SLOPE BOROUGH] subdivisions."

This change is necessary to avoid the local and special legislation problem.

Honorable Bettye Fahrenkamp  
Re: SB 835

April 26, 1982  
Page 6

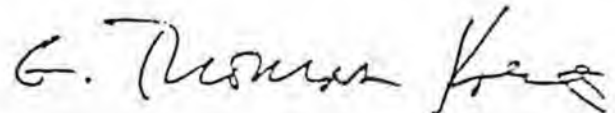
In addition, it was suggested that a committee letter of intent be drafted to the effect that, at the present time, the North Slope Borough is the only political subdivision of the state which will be most directly or severely impacted by oil and gas leasing in NPR-A.

I believe these comments accurately reflect the concensus of our work group. However, the other individuals present may have some further suggestions for change.

Finally, I must indicate that these comments are not intended to represent the Administration's policy position on this bill. Rather, they are provided in the nature of a drafting service to overcome the constitutional and other legal problems which we believe are presented by the bill in its current form. If we can be of further assistance in this regard, please contact us at your earliest convenience.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
G. Thomas Koester  
Assistant Attorney General

GTK:dlm

cc: Honorable Don Bennett  
Honorable M.E. Dankworth  
Co-Chairmen, Senate Finance Committee

Tom Smythe  
Robert DuPere  
Keith Specking

June 22, 1982

The Honorable Jay S. Hammond  
Governor  
State of Alaska  
Pouch A  
Juneau, Alaska 99811

Re: CSSB.835(Fin) am H  
(National Petroleum Reserve, Alaska, special revenue fund)  
Our File: 388-140-82

Dear Governor Hammond:

At your request, we have reviewed CSSB 835(Fin) am H which establishes a National Petroleum Reserve, Alaska, special revenue fund.

The United States Congress, in P.L. 96-514 (94 Stat. 2964, December 12, 1980), provided that the state is to receive 50 percent of all receipts from competitive oil and gas leasing in the National Petroleum Reserve, Alaska. The federal legislation provides that the state may use these revenues "for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, that in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act."

This bill would establish a fund into which all receipts from the federal government under this program would be deposited, and provides for management of the money deposited. It also provides that the commissioner of revenue is to pay to those subdivisions of the state most directly or severely "impacted" by development of oil and gas in the reserve the amounts appropriated from the fund by the legislature for that purpose. Remaining amounts in the fund may be used by the state, subject to appropriation by the

The Honorable  
Jay S. Hammond

June 22, 1982

- 2 -

legislature, for the activities and services specified in the federal legislation. Amounts paid to subdivisions of the state must also be used only for those purposes. The bill provides that the legislature intends that the amount paid to subdivisions be equal to 50 percent of the amount received from the federal government; however, that percentage would be subject to annual review by the legislature.

An obvious first question presented by the bill is whether it creates an impermissible dedicated fund under art. IX, sec. 7 of the Alaska Constitution, which provides in pertinent part: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs." Following the Alaska Supreme Court's decision in State v. Alex, \_\_\_ P.2d \_\_\_, Op. No. 2488 (Alaska, April 23, 1982), there is no question that the constitutional provision applies to these revenues.

However, under that provision, it is permissible for the state to establish a dedicated fund "when required by the federal government for state participation in federal programs." The federal legislation directing payment of the money to the state attaches conditions to the state's receipt of that money: the funds received from the federal government must be dedicated to (1) planning, (2) construction, maintenance, and operation of essential public facilities, and (3) other necessary provisions of public service. In addition, impacted political subdivisions of the state must be given priority in the allocation of funds. Although the federal Act does not specifically require creation of a fund, it does specify the uses of the money, and our constitutional provision refers to "dedicating" for "any special purpose." Thus, the federal Act does impose a requirement which is exempt from the dedicated fund prohibition.

We believe that the establishment of a trust fund into which these federal revenues are placed immediately upon receipt from the federal government is both permissible under art. IX, sec. 7 of the Alaska Constitution and desirable in that it will ease the administrative task of demonstrating to the federal government that the funds received have been spent for the purposes and in the manner required by the federal Act. In other words, this would be

The Honorable  
Jay S. Hammond

June 22, 1982

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a constitutionally permissible dedicated fund.

Another question is whether federal receipts received by the state under the federal legislation are subject to art. IX, sec. 15 of the Alaska Constitution, which provides in pertinent part: "At least twenty-five percent of all . . . federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund. . . ." Since these payments are "federal mineral revenue sharing payments," an argument can be made that twenty-five percent of them must be placed in the permanent fund under the plain language of art. IX, sec. 15.

However, we believe that that provision must be read in conjunction with art. IX, sec. 7. The latter section authorizes the creation of separate dedicated funds "when required by the federal government for state participation in federal programs." Because the federal legislation specifies the purposes for which these federal revenue sharing payments may be spent, and because deposit in the permanent fund is not among those purposes, we believe that the better view is that federal mineral revenue sharing payments from federal oil and gas leasing in the National Petroleum Reserve, Alaska, under P.L. 96-514 are not subject to the requirement in art. IX, sec. 15 that at least twenty-five percent be deposited in the permanent fund. While resolution of the issue is not entirely clear, we believe that this result makes better sense in that it avoids the anomalous situation in which compulsory deposit in the permanent fund under art. IX, sec. 15 could entirely defeat state participation in the federal program because that deposit would be an expenditure of the funds in a manner contrary to the federal legislation authorizing their transmittal to the state in the first place. This result would seem to flow directly from the authorization in art. IX, sec. 7 for separate dedicated funds "when required by the federal government for state participation in federal programs" which, presumably, are funds separate from the permanent fund established in art. IX, sec 15.

As initially introduced, this bill presented several other legal questions. See our letter of April 26, 1982, to the Honorable Bettye Fahrenkamp, Chairwoman, Senate Resources Committee, on this subject (Department of Law file no. 366-619-82). However, those problems appear to have been corrected during the legislative committee work on the

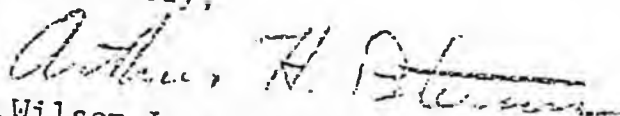
The Honorable  
Jay S. Hammond

June 22, 1982

- 4 -

bill. In its current form, it presents no legal problems.

Sincerely,



for Wilson I. Condon  
Attorney General

WLC:GTK:11b

EXPLORATION OF NATIONAL PETROLEUM RESERVE IN ALASKA

42 USC 6508.  
42 USC 6504.

43 USC 1712,  
1752.

42 USC 6502

43 USC 1337

For necessary expenses of carrying out the provisions of section 104 of Public Law 94-258, and for conducting hereafter and with funds appropriated by this Act and by subsequent appropriation Acts, notwithstanding any other provision of law and pursuant to such rules and regulations as the Secretary may prescribe, an expedition program of competitive leasing of oil and gas in the National Petroleum Reserve in Alaska, \$107,001,000, to remain available until expended: *Provided*, That (1) activities undertaken pursuant to this Act shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska (the Reserve); (2) the provisions of section 202 and section 603 of the Federal Lands Policy and Management Act of 1976 (90 Stat. 2743) shall not be applicable to the Reserve; (3) the first lease sale shall be conducted within twenty months of the date of enactment of this Act: *Provided*, That the first lease sale shall be conducted only after publication of a final environmental impact statement if such is deemed necessary under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4332); (4) the withdrawals established by section 102 of Public Law 94-258 are rescinded for the purposes of the oil and gas leasing program authorized herein; (5) bidding systems used in lease sales shall be based on bidding systems included in section 205(a)(1)(A) through (H) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629); (6) lease tracts may encompass identified geological structures; (7) the size of lease tracts may be up to sixty thousand acres, as determined by the Secretary; (8) each lease shall be issued for an initial period of up to ten years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities, or as drilling or reworking operations, as approved by the Secretary, are conducted thereon; and (9) all receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this Act shall be paid into the Treasury of the United States: *Provided*, That 50 per centum thereof shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 31 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: *Provided further*, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act.

Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the National Petroleum Reserve in Alaska which do not interfere with operations under any contract maintained or granted previously. Any information acquired in such explorations shall be subject to the conditions of 43 U.S.C. 1352(a)(1)(A).

Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve Alaska shall be barred unless brought in the appropriate District Court within 90 days after notice of the availability of such statement is published in the Federal Register. Any proceeding on such action



Judicial review.  
Publication in  
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shall be assigned for hearing at the earliest possible date and shall be expedited by such Court.

The detailed environmental studies and assessments that have been conducted on the exploration program and the comprehensive land-use studies carried out in response to sections 175 (b) and (c) of Public Law 94-258 shall be deemed to have fulfilled the requirements of section 102(2)(c) of the National Environmental Policy Act (Public Law 91-190), with regard to the first two oil and gas lease sales in the National Petroleum Reserve-Alaska: *Provided*, That not more than a total of 2,000,000 acres may be leased in these two sales: *Provided further*, That any exploration or production undertaken pursuant to this section shall be in accordance with section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 304; 42 U.S.C. 6304).

42 USC 6305.

42 USC 4332.

ADMINISTRATIVE PROVISIONS

The amount appropriated for the Geological Survey shall be available for purchase of not to exceed 22 passenger motor vehicles, of which 19 shall be for replacement only; reimbursement to the General Services Administration for security guard services; contracting for the furnishing of topographic maps and for the making of geophysical or other specialized surveys when it is administratively determined that such procedures are in the public interest; construction and maintenance of necessary buildings and appurtenant facilities; acquisition of lands for observation wells; expenses of the U.S. National Committee on Geology; and payment of compensation and expenses of persons on the rolls of the Geological Survey appointed, as authorized by law, to represent the United States in the negotiation and administration of interstate compacts.

BUREAU OF MINES

MINES AND MINERALS

For expenses necessary for conducting inquiries, technological investigations and research concerning the extraction, processing, use and disposal of mineral substances without objectionable social and environmental costs; to foster and encourage private enterprise in the development of mineral resources and the prevention of waste in the mining, minerals, metal and mineral reclamation industries; to inquire into the economic conditions affecting those industries; to promote health and safety in mines and the mineral industry through research; and for other related purposes as authorized by law, \$139,428,000, of which \$107,726,000 shall remain available until expended.

ADMINISTRATIVE PROVISION

The Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to execute projects in cooperation with other agencies, Federal, State, or private: *Provided*, That the Bureau of Mines is authorized during the current fiscal year, to sell directly or through any Government agency, including corporations, any metal or mineral product that may be manufactured in pilot plants operated by the Bureau of Mines and the proceeds of such sales shall be covered into the Treasury as miscellaneous receipts.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

April 26, 1982

Honorable Bettye Fahrenkamp  
Chairwoman, Senate Resources Committee  
Alaska State Senate  
Twelfth Legislature  
Pouch V  
Juneau, Alaska 99811

Re: SB 835 (National Petroleum Reserve-Alaska  
Trust Fund). Our File No. 366-619-82

Dear Senator Fahrenkamp:

SB 835, which would establish a trust fund account for revenues the state receives from the federal government from federal oil and gas leasing in the National Petroleum Reserve-Alaska, presents a number of serious legal questions in its current form.

The first question is raised under Article IX, Section 7 of the Alaska Constitution, which provides in pertinent part: "The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs." The Department of Law and the Legislative Counsel have disagreed over the reach of this prohibition. Our department has construed the prohibition broadly to apply to all "public revenues" (e.g., taxes, license fees, revenues from the sale or disposition of natural resources, etc.); the Legislative Counsel has interpreted it narrowly as reaching only tax and license revenues. On April 23, 1982, the Alaska Supreme Court adopted the Department of Law's broader interpretation in State v. Alex, \_\_\_ P.2d \_\_\_, Op. No. 2488 (Alaska, April 23, 1982). See Slip Op. at p. 20. As a result, we believe the revenues which the bill addresses -- i.e., those that the state would receive from the federal government as the result of federal oil and gas leasing in NPR-A -- are subject to the prohibition.

However, there is an exception to the dedicated fund prohibition "when required by the federal government for state participation in federal programs." The pertinent portion of

P.L. 96-514, 94 Stat. 2964, which directs payment of the money to the state, attaches certain conditions to the state's receipt of that money: The state may use it "for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: Provided further, That in the allocation of such funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." In other words, the funds received from the federal government must be dedicated to planning, construction, maintenance, and operation of essential public facilities, and other necessary provisions of public service. In addition, impacted political subdivisions must be given priority in the allocation of the funds.

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As a result, we believe the directive in Section 2(c) of SB 835 to pay a minimum of 50 percent of amounts in the fund to the North Slope Borough violates the dedicated fund prohibition because the federal Act does not require it for state participation. In addition, the directive in Section 2(d) that remaining amounts in the fund may be spent only "in conjunction with the exploration of the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve" also violates the prohibition, again because the federal Act does not require it. The federal Act simply does not impose these restrictions on the use of the funds received by the state.

Another question raised by SB 835 stems from Article II, Section 19 of the Alaska Constitution, which provides in pertinent part: "The legislature shall pass no local or special act if a general act can be made applicable." The problem here is that SB 835 specifically names the North Slope Borough as a recipient of amounts from the fund established. However, nothing in the federal Act requires that the North Slope be named, and it is obvious that a general act can be made applicable and satisfy the terms of the federal Act simply by "giv[ing] priority to use by subdivisions of the State most directly or severely impacted by development of oil and gas leased under this Act." That is the language of the federal Act, so using that language would satisfy that condition of the federal Act. It is language of general applicability to all subdivisions which might be impacted by NPR-A development, and therefore would be a general (not local or special) act within the meaning of the Alaska Constitution. (We also would point out that the North Slope Borough may not be the only political subdivision impacted by oil and gas leasing in NPR-A. In the reserve, Barrow is a first class city and Wainwright and Nuiqsuit are second class cities. Moreover, development in NPR-A may have an impact on other political subdivisions along the pipeline corridor or, it is conceivable, any other route chosen to transport the oil and gas produced -- i.e., Nome, etc. This potential impact on other political subdivisions demonstrates the advisability of couching the bill in terms of a general act, not a local or special act directed only to the North Slope Borough.)

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2. Page 1, lines 24-26 should be amended to read: "The fund shall consist of funds [APPROPRIATED TO IT BY THE LEGISLATURE EQUAL TO THE AMOUNT OF FUNDS] received by the state from the federal government under P.L. 96-514." This would establish the constitutionally-permissible dedicated fund.

3. Subsection (c) of Section 2, which begins on page 1, line 29, and continues to page 2, line 4, should be deleted in its entirety and replaced with the following:

(c) The commissioner of revenue shall pay to the subdivisions of the state most directly or severely impacted by development of oil and gas leased under the federal Act the amount appropriated by the legislature from the fund for that purpose. It is the intent of the legislature that the amount appropriated for payment to the subdivisions equal 50 percent of the amount received from the federal government under the federal Act, and that this percentage be reviewed every five years following passage of this Act.

This would indicate the legislative intent of sharing the revenues with impacted political subdivisions without violating the dedicated fund prohibition by imposing conditions beyond those required by the federal Act. It also avoids the local and special legislation problem, as well as the problem regarding an appropriation in a bill not confined to appropriations.

4. Page 2, lines 5-10 should be amended to read: "(d) Amounts received by the state under (a) of this section [WHICH ARE NOT APPROPRIATED IN ACCORDANCE WITH (c) OF THIS SECTION] shall be used by the state, subject to appropriation by law, for the following activities and services [IN CONJUNCTION WITH THE EXPLORATION OF THE NATIONAL PETROLEUM RESERVE IN ALASKA AND A PROGRAM OF COMPETITIVE LEASING OF OIL AND GAS FROM THAT RESERVE]:" This avoids any dedicated funds problem by eliminating those conditions which exceed those required by the federal Act.

5. Subsection (e) of Section 2, appearing on page 2, lines 15-20, should be deleted in its entirety.

6. Subsection (f), beginning on page 2, line 21, and ending on page 3, line 1, should be amended to read:

"(f) amounts paid to [THE NORTH SLOPE BOROUGH] subdivisions under (c) of this section shall be used by the [NORTH SLOPE BOROUGH] subdivisions only for the following activities and services in conjunction with [THE EXPLORATION] development on the National Petroleum Reserve in Alaska and a program of competitive leasing of oil and gas from that reserve:

"(1) planning;

"(2) construction, maintenance, and operation of essential public facilities by the [NORTH SLOPE BOROUGH] subdivisions; and

"(3) other necessary public services provided by the [NORTH SLOPE BOROUGH] subdivisions."

This change is necessary to avoid the local and special legislation problem.

Honorable Bettye Fahrnkamp  
Re: SB 835

April 26, 1982  
Page 6

In addition, it was suggested that a committee letter of intent be drafted to the effect that, at the present time, the North Slope Borough is the only political subdivision of the state which will be most directly or severely impacted by oil and gas leasing in NPR-A.

I believe these comments accurately reflect the consensus of our work group. However, the other individuals present may have some further suggestions for change.

Finally, I must indicate that these comments are not intended to represent the Administration's policy position on this bill. Rather, they are provided in the nature of a drafting service to overcome the constitutional and other legal problems which we believe are presented by the bill in its current form. If we can be of further assistance in this regard, please contact us at your earliest convenience.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By: *15/*  
G. Thomas Koester  
Assistant Attorney General

GTK:dlm

cc: Honorable Don Bennett  
Honorable M.E. Dankworth  
Co-Chairmen, Senate Finance Committee  
Tom Smythe  
Robert DuPere ✓  
Keith Specking

COMMITTEE REPORT  
SENATE

FURTHER: FINANCE

5/3/84

Date 5-7-84

Mr. President

The Committee on RESOURCES considered CSHB 298(Jud)

establishing a National Petroleum Reserve, Alaska, special revenue fund; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with, or ~~adopt~~ SCS for CSHB 298(Res)
- new title
- same title and recommends Do Pass
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

*Vito*  
*Paul*  
*Arthur Stupulovich*  
*Michael*  
*Ziegler*  
*Bob Mulvaney*

MEMBERS HAVING  
OTHER RECOMMENDATIONS

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Dittus Fehrenkamp*  
 Chairman  
*Do Pass*  
 Chairman recommendation

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date 2/27/84

REQUEST

Bill/Resolution No: CS HB 298(Jud)  
 Title: National Petroleum Reserve  
Special Revenue Fund  
 Sponsor: House Resources  
 Requestor: House Judiciary  
 Date of Request: 3-21-84

FISCAL DETAIL

Agency Affected: Revenue  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program or Subprogram(s) Affected:  
Treasury

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>CAPITAL</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<u>REVENUE</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB  
 Division: Treasury

Phone: 465-2350  
 Date: 3-21-84

Approved by Commissioner: [Signature]  
 Agency: Revenue

Date: 3/23/84

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date \_\_\_\_\_

REQUEST

Bill/Resolution No: CS HB 298 (Jud)  
 Title: National Petroleum Reserve  
Special Revenue Fund  
 Sponsor: House Finance  
 Requestor: House Finance  
 Date of Request: April 20, 1984

FISCAL DETAIL

Agency Affected: Department of Revenue  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program of Subprogram(s) Affected:  
Treasury

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB  
 Division: Treasury

Phone: 465-2350  
 Date: April 23, 1984

Approved by Commissioner: Milt Barker  
 Agency: Revenue

Date: 4-23-84

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date 2/23/84

REQUEST

Bill/Resolution No: CS HB 298(Jud)  
 Title: National Petroleum Reserve  
Special Revenue Fund  
 Sponsor: House Resources  
 Requestor: House Judiciary  
 Date of Request: 3-21-84

FISCAL DETAIL

Agency Affected: Revenue  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program or Subprogram(s) Affected:  
Treasury

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>CAPITAL</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<u>REVENUE</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Milt Barker MB  
 Division: Treasury  
 Approved by Commissioner: [Signature]  
 Agency: Revenue

Phone: 465-2350  
 Date: 3-21-84  
 Date: 3/23/84

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date

REQUEST

Bill/Resolution No: CS HB 298 (Jud)  
 Title: National Petroleum Reserve  
Special Revenue Fund  
 Sponsor: House Finance  
 Requestor: House Finance  
 Date of Request: April 20, 1984

FISCAL DETAIL

Agency Affected: Department of Revenue  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program of Subprogram(s) Affected:  
Treasury

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>	-	-	-	-	-	-
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
<u>TOTAL OPERATING</u>	-	-	-	-	-	-
<u>CAPITAL</u>	-	-	-	-	-	-
<u>REVENUE</u>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Hilt Barker MB  
 Division: Treasury

Phone: 465-2350  
 Date: April 23, 1984

Approved by Commissioner: Hilt Barker  
 Agency: Revenue

Date: 4-23-84

Distribution (by Agency preparing fiscal note):

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