LEG. FINANCE - BILLS 1983 - 1984 1993

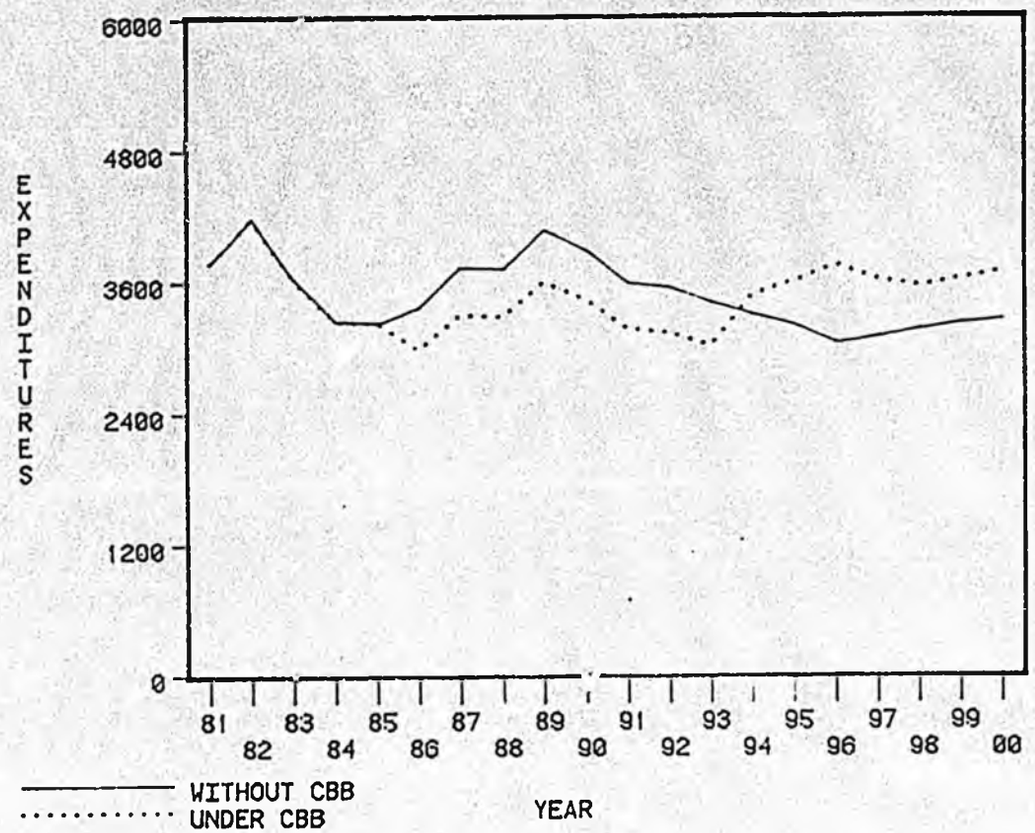
HJR 39 cont. - HJR 45

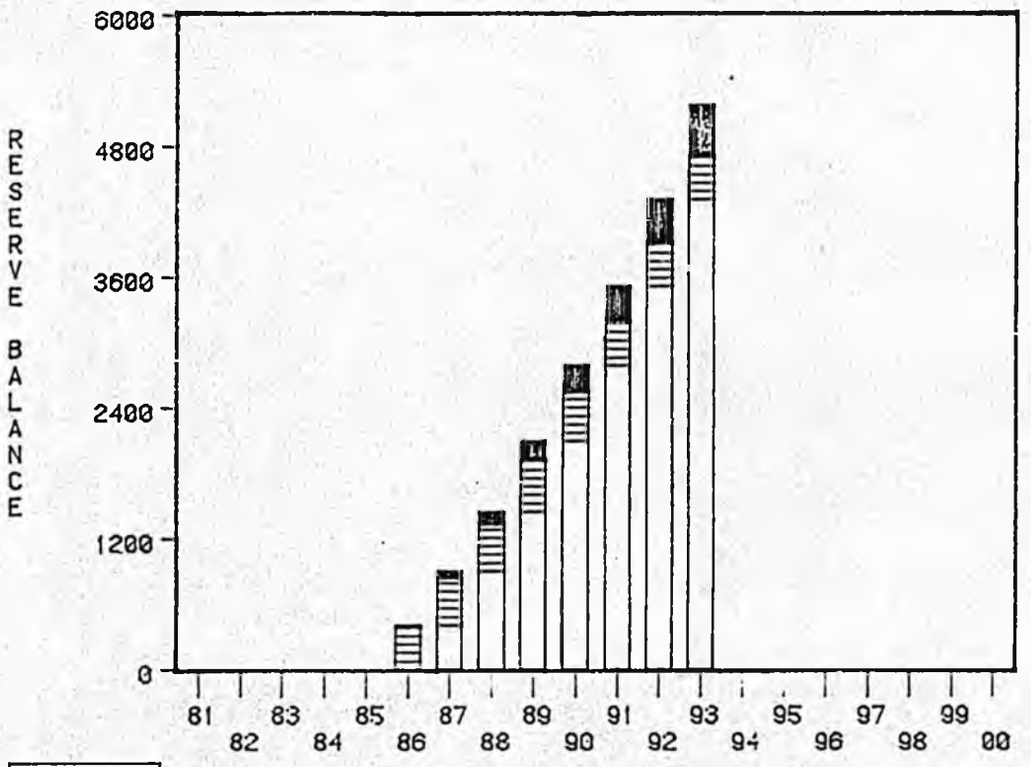
1993

Figure 3

EXPENDITURES AND RESERVES UNDER CASH BASED BUDGETING

(IN MILLIONS OF $)





Scenario 2
Percentage of General Fund Revenues Plus Upfront Contribution

Table 4 displays a projection of the CBB computer model assuming an annual contribution of 8.9 percent of General Fund unrestricted revenues and a $300 million upfront (grubstake) contribution. A significant difference in this projection as compared to the projection shown in Table 3 is that the initial contribution year is FY 85 instead of FY 86.

Table 5 presents a summary of how "General Fund revenues in excess of the operating costs of government" (from Table 2) compare to the contribution requirements for cash-based budgeting.

Table 5
The General Fund As A Source For Cash-Based Budgeting
(millions of dollars)

Fiscal Year	General Fund Excess Over Operating Budget*	Scenario 1** CBB Required Contributions	Scenario 2*** CBB Required Contributions
1985	$1,039		$300
1986	1,054	$347	300
1987	1,279	384	332
1988	1,114	382	330
1989	1,315	419	362
1990	962	400	345
1991	489	369	319
1992	257	364	315
1993	-70	351	303

*These projections assume a 30th percentile revenue forecast with an inflation rate of 6 percent annually. Excess revenues equal projected General Fund unrestricted revenues minus a continuation FY 84 level Operating Budget.

**Scenario 1 assumes a cash-based budgeting program with annual General Fund unrestricted revenue contributions of 10.3 percent.

***Scenario 2 assumes a cash-based budgeting program with annual General Fund unrestricted revenue contributions of 8.9 percent and an upfront (grubstake) contribution of $300 million.

Prepared by: House Research Agency

Table 4

Scenario 2

THE GENERAL FUND AS A REVENUE SOURCE FOR CASH-BASED BUDGETING

Based on a 30th Percentile Revenue Projection

(millions of dollars)

Fiscal Year	DOR Revenue Forecast	Revenue Under CBB	Potential Expenditure Level	General Fund Earnings	General Fund Balance	....Cash-Based Budgeting Reserve Fund.... Contributions	Earnings	Balance
1981	3,769		3,769	201	2,010			
1982	4,174		4,174	254	2,540			
1983	3,624		3,624	266	2,660			
1984	3,233		3,233	300	3,000			
1985	3,219	2,919	2,919	250	2,500	300.0	15	315
1986	3,345	3,066	3,066	259	2,590	299.5	47	662
1987	3,729	3,397	3,397	288	2,880	331.9	85	1,078
1988	3,711	3,381	3,381	288	2,880	330.3	128	1,537
1989	4,068	3,706	3,706	318	3,180	362.1	178	2,077
1990	3,880	3,535	3,535	301	3,0	345.3	234	2,656
1991	3,582	3,263	3,263	275	2,750	318.8	293	3,268
1992	3,536	3,221	3,221	270	2,700	314.7	357	3,940
1993	3,405	3,102	3,102	258	2,580	303.0	427	4,670
1994	3,290	3,739	3,471	696	7,408			
1995	3,195	3,651	3,572	692	7,378			
1996	3,033	3,469	3,695	658	7,011			
1997	3,092	3,524	3,560	657	7,006			
1998	3,159	3,601	3,496	671	7,150			
1999	3,213	3,664	3,563	682	7,271			
2000	3,245	3,702	3,632	689	7,351			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

col.

2 Department of Revenue January, 1984 revenue projection.

3 Revenues after effects of cash-based budgeting program. During the CBB reserve contribution period, revenues (column 3) are equal to DOR projections minus annual CBB contributions. Starting with the first cash-based budgeting year, revenues (column 3) are equal to DOR projections plus additional earnings which accrue to the general fund as a result of transferring the CBB reserve fund balance to the general fund.

4 Expenditure levels are presently limited to projected revenues (ignoring the Constitutional appropriation limit). Beginning with the first cash-based budgeting year, expenditures will be limited to the revenues collected in the previous calendar year.

5 General fund earnings are DOR projections up to the start of cash-based budgeting, at which point the general fund earnings will be augmented due to the increased earnings capacity of the general fund from that point on into the future.

6 Beginning with the first cash-based budgeting year, the general fund balance is substantially increased by the transfer of the CBB reserve fund.

8 Reserve fund earnings are calculated at a 10 percent annual interest rate compounded monthly.

9 The earnings rate of the CBB reserve fund is compounded monthly using a 10% annual interest rate.

This projection is based on a general fund unrestricted revenue contribution of 8.9 percent.

A 'grubstake' contribution is assumed in this projection for FY 85 in the amount of $ 310 million.

From Table 5, it can be seen that only in the last two years of the contribution period (FY 92 and FY 93), would the funding demands under scenarios 1 and 2 exceed the projected "excess General Fund revenues" available. Unless a supplementary source of revenues were employed in those years, the automatic General Fund transfers to the CBB reserve would cut into the share of total State revenues identified for the Operating Budget.[12] Of course, these projections assume that operating expenditures and actual revenues received will match the 30th percentile revenue forecast. It should be remembered that CS HJR 39 contains a second contribution mechanism: a percentage of the unappropriated General Fund balance. If expenditures are kept below the level of total revenues received during the CBB contribution years, this contribution mechanism may reduce or eliminate the projected shortage of "excess General Funds" shown for scenarios 1 and 2.

On the other hand, if the operating costs of government are permitted to increase during the CBB contribution period, the amounts of "excess" General Fund revenues would be reduced. An earlier shortfall in "excess" General Funds means that the CBB contributions would cut more deeply into the share identified for the Operating Budget.

Contributions to the CBB reserve may also impact the Operating Budget share of total appropriations as a consequence of provisions in the present Constitutional Appropriation Limit. Of the total annual appropriation, "at least one-third shall be reserved for capital projects and loan appropriations," according to Article IX, Section 16 of the State Constitution. If transfers of State revenues to the CBB reserve cut too deeply into total available revenues, the Operating Budget share may have to bear part of the burden along with "excess" General Funds (which includes the Capital Budget and loans appropriations).

Permanent Fund Earnings. The Permanent Fund is a source of revenues which could be used to supplement General Fund contributions in those years when a shortage in "excess" General Funds occur. Because of the considerable earnings capacity of the Permanent Fund, however, the fund might serve equally as well as the primary source of funds for cash-based budgeting, with the General Fund as a supplementary source. In the following discussion, emphasis will be placed on the latter perspective.

Before we begin assessing the development of a cash-based budgeting reserve fund using the Permanent Fund earnings as a revenue source, a

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[12] See Appendix E for a discussion of how cuts in the Operating Budget could be used as a fiscal management tool to bring the operating costs of government within the level of projected revenues in the 1990s.

catergories of the fund. Moreover, a decision to use the Permanent Fund earnings as a source for contributions to the CBB reserve fund constitutes a significant change in the laws governing the existing Permanent Fund program.

Consequently, for purposes of this analysis, we have assumed that the Permanent Fund is restructured in a way that will simplify calculations of funds required to inflation-proof the Permanent Fund principal, make contributions to the cash-based budgeting reserve fund and allocate funds for dividend payments. Our Permanent Fund model is defined by the following considerations:[13]

- Inflation-proofing of the Permanent Fund principal is the number one priority. Consequently, an amount necessary to inflation-proof the Permanent Fund principal is deducted from total Permanent Fund earnings each year.

- The second priority for earnings under the restructured Permanent Fund program is the cash-based budgeting reserve fund. Therefore, after deductions are made for inflation-proofing the Permanent Fund principal, any remainder is available for contribution to the CBB reserve fund.

- Should any money remain after deductions are made for inflation-proofing and contributions to the reserve fund, the balance is made available for Permanent Fund dividend distribution.

Given the Permanent Fund restructuring described above, it is a comparatively simple matter to project that portion of Permanent Fund earnings available for CBB reserve contributions. Table 6 shows such a projection for the Department of Revenue 30th percentile revenue forecast. Given a transfer of Permanent Fund earnings (in excess of inflation-proofing requirements) to the CBB reserve at the end of each fiscal year, this projection shows that the CBB reserve will be sufficiently large to begin cash-based budgeting in FY 96.

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[13]Although the undistributed income account is legally vulnerable to appropriation by the legislature for any purpose, this source of funds is not used as a grubstake for cash-based budgeting in this restructured Permanent Fund model. The procedure of averaging income over five years with surplusses deposited into the undistributed income account serves to insulate the managers of the Permanent Fund from pressures to adopt high risk investment policies or the temptation to sell assets of the Corporation prematurely in order to boost the Permanent Fund financial image over the short term.

discussion of the complexities of the Permanent Fund as it is currently constructed is in order. The monies of the Permanent Fund and associated accounts are treated as a unit for purposes of investment and computation of earnings, though for accounting purposes there are, in effect, three separate accounting categories under the management of the Permanent Fund Corporation, and one administrative account managed by the Department of Revenue for the purpose of dividend distribution.

The largest and most important account is the Permanent Fund principal balance into which contributions are made annually from a portion of all oil royalties, rentals and lease bonuses. For purposes of computing Permanent Fund dividends, the current year net income earnings on the Permanent Fund are averaged with the yields of the four previous years. The resultant quantity is referred to as "income available for distribution." An amount equal to fifty percent of the distributable income is transferred into a special administrative dividend account. The balance of the present year's total income earnings is available to offset the effects of inflation of the Permanent Fund principal. While the Permanent Fund Corporation uses a national standard inflation index to determine the sums needed each year to inflation-proof the Permanent Fund, the Department of Revenue uses an annual inflation factor of six percent in their long-term projections.

If a surplus from the present year's total income earnings remains after making the statutory allotment for dividends and inflation-proofing the fund, the remainder is transferred to the second major account of the Permanent Fund: the undistributed income account (UIA). The purpose of the undistributed income account is to provide a repository for surplus Permanent Fund income created by the five-year averaging procedure, but it also provides a reserve for inflation-proofing the Permanent Fund in future years when and if available earnings are insufficient for that purpose.

Earnings that accrue to the undistributed income account annually are accounted for separately from the principal of the UIA and thus constitute the fourth accounting category. UIA earnings are subject to separate accounting from the UIA principal because the UIA earnings are not legally designated for legislative appropriation to inflation-proof the Permanent Fund. As a matter of practice, the UIA earnings are the first funds to be allocated to the dividend account, with the balance required taken from the Permanent Fund principal earnings.

The Department of Revenue uses a sophisticated computer model to project the Permanent Fund balance, fund income earnings, dividend payments, requirements for inflation-proofing and the undistributed income account balance. Because of the very involved nature of the Permanent Fund program, it is difficult to dip into various categories of the Permanent Fund without seriously altering the projections for other

catergories of the fund. Moreover, a decision to use the Permanent Fund earnings as a source for contributions to the CBB reserve fund constitutes a significant change in the laws governing the existing Permanent Fund program.

Consequently, for purposes of this analysis, we have assumed that the Permanent Fund is restructured in a way that will simplify calculations of funds required to inflation-proof the Permanent Fund principal, make contributions to the cash-based budgeting reserve fund and allocate funds for dividend payments. Our Permanent Fund model is defined by the following considerations:[13]

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[13]Although the undistributed income account is legally vulnerable to appropriation by the legislature for any purpose, this source of funds is not used as a grubstake for cash-based budgeting in this restructured Permanent Fund model. The procedure of averaging income over five years with surplusses deposited into the undistributed income account serves to insulate the managers of the Permanent Fund from pressures to adopt high risk investment policies or the temptation to sell assets of the Corporation prematurely in order to boost the Permanent Fund financial image over the short term.

Table 6

PERMANENT FUND EARNINGS AS A REVENUE SOURCE FOR CASH-BASED BUDGETING
Based On A 30th Percentile Revenue Projection
(millions of dollars)

Fiscal Year	Perm.Fund Contribs.	Perm.Fund Balance	Perm.Fund Earnings	Inflation Proofing	Perm.Fund Dividend	CBB Reserve Contribs.	CBB Reserve Balance
1986	335	5,948	544	337	0	208	208
1987	374	6,701	613	379	0	234	463
1988	402	7,529	690	426	0	264	773
1989	464	8,473	776	480	0	297	1,147
1990	440	9,447	869	535	0	335	1,596
1991	411	10,450	965	592	0	374	2,129
1992	413	11,515	1,066	652	0	414	2,756
1993	402	12,632	1,172	715	0	457	3,488
1994	392	13,805	1,283	781	0	501	4,338
1995	373	15,029	1,399	851	386	163	4,935

This projection assumes that the Permanent Fund program is revised as described in Chapter Two. Permanent Fund earnings are based on a real rate of return of 4 %, and an inflation rate of 6 %.
In the final contribution year, only the amount needed to raise the CBB reserve to a level equal to 1.5 times the appropriations of the prior fiscal year is shown.

Obviously, as the Permanent Fund continues to grow over the years, both the inflation-proofing requirement and the earnings capacity of the fund increase. Since the Permanent Fund earnings rate is projected to exceed the inflation rate over this period of time, increasingly larger contributions to the CBB reserve fund are possible, ranging from $208 million in FY 86 to $501 million in FY 94. Notice that in the final contribution year (FY 95), only $163 million need be contributed to the CBB reserve fund in order to reach the target (equal to the 1.5 times the appropriations of the preceding fiscal year). This leaves $386 million to be distributed as Permanent Fund dividends in that year. Once the need for contributions to the CBB reserve end, the Permanent Fund dividend program would be restored to substantially higher levels.

A mean revenue projection of Permanent Fund earnings used to fund cash-based budgeting is presented in Appendix F. The major difference between the mean forecast and the 30th percentile forecast is that a longer contribution period is required under the mean forecast assumption. Under the mean forecast, cash-based budgeting would not be projected to begin until FY 98.

To summarize the effects of using Permanent Fund earnings as a source of funds for cash-based budgeting, the following points can be made:

- Cash-based budgeting could be fully funded from Permanent Fund earnings (after inflation-proofing the Permanent Fund principal) by FY 96 under a 30th percentile revenue forecast, or by FY 98 under a mean revenue forecast.

- Unlike the General Fund source of contributions to cash-based budgeting, the Permanent Fund earnings approach has the advantage that the level of General Fund appropiations would not be diminished by $300 to $400 million per year.

- The major disadvantage of the Permanent Fund earnings source for funding cash-based budgeting is that the dividend distribution program would be eliminated over the 9 to 11-year CBB reserve contribution period.

New Or Higher Taxes. In their quarterly publication, Revenue Sources, the Department of Revenue distinguishes between two broad classes of tax revenues: petroleum taxes and nonpetroleum taxes. Considering that nearly 85 percent of total State revenues come from petroleum taxes and royalties, it is conceivable that additional revenues, sufficient to meet the necessary contributions for the CBB reserve fund, could be raised through increased petroleum taxes. The political feasibility of raising petroleum taxes is, on the other hand, a matter of considerable conjecture, especially in light of the Congressional debate over the need to place a limit on the ability of petroleum

Other partial funding options for cash-based budgeting include various forms of front-end funding for the CBB reserve:

- A General Fund appropriation such as the $300 million grubstake described earlier in this chapter.
- The Permanent Fund undistributed income account balance of $353.8 million (June 30, 1983 audited figure).
- The rainy day fund with a June 30, 1983 balance of $316 million.
- Other State funds such as the Public Employees' and Teachers' Retirement Funds are comparatively large sources of funds that could be invested in the cash-based budgeting program. The State contributions to cover the unfunded liabilities of the Public Employees' and Teachers' Retirement Funds could be reduced from the present level with the corresponding savings available for CBB reserve deposits.

These possible funding alternatives are mentioned here to provide a more complete picture of the many funding methods potentially available for cash-based budgeting. These sources will not be the subject of further analysis in this report.

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producing states to increase oil production taxes. Further analysis of this CBB reserve funding option is beyond the scope of this report.

The potential for funding cash-based budgeting by raising existing nonpetroleum taxes is also questionable but for a different reason. Unlike petroleum taxes, nonpetroleum taxes make up such a small portion of total State revenues that only massive increases in tax rates would produce a sufficient amount of additional revenue to cover the cost of funding a CBB reserve fund. Given the January 1984 Department of Revenue estimate of all nonpetroleum tax revenue at about $131 million, tax rates would have to be three or four times higher than existing rates in order to meet CBB reserve contribution requirements of between $300 million and $420 million per year. It appears unlikely that nonpetroleum tax bases could sustain such high increases in tax rates.

A more promising possibility for funding cash-based budgeting would be through the imposition of a new tax or the resurrection of an old tax such as the individual income tax (repealed in 1980). Although deserving of careful analysis in order to produce an accurate measure of the potential of a newly imposed State individual income tax, a rough estimate based on earlier data collections would place the revenue generating potential of this tax in the vicinity of $136 million for FY 85.[14] Ignoring the obvious political considerations, a reinstated individual income tax appears to have sufficient revenue generating potential to fund cash-based budgeting by FY 94.

Combination Of Revenue Sources. A simple alternative to relying on a single source of revenues for the funding of cash-based budgeting is to combine sources. A combination of General Fund unrestricted revenues, Permanent Fund earnings, and revenues from a reinstituted State individual income tax would clearly be sufficient to cover the funding requirements of cash-based budgeting, based on the preceding analysis. A combination source approach to cash-based budgeting would have the decided benefit of mitigating the impact of CBB reserve contributions on the capital budget or the Permanent Fund dividend program inherent in programs which rely solely on a single revenue source such as General Funds or Permanent Fund earnings.

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[14]This estimate was reported in an April 20, 1982, memorandum from the Research Section of the Department of Revenue entitled "Alternative Means of Increasing Nonpetroleum Revenues."

Other partial funding options for cash-based budgeting include various forms of front-end funding for the CBB reserve:

- A General Fund appropriation such as the $300 million grubstake described earlier in this chapter.
- The Permanent Fund undistributed income account balance of $353.8 million (June 30, 1983 audited figure).
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These possible funding alternatives are mentioned here to provide a more complete picture of the many funding methods potentially available for cash-based budgeting. These sources will not be the subject of further analysis in this report.

CHAPTER THREE

NEAR-TERM IMPLEMENTATION OF CASH-BASED BUDGETING

Two methods by which cash-based budgeting could conceivably be implemented soon after voter approval are by a loan from the Permanent Fund and by bonding. Since the Alaska Constitution (Article 9, Section 8) presently prohibits the State from incurring debt except for voter approved capital construction projects, both the Permanent Fund loan and bonding methods of funding cash-based budgeting would require the passage of Constitutional amendments.

Under either option, the reserve required for initiation of cash-based budgeting for FY 86 is $4.829 billion as shown in Table 7. With a reserve fund of this size, the FY 86 budget could be prepared with appropriations limited to the amount of revenues collected in the previous calendar year (1984). Beginning with the FY 86 budget, appropriations would have to be made each year to service the $4.829 billion debt owed either to the Permanent Fund or to the bond buyers.

Table 7
Cash-Based Budgeting Reserve Fund Requirements
(for CBB start-up on any fiscal year through FY 90)

Fiscal Year	Projected Revenues ($millions)	CBB Reserve Requirement* ($millions)
1986	$3,365	$4,829
1987	3,729	5,048
1988	3,711	5,594
1989	4,068	5,567
1990	3,880	6,102

*Reserve requirements for near-term start-up of cash-based budgeting are equal to 1.5 times the appropriations of the preceding fiscal year. Appropriations are assumed to equal revenue projections.

Source: Department of Revenue 30th percentile forecast (Jan. 1984).

Prepared by: House Research Agency

Permanent Fund Loan

Except for problems associated with the liquidity of Permanent Fund investments, the Permanent Fund principal provides a potential source of funds for initiation of cash-based budgeting.[15] A recent Department of Revenue forecast projects a $5.3 billion balance in the Permanent Fund at the beginning of FY 86. This means that the required loan to the CBB reserve fund would nearly exhaust the investment potential of the Permanent Fund.

An immediate question is what would this do to Permanent Fund dividend distributions. Assuming that the interest rate on the loan were allowed to float from year to year at the average rate of return of all other Permanent Fund investments, the effect would be negligible. In this vein, the CBB reserve fund loan can be thought of as just another investment of Permanent Fund principal, anticipated to provide a reasonable rate of return. Since the dividends are dependent only on the total earnings of the Permanent Fund investments, and not on the balance in the fund, the annual dividends would remain unchanged.

A schedule of estimated loan repayments to the Permanent Fund once cash-based budgeting begins is shown in Table 8. This repayment schedule assumes monthly payments at an interest rate on the unpaid balance of 10 percent per annum.[16]

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[15] It is likely that some Permanent Fund investments would not be immediately convertible to the cash-based budgeting reserve. The full CBB reserve requirement may not be available for 2 to 3 years. Consequently, the FY 86 CBB implementation presented above should be thought of as the most optimistic case, especially when it is noted that with each year delay, the CBB reserve requirement grows as shown in Table 7.

[16] Officials of the Alaska Permanent Fund Corporation have expressed the point of view that a 10 percent rate of return on a loan to fund cash-based budgeting is too low in comparison to the rate that would be expected on the open market. They suggest that a true market rate of 12.5 to 13 percent is more appropriate for an investment of comparable risk to the CBB reserve loan. With market interest rates, the annual debt service on a Permanent Fund loan would be increased by about $84 million assuming a 7-year loan maturity.

Table 8
Cash-Based Budgeting
Annual Permanent Fund Loan Repayments Beginning FY 86
(millions of dollars)

Repayment Period (years)	Final Payment	Annual Debt Service To Permanent Fund	Annual GF Contribution Beyond Added Earnings Capacity of General Fund
6	FY 91	$1,073.5	$591
7	FY 92	962.0	479
8	FY 93	879.3	396
9	FY 94	815.8	333
10	FY 95	765.8	283

Prepared by: House Research Agency

Assuming a 10 percent rate of return on investments, a Permanent Fund loan of $4.829 billion to the General Fund would increase the earnings capacity of the General Fund by $482.9 million. Consequently, $482.9 million of the annual debt service can be covered by the increased General Fund earnings. The remaining debt service for various loan maturities is shown in the last column of Table 8. These residual debt service amounts can reasonably be compared to the annual General Fund contributions to the CBB reserve discussed earlier under the deferred implementation option to cash-based budgeting.

A serious drawback to the Permanent Fund loan approach is the precedent that such a use of the Permanent Fund principal would set. The Alaska Constitution makes no prescriptions for the use of the Permanent Fund with respect to State government budgeting practices. The only reference to uses of the fund relate to constraints on the type of investments of Permanent Fund principal ("... the prinicpal of which shall be used only for those income-producing investments specifically designated by law ..." [Article IX, Section 15]).

A loan from the Permanent Fund to the CBB reserve fund could be viewed as a simple transfer of money from one of the State's pockets to another. It is more likely, however, that the bond market would view such a loan as general obligation debt of the State. Consequently, a $4.829 billion debt to the Permanent Fund would eliminate further debt capacity (for capital construction projects) during the entire period that the Permanent Fund loan was being repaid.

Moreover, there would be a serious threat that the State's bond rating would drop from the current AA rating to A or A-. This fall in the State's bond rating would affect all State agencies which rely on bond sales for program operations. Consequently, agencies such as the

Alaska Housing Finance Corporation, the Alaska Power Authority, the Alaska Industrial Development Authority, the Municipal Bond Bank, etc., would find themselves paying a higher interest rate on all bonds sold during the Permanent Fund loan repayment period.

The Permanent Fund loan approach to funding cash-based budgeting is also potentially vulnerable to legal challenge under the "prudent man rule." According to AS 37.13.120, "the prudent-man rule as applied to investments of the corporation means that in making investments the board shall exercise the judgment and care...which an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments..."

Under this rule, an Alaskan resident or organization could challenge the $4.829 billiun Permanent Fund loan under the following considerations:

- AS 37.13.120 (c) requires the Permanent Fund Corporation board to "maintain a reasonable diversification among investments." Clearly, a loan encompassing over 80 percent of total Permanent Fund assets falls short of the diversification requirement.

- AS 37.13.120 (L)(1) permits in-state investments only when the investments "have a risk level and expected yield comparable to alternate investment opportunities." A loan repayment to to the Permanent Fund based on a market rate of 12.5 to 13 percent would presumably meet the yield requirement of this section, while a lower rate could be construed as a subsidy to the General Fund.

- Considering that the creation of the Permanent Fund was intended to provide financial support to the State after oil revenues are depleted, there is a considerable question as to whether a loan to the State General Fund meets the test for comparable risk to other investments. A Permanent Fund loan to the State treasury is consequently a paradoxical investment policy since the State's ability to repay the loan is in large measure dependent on oil revenues.

Bonding

An alternative to the Permanent Fund loan approach which potentially offers an immediate or near-term start-up of cash-based budgeting is the sale of bonds. Presumably, if $4.829 billion in bonds could be sold to finance the CBB reserve fund, cash-based budgeting could be started immediately, followed by a debt service plan very much like the schedule considered for Permanent Fund loan repayment.

The difficulty with the bonding approach is that the State's debt capacity may not be sufficient to accommodate the CBB reserve requirement of $4.829 billion. According to a recent report, the State has presently exhausted its capacity to incur further debt.[17] The report suggests that an additional $1.2 billion in debt could potentially be incurred by the State through FY 90 only by doubling its current debt service to revenue ratio. Recommendations against such an increase in the debt service/revenue ratio were made in the report since the State's AA bond rating would be in jeopardy under such a move.

A further problem arises due to Internal Revenue Service (IRS) constraints on tax-exempt bond sales which forbids financial arbitrage. This means that revenues raised through tax-exempt bond sales may not be reinvested at interest rates higher than those applying to the sale of the bonds. This restriction could seriously hamper the investment alternatives of the General Fund balance and increase the relative cost of this approach to cash-based budgeting.

Although the bonding alternative presents serious obstacles as a source for full funding of cash-based budgeting, bonds could offer a means of supplementing revenues from other sources. Aside from the sale of conventional general obligation bonds, the State could potentially offer up to $600 or $700 million in one-year revenue bonds at a 6 percent tax-exempt rate. Revenue bonds would have to be repaid within one year but offer a low-cost borrowing option for upfront funding. Moreover, IRS arbitrage restrictions are generally not strictly enforced on revenue bond sales. This means that funds generated by this method could conceivably be invested at higher market rates of around 12 or 13 percent.

In summary, although the Permanent Fund loan and bonding alternatives offer the advantage of a near-term start-up of cash-based budgeting, or the prospect of a relatively low-cost source for supplementary front-end funds, they appear to present serious difficulties with respect to the bonding capacity of the State and potential legal problems.

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[17] See the August 1983 report prepared by Government Finance Research Center (Municipal Finance Officers Association), Washington D.C. entitled A Review of Debt Capacity and Debt Management for the State of Alaska.

CHAPTER FOUR

THE FISCAL MANAGEMENT BENEFITS AND LIMITATIONS OF CASH-BASED BUDGETING

The original intent of legislation proposing cash-based budgeting was to create a budgeting system in which the revenues available for appropriation were known in advance of preparing the budget. With sufficient revenues in the CBB reserve fund, appropriations can be limited, under cash-based budgeting, to the total revenues actually collected in the previous calendar year. In this way, the legislature will know by the start of the session precisely how much money can be appropriated in the budget that they will prepare. However, cash-based budgeting is more than a simple mechanism for dealing with revenue uncertainty.

Prohibition Against Deficit Spending

At present, State law does not prohibit deficit spending in the manner of the various "balanced budget" laws enacted recently in other states.[18] Nevertheless, if cash-based budgeting were enacted by a constitutional amendment, a very specific prohibition against deficit spending would become part of State law. Deficit spending under cash-based budgeting is prohibited because appropriations are limited to cash on hand. The only exception to this prohibition against deficit spending (which also applies to the contraction of State debt) would be "for the purpose of repelling invasion, suppressing insurrection, defending the state in war, meeting natural disasters,..."

Fiscal Restraint

Cash-based budgeting is a device for instituting fiscal restraint in the budgetary process in two ways. In the first case, because annual appropriations of between $300 and $420 million would effectively be taken off the top of the revenue stream, fewer funds would be available for appropriation for other purposes during the years when contributions

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[18]The Alaska Constitution (Article IX, Section 8) does prohibit the State from incurring debt except for the purposes of funding capital improvements which have been approved by a majority of qualified voters. Furthermore, The Executive Budget Act (AS 37.07.020 c) states that "proposed expenditures may not exceed estimated revenues for the succeeding fiscal year."

or debt service payments were being made.[19] Relative to Governor Sheffield's recommended capital budget for FY 85 totaling about $1 billion (including the $300 million major projects fund), CBB reserve fund contributions would represent roughly one-third of this annual capital budget figure.

A second form of fiscal restraint provided by cash-based budgeting relates to the delay between the time that a major revenue fluctuation might occur and the point at which those revenues might be appropriated. For example, if a major oil field would be expected to begin production in the coming fiscal year, this might substantially increase the revenues projected for that fiscal year. Unlike present budgeting practices, however, the legislature would be prohibited from raising appropriations for the coming fiscal year in anticipation of these revenues, since under cash-based budgeting, appropriations are limited to revenues collected in the prior calendar year.

Of course, one year later, the increased revenues caused by higher oil production levels could be rolled into the budget for the following fiscal year. Consequently, the form of fiscal restraint imposed by cash-based budgeting has only a temporary effect created by delaying access to revenues for one year.

CBB Effects On Declining Revenues

It is important to view cash-based budgeting in the larger context of the long-term financial prospects of the State. The central question from this perspective is how would cash-based budgeting affect State finances in view of a projected revenue decline?

- Although cash-based budgeting resolves the "revenue uncertainty" problem for budgeting purposes on a year-to-year basis, it does not eliminate the considerable uncertainty concerning how the State will budget "within its means" during a period of projected declining revenues.

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[19] On the other hand, it should be realized that in addition to the capital projects potentially foregone as a consequence of annual contributions to the CBB reserve, there are the opportunity costs associated with these foregone appropriations. Examples of these opportunity costs include lost momentum in accelerating sectors of the fisheries, mining, timber, coal, or tourism industries that might have come with new harbors, highways, railroad spurs, and airports, or increased loans for businesses or resource enhancement. A slowing of efforts to upgrade health standards across the State through upgraded water and sewage systems, are other potential opportunity costs of funding a cash-based budgeting system.

- On the other hand, cash-based budgeting would mitigate the impact of declining revenues by supplementing total revenues with interest earnings on the CBB reserve balance. After cash-based budgeting begins, the General Fund would be increased by the transfer of the CBB reserve fund (projected to be about $4.5 billion by FY 94). Assuming an average investment earnings rate of 10 percent, the General Fund should generate an additional $450 million each year as a consequence of this transfer.

- During the period when contributions are being made to the CBB reserve fund (FY 86 through FY 93), revenues available for appropriation would be diminished by the amount of annual contributions (between $300 and $420 million). This effective reduction in revenues potentially makes government growth more difficult. To the extent that government growth is curbed during the CBB contribution period, the adjustment to a period of declining revenues should require somewhat less drastic measures than would be necessary if further growth were permitted.

- Should a dramatic drop in revenues occur during a single year, cash-based budgeting would provide a one-year delay in the impact of that decline before a fiscal adjustment would have to be made. Under cash-based budgeting, revenues must accumulate in the General Fund over a full calendar year before they are made available for appropriation, thus providing a cushion of time in which to react to changes in revenue trends. However, the effect of a dramatic fall in revenues cannot be avoided under cash-based budgeting, only deferred for one year.

- As a savings account to mitigate the impact of declining revenues in the future, cash-based budgeting offers little that is not offered by the Permanent Fund. Moreover, the earnings rate on funds set aside by cash-based budgeting may not match the rate possible on investments of the Permanent Fund. In the event that revenues fell sharply over a period of a few years, funds reserved under cash-based budgeting would have to be readily available to cover previously made appropriations of these funds. Consequently, investments of cash-based budgeting reserve funds must remain fairly liquid for this purpose, which means that the investment options of CBB funds and possible rates of return would be somewhat limited in comparison to Permanent Fund investments.

- The only advantage of cash-based budgeting over the Permanent Fund for this purpose is that the budgetary support function would presumably be more clearly spelled out in the enacting Constitutional provisions of cash-based budgeting.

BENEFITS AND LIMITATIONS

Uncertainty In The Allocation Process

Knowing exactly how much money is available for appropriation each year is different from the task of allocating available funds. Even though the size of the pie will be known under cash-based budgeting, the problems of dividing up the pie will still require difficult political decisions. For local governments and school districts, which rely on State appropriations to finalize their budgets, uncertainty over revenues would remain until the legislative allocation process is complete. This source of revenue uncertainty will become an increasing problem for local jurisdictions during a period of declining revenues as a consequence of increasingly intense competition among contenders for a piece of the budget pie.

The Constitutional provision (Article IX, Section 16) which stipulates that no less than one-third of the total annual appropriation must be reserved for capital projects and loans introduces additional allocation uncertainty under cash-based budgeting. During the years when General Fund contributions are being transferred into the CBB reserve fund, the remaining revenues available for appropriation are consequently diminished by the amount of the contribution. As total State revenues begin to decline around 1990, it is possible that the Constitutional constraints on the allocation of total appropriations may cause part of the burden of funding the CBB contribution to be borne by the Operating Budget since one-third of the total funds are reserved for the Capital Budget and loans.

Revenue Stability - Smoothing

With the start of cash-based budgeting, an element of revenue stability would be introduced to the extent that revenues needed to cover future appropriations will be "in the bank." However, cash-based budgeting would do nothing to smooth out an erratic revenue stream (including both sharp increases and dramatic drops) since revenues would presumably be appropriated at the same level in which they were received 18 months earlier.

The cash-based budgeting program outlined in this report could be modified so that appropriation levels would follow smooth trends. The appropriation level could be tied to an average of revenues estimated for several years into the future. On the other hand, the appropriation level could be a function of the average appropriations over the past several years. Unfortunately, both smoothing techniques present substantial problems:

- When tied to an estimated average of future revenues, the smoothing technique defeats the purpose of cash-based budgeting, which is to eliminate the need to base budget preparation plans on forecasts of future revenues.

- When based on the average of past appropriation levels, the smoothing feature of cash-based budgeting fails to be effective under declining revenues. During a period of declining revenues, the average of past appropriations will always be higher than the amount of revenues available for appropriation in the coming budget year (if one assumes that all revenues are appropriated each year). In this instance, no smoothing will occur since the appropriation level each year will exactly track the revenues received.

Cash-Based Budgeting As An Expenditure Limitation[20]

The expenditure limitation concept inherent in cash-based budgeting is simply that appropriations are limited to cash on hand (revenues actually collected during the prior calendar year). Therefore, cash-based budgeting does not limit expenditures in the conventional sense. Expenditure limitation measures normally constrain appropriations to a level adjusted to account for changes in demand for government services (changes in population) and for changes in the cost of goods and services used by government (inflation). By contrast, the expenditure limit imposed by cash-based budgeting is simply bound to increases or declines in total State revenues which are in turn predominately dependent on changes in the price and production level of petroleum.

The Role of Cash-Based Budgeting in Fiscal Management

The potential for cash-based budgeting to serve as a fiscal management tool for addressing the concerns of deficit spending, fiscal restraint, expenditure limitation, revenue stability and the uncertainty of budgeting in a period of declining revenues has been outlined in this chapter. However, the concept of fiscal management requires an analysis of long-term budgeting considerations that should be a companion to this analysis of cash-based budgeting.

A conclusion which can be drawn from this report is that a comprehensive fiscal management analysis which examines all of the management tools at the State's disposal should be undertaken.

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[20]The concept of cash-based budgeting as an expenditure limitation mechanism discussed here relates only to those characteristics inherent in the concept of cash-based budgeting. CS HJR 39 contains two expenditure limitation provisions which differ from the concept described here. One of these provisions addresses the conventional link to population and inflation changes.

Appendix A

LEGISLATIVE INTEREST IN CASH-BASED BUDGETING

Legislative interest in cash-based budgeting in recent years has centered around two bills: HB 477 (1979) and HJR 39 (1983). These initiatives came in response to considerable legislative concern over the turmoil surrounding the budgetary process resulting from unprecedented volatility in revenue forecasts.

HB 477

As early as 1979, legislation was introduced to implement a forward funding plan. The bill would have established a "budget and appropriations reserve account" and required annual appropriations to this account equal to 15 percent of the average gross receipts of the General Fund. These appropriations would have been required from 1980 until 1986, when the budget and appropriations reserve account would have been roughly equal to the prior year's budget. Beginning with FY 87, this account would lapse into the General Fund and the budget from that point on would have been based on revenues collected during the previous fiscal year.

HB 477 made little progress during the 1979 session, but by FY 82, interest in forward funding had revived when nearly 90 percent of the State's revenues were generated by levies on oil and gas production and the volatility of oil prices resulted in substantial uncertainty over future State revenues. In the three-month period from December 1981 to March 1982, the Department of Revenue forecast of FY 83 petroleum revenues fell nearly 40 percent from $3.6 billion to $2.2 billion. This unexpected, large drop in forecast revenues forced the legislature and the administration to make major, rapid revisions and spending reductions in the FY 83 budget. In addition, $1 billion in FY 82 special Permanent Fund contributions was deferred to avoid a deficit in that year.

The unexpected decline in revenues and uncertainty over future income at the State level was in turn felt throughout Alaska. Local governments, school districts and other organizations which receive major State support found their funding levels difficult to predict until the FY 83 budget was finally enacted.

LEGISLATIVE INTEREST

In order to provide more certain revenue forecasts for budget purposes, the Department of Revenue modified its forecast presentation for FY 84 so that there would be only a 30 percent chance of revenues falling lower than their forecasts. Before this change, the department had issued forecasts which had a 50 percent chance of being too high. The more conservative estimates are termed the "risk-adjusted forecast" by the department, recognizing the substantial risk of lower oil prices and revenues and the negative effects that unexpected revenue declines have on the State budget process.*

In spite of the efforts of the administration to deal with the revenue uncertainty problem, the legislature continued to search for a solution which insures stability in the budgetary process.

HJR 39 (Cash-Based Budgeting)

The most recent legislative activity dealing with revenue uncertainty came with the introduction of HJR 39 in March 1983. HJR 39 would place a constitutional amendment to establish a cash-based budgeting system on the November 1984 ballot. If approved by the voters, two new sections would be added to the Alaska Constitution. The first section would establish an "appropriation reserve fund" and specify how the reserve fund is to be used. The second section would require the legislature to appropriate 15 percent of the General Fund revenues to the appropriations reserve fund each year for seven years, from FY 86 to FY 92. At the end of the seven-year period, the reserve would be large enough to fund the State's entire budget for the following year.

On July 1, 1992 (the start of FY 93), the transition to cash-based budgeting would be made, and only the amount of money contained in the appropriations reserve fund as of this date could be spent during the fiscal year (certain exceptions would be made for wars, natural disasters and other cases). After this date, all State revenues would be placed in the reserve fund, and at the end of each succeeding fiscal year the balance of the reserve fund would lapse into the treasury. HJR 39 made no mention of the investment of reserve fund holdings or of the disposition of interest earnings resulting from the investments.

Using the Department of Revenue January 1984 revenue projections, the provisions of HJR 39 are translated into dollar terms on Table A1.

Two projections of the implications of HJR 39 are shown; one for the 30th percentile revenue projection and another for the mean revenue

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*Most other governments rely on 50th percentile revenue projections for budget purposes.

projection. Notice that the cash-based budgeting (CBB) reserve contributions are shown in the far right column, with the reserve fund totals indicating the funds available for expenditure when cash-based budgeting commences in FY 93. Specifically, under the provisions of HJR 39, $3.779 billion will be available for expenditure in FY 93 assuming a 30th percentile revenue forecast, while $4.249 billion would be available in the CBB reserve fund assuming a mean revenue forecast.

Table A1

HJR 39 RESERVE FUND CALCULATIONS
(millions of dollars)

Fiscal Year	Unrestricted General Fund Revenues	4-Year Moving Average Revenues	15 Percent Revenue Contribution	
1982	4,174			
1983	3,624			
1984	3,233			
1985	3,219			
1986	3,365	3,563	534	
1987	3,729	3,360	504	
1988	3,711	3,387	508	
1989	4,068	3,506	526	
1990	3,880	3,718	558	
1991	3,582	3,847	577	
1992	3,536	3,810	572	
1993	3,405		3,779	(Total)
	(Based On A 30th Percentile Revenue Projection)			
1982	4,174			
1983	3,625			
1984	3,331			
1985	3,432			
1986	3,697	3,641	546	
1987	4,170	3,521	528	
1988	4,278	3,658	549	
1989	4,848	3,894	584	
1990	5,077	4,248	637	
1991	4,886	4,593	689	
1992	4,828	4,772	716	
1993	4,947		4,249	(Total)
	(Based On A M e a n Revenue Projection)			

HJR 39 requires that contributions to the reserve fund begin in FY 86 and continue for 7 years. The reserve fund contributions are calculated as 15% of the average revenues from the 4 preceding years. No provisions are made for investment earnings on the reserve fund balance.

Original sponsors: Hayes, Abood,
Barnes, et al

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 39 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

Proposing amendments to the Constitution of the State of Alaska creating an appropriation reserve fund and limiting increases in appropriations.

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

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

SECTION 16. APPROPRIATION LIMITATIONS. Except for appropriations to the Alaska permanent fund and appropriations required to pay the principal and interest on general obligation bonds, appropriations from the treasury during a fiscal year may not exceed the lesser of the amount appropriated in the year this section takes effect adjusted for the cumulative inflation and population growth or decline as defined by law or 95 percent of the unrestricted revenue of the state for the previous calendar year. An appropriation in excess of this limit may not be made unless a state of emergency is declared by the governor as provided by law.

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

SECTION 17. APPROPRIATION RESERVE FUND. An appropriation reserve fund is established. Appropriations may not be made from the appropriation reserve fund except for the purpose of repelling invasion, suppressing insurrection, defending the state in war, meeting natural disasters, or appropriations required to pay the principal and interest on general obligation bonds. After June 30 of the year in

which the balance of the appropriation reserve fund exceeds 1.5 times the appropriations of unrestricted revenue in the preceding fiscal year, the balance of the appropriation reserve fund shall lapse into the treasury. The balance of the appropriation reserve fund shall be invested at competitive national market rates. All earnings of the fund shall become part of the principal of the fund.

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

SECTION 29. APPROPRIATION RESERVE FUND. Beginning July 31, 1985, and continuing until June 30 of the year in which the balance of the appropriation reserve fund exceeds 1.5 times the appropriations of unrestricted revenue in the preceding fiscal year, an amount equal to 8.8 percent of the unrestricted revenue for each month, as determined in accordance with this section, shall be transferred from the treasury to the appropriation reserve fund on the first day of the succeeding month. Any balance transferred to the appropriation reserve fund under section 30 of article XV shall reduce by the balance transferred the amount required to be transferred in a year by the provisions of this section but no excess amount transferred may be carried forward to reduce the amount required to be transferred in another fiscal year.

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

SECTION 30. APPROPRIATION LIMITATIONS. After June 30, 1986, and until June 30 of the year in which the balance of the appropriation reserve fund exceeds 1.5 times the appropriations of unrestricted revenue in the preceding fiscal year appropriations from the treasury during a fiscal year, except for appropriations to the Alaska permanent fund and appropriations required to pay the principal and

interest on general obligation bonds, may not exceed the amount appropriated in the year in which this section becomes effective by more than the cumulative inflation and population growth or decline as prescribed by law. An appropriation in excess of this limit may not be made unless a state of emergency is declared by the governor as provided by law. No less than 25 percent of that portion of the unrestricted revenue of the state which has not been appropriated as allowed by this section shall be transferred from the general fund to the appropriation reserve fund on the first day of each fiscal year during the period defined in this section.

* Sec. 5. Section 1 of this amendment takes effect on July 1 of the year in which the balance in the appropriation reserve fund established in sec. 2 of this amendment exceeds 1.5 times the appropriations of unrestricted revenue in the preceding fiscal year.

* Sec. 6. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Introduced: 3/18/83
Referred: State Affairs and Finance

BY HAYES, ABOOD, BARNES, BETTISWORTH, COWDERY, FLOOD, LISKA, MARTIN, RINGSTAD, UEHLING, WARD, LINDAUER AND BUSSELL

IN THE HOUSE

HOUSE JOINT RESOLUTION NO. 39

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Proposing amendments to the Constitution of the State of Alaska creating an appropriation reserve fund.

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

* Section 1. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. APPROPRIATION RESERVE FUND. An appropriation reserve fund is established. After July 1, 1992, no money in excess of the balance of the appropriation reserve fund at the close of the preceding fiscal year shall be withdrawn from the treasury except for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this section becomes effective. After July 1, 1992, all revenue of the State shall be placed in the appropriation reserve fund and the balance of the appropriation reserve fund shall lapse into the treasury at the close of each succeeding fiscal year.

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

SECTION 26. APPROPRIATION RESERVE FUND. Beginning with the First Session of the Fourteenth Legislature and continuing through the First Session of the Seventeenth Legislature, the legislature shall annually appropriate from the general fund to the appropriation reserve fund an amount equal to 15 percent of the average gross receipts of the general fund, as determined in accordance with this section. For the purposes of this section, "average gross receipts of the

general fund" is determined by dividing the total amount of money deposited in the general fund and in special accounts within the general fund (other than the appropriation reserve fund) from all sources during the four fiscal years immediately preceding the current fiscal year by four.

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

Introduced: 4/25/79
Referred: Finance

BY HAYES, BARNES, BEIRNE, BETTISWORTH, BRANSON, CARNEY, ELIASON, FREEMAN, FULLER, HALFORD, HAUGEN, HURLBERT, MCKINNON, MALONE, MARTIN, METCALFE, MILES, MILLER, MONTGOMERY, MOSS, O'CONNELL, PHILLIPS, RANDOLPH AND ROGERS

IN THE HOUSE

HOUSE BILL NO. 477

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to state fiscal procedures; and providing for an effective date."

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

* Section 1. INTENT. It is the intent of the legislature in establishing the budget and appropriations reserve account in this Act to provide a mechanism to eventually allow the state to prepare its annual budget based upon revenues that have actually been received during the previous fiscal year rather than basing it upon estimated revenues to be received during the succeeding fiscal year. By placing a portion of the state's annual receipts into the budget and appropriations reserve account for each of the next seven years, it is intended that the amount in the budget and appropriations reserve account will be sufficient to cover all of the state's operating and capital expenses for fiscal year 1987, thus allowing a transitional period in which the receipts deposited in the general fund during fiscal year 1987 will be available to meet the state's operating and capital expenses for fiscal year 1988.

* Sec. 2. AS 37.05 is amended by adding a new section to read:

Sec. 37.05.156. BUDGET AND APPROPRIATIONS RESERVE ACCOUNT. (a) There is created as a special account within the general fund the budget and appropriations reserve account.

(b) The legislature shall appropriate money from the general fund to the budget and appropriations reserve account as provided in (c) of this section. Amounts appropriated to the budget and appropriations reserve account shall be treated as surplus of the general fund and

shall be invested in accordance with AS 37.10.070. Income from investment of the budget and appropriations reserve account shall be deposited in the general fund.

(c) Beginning with the Second Session of the Eleventh Legislature and continuing through the Second Session of the Fourteenth Legislature, the legislature shall annually appropriate from the general fund to the budget and appropriations reserve account an amount equal to 15 per cent of the average gross receipts of the general fund, as determined in accordance with this subsection. Each appropriation shall include a provision stating that the amount appropriated to the budget and appropriations reserve account lapses into the general fund on July 1, 1986, notwithstanding AS 37.25.010. For the purposes of this subsection, "average gross receipts of the general fund" is determined by dividing the total amount of money deposited in the general fund and in special accounts within the general fund (other than the budget and appropriations reserve account) from all sources during the four fiscal years immediately preceding the current fiscal year by four.

* Sec. 3. AS 37.07.020(a) is amended to read:

(a) The governor shall prepare and submit to the legislature before the fourth legislative day a budget for the succeeding fiscal year which shall cover all estimated receipts, including all grants, loans, and money received from the federal government, and all proposed expenditures of the state government. The budget shall be accompanied by a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues. <u>After July 1, 1986, the budget shall also be accompanied by a statement of all receipts, including all grants, loans and money received from the federal government, deposited in the general fund during the previous fiscal year.</u>

* Sec. 4. AS 37.07.020(c) is amended to read:

(c) Before July 1, 1985, proposed [PROPOSED] expenditures may not exceed estimated revenues for the succeeding fiscal year. Between July 1, 1985 and July 1, 1986, proposed expenditures may not exceed estimated revenues for the succeeding fiscal year excluding the amount lapsed into the general fund from the budget and appropriations reserve account under AS 37.05.156(c). Between July 1, 1986 and July 1, 1987, proposed expenditures may not exceed the amount lapsed into the general fund from the budget and appropriations reserve account under AS 37.05.-156(c). For fiscal years beginning after June 30, 1987, proposed expenditures may not exceed the amount of revenues deposited in the general fund in the preceding fiscal year. The expenditures proposed in the six-year capital improvements program and financial plan shall not exceed the estimated revenues and bond authorizations passed and proposed.

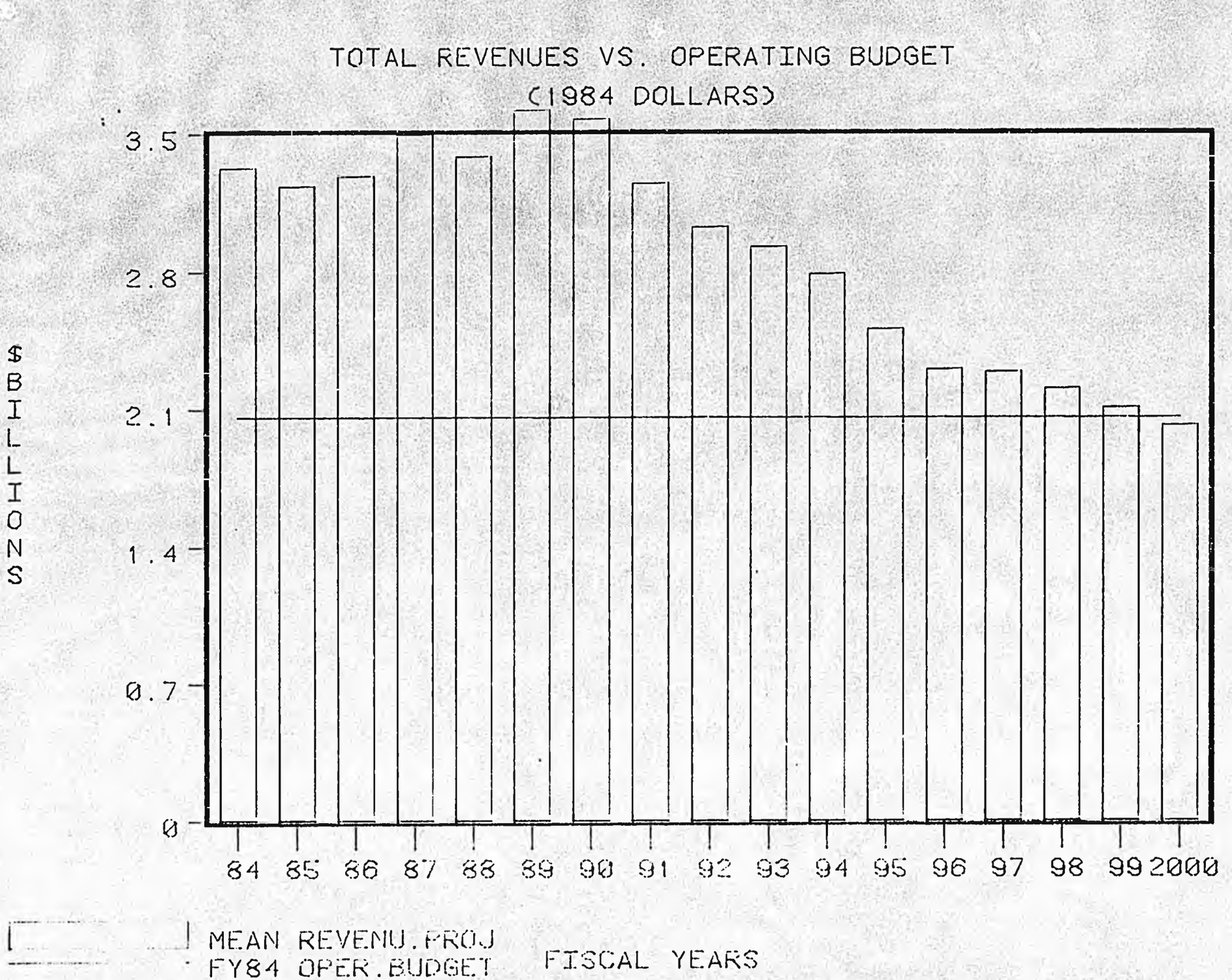
* Sec. 5. This Act takes effect July 1, 1979.

Appendix B

STATE REVENUE FORECAST IN NOMINAL AND FY 84 DOLLARS
(millions of dollars)

Fiscal Year	30th Percent. Rev.Proj.		Excess Revenues		Mean Rev. Proj.		Excess Revenues		Discount Factor
	Nominal $	FY 84 $	FY 84 $	Nominal $	Nominal $	FY 84 $	FY 84 $	Nominal $	
1984	3,233	3,233	1,176	1,176	3,331	3,331	1,274	1,274	1.000
1985	3,219	3,037	980	1,039	3,432	3,238	1,181	1,252	0.943
1986	3,365	2,995	938	1,054	3,697	3,290	1,233	1,386	0.890
1987	3,729	3,131	1,074	1,279	4,170	3,501	1,444	1,720	0.840
1988	3,711	2,939	882	1,114	4,278	3,389	1,332	1,681	0.792
1989	4,068	3,040	983	1,315	4,848	3,623	1,566	2,095	0.747
1990	3,880	2,735	678	962	5,077	3,579	1,522	2,159	0.705
1991	3,582	2,382	325	489	4,886	3,249	1,192	1,793	0.665
1992	3,536	2,219	162	257	4,828	3,029	972	1,549	0.627
1993	3,405	2,015	-42	-70	4,947	2,928	871	1,472	0.592
1994	3,290	1,837	-220	-394	4,995	2,789	732	1,311	0.558
1995	3,195	1,683	-374	-710	4,762	2,509	452	857	0.527
1996	3,033	1,507	-550	-1,106	4,632	2,302	245	493	0.497
1997	3,092	1,450	-607	-1,295	4,886	2,291	234	499	0.469
1998	3,159	1,397	-660	-1,492	4,992	2,208	151	341	0.442
1999	3,213	1,341	-716	-1,717	5,056	2,110	53	126	0.417
2000	3,245	1,277	-780	-1,980	5,131	2,020	-37	-94	0.394

Nominal dollar revenue forecasts are Department of Revenue projections released January, 1984.
FY 84 Operating Budget = $2,057 million
Discount Factor assumes 6% inflation rate.
FY 84 $ revenue projection = nominal amount x discount factor.
FY 84 $ excess revenues = revenues (84$) - Operating Budget.
Nominal $ excess revenues = FY 84 $ excess revenues / discount factor.


TOTAL REVENUES VS. OPERATING BUDGET
(1984 DOLLARS)
3.5
2.8
2.1
1.4
0.7
0
$BILLIONS
84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 2000
MEAN REVENU. PROJ
FY84 OPER. BUDGET
FISCAL YEARS

Appendix C

YEAR-END GENERAL FUND UNAPPROPRIATED BALANCE CONTRIBUTION

Of the three cash-based budgeting contribution mechanisms, the percentage of the year-end General Fund unappropriated balance is the most difficult to model. A presumption could be made that on the average, the amount contributed to the CBB reserve under this mechanism is roughly equal to the difference between the Department of Revenue mean forecast and their 30th percentile revenue forecast. This estimate is possible if the legislature consistently budgeted using the 30th percentile forecast as an appropriation ceiling. However, it must be recognized that the 30th percentile forecast and the mean forecast tend to converge as the projection period shortens.

For example, by comparing the 30th percentile and mean forecasts shown in Appendix B, one can see that the forecasts for FY 84 ($3,233 and $3,331 million respectively) differ by only 3 percent. However, the forecasts for FY 2000 ($3,245 and $5,131 million respectively) differ by 58 percent. Put simply, the closer one gets to a forecast period, the greater the certainty that one can have over the revenue estimate for that year.

Taken one year at a time, the difference between the 30th percentile and mean forecasts made by the Department of Revenue should be fairly small, resulting in a modest General Fund balance on the average from which a percentage contribution to the reserve can be made. The most that can be said is that contributions from this mechanism could potentially cause the size of the CBB reserve fund to grow sufficiently large so that cash-based budgeting could be started one year earlier than it otherwise would.

For example, assuming that on the average, the actual revenues received exceeded the level of appropriations each year by about 5 percent, a 25 percent contribution of unappropriated General Fund balance would add approximately $45 million each year to the CBB reserve fund. Over an eight-year contribution period, this mechanism would have an impact on the reserve fund roughly equivalent to the $300 million grubstake contribution shown in Table 4.

Appendix D

Scenario 1

THE GENERAL FUND AS A REVENUE SOURCE FOR CASH-BASED BUDGETING
Based on a M e a n Revenue Projection
(millions of dollars)

Fiscal Year	DOR Revenue Forecast	Revenue Under CBB	Potential Expenditure Level	General Fund Earnings	General Fund Balance	....Cash-Based Budgeting Reserve Fund.... Contributions	Earnings	Balance
1981	3,769		3,769	201	2,010			
1982	4,174		4,174	254	2,540			
1983	3,625		3,625	266	2,660			
1984	3,331		3,331	340	3,000			
1985	3,432		3,432	250	2,500			
1986	3,697	3,316	3,316	259	2,590	380.8	18	399
1987	4,170	3,740	3,740	288	2,880	429.5	62	890
1988	4,278	3,837	3,837	288	2,880	440.6	114	1,445
1989	4,848	4,349	4,349	318	3,180	499.3	175	2,119
1990	5,077	4,554	4,554	301	3,010	522.9	247	2,889
1991	4,886	4,383	4,383	275	2,750	503.3	326	3,718
1992	4,828	4,331	4,331	270	2,700	497.3	413	4,628
1993	4,947	4,437	4,437	258	2,580	509.5	509	5,646
1994	4,995	4,481	4,481	247	2,470	514.5	615	6,776
1995	4,762	5,419	4,971	693	9,584			
1996	4,632	5,297	5,207	887	9,534			
1997	4,886	5,570	5,358	909	9,776			
1998	4,992	5,700	5,434	937	10,083			
1999	5,056	5,777	5,635	952	10,245			
2000	5,131	5,864	5,739	965	10,380			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

col.

2 Department of Revenue January, 1984 revenue projection.

3 Revenues after effects of cash-based budgeting program. During the CBB reserve contribution period, revenues (column 3) are equal to DOR projections minus annual CBB contributions. Starting with the first cash-based budgeting year, revenues (column 3) are equal to DOR projections plus additional earnings which accrue to the general fund as a result of transferring the CBB reserve fund balance to the general fund.

4 Expenditure levels are presently limited to projected revenues (ignoring the Constitutional appropriation limit). Beginning with the first cash-based budgeting year, expenditures will be limited to the revenues collected in the previous calendar year.

5 General fund earnings are DOR projections up to the start of cash-based budgeting, at which point the general fund earnings will be augmented due to the increased earnings capacity of the general fund from that point on into the future.

6 Beginning with the first cash-based budgeting year, the general fund balance is substantially increased by the transfer of the CBB reserve fund.

8 Reserve fund earnings are calculated at a 10 percent annual interest rate compounded monthly.

9 The earnings rate of the CBB reserve fund is compounded monthly using a 10% annual interest rate.

This projection is based on a general fund unrestricted revenue contribution of 10.3 percent.

Scenario 2

THE GENERAL FUND AS A REVENUE SOURCE FOR CASH-BASED BUDGETING
Based on a M e a n Revenue Projection
(millions of dollars)

Fiscal Year	DOR Revenue Forecast	Revenue Under CBB	Potential Expenditure Level	General Fund Earnings	General Fund Balance	....Cash-Based Budgeting Reserve Fund.... Contributions	Earnings	Balance
1981	3,769		3,769	201	2,010			
1982	4,174		4,174	254	2,540			
1983	3,625		3,625	266	2,660			
1984	3,331		3,331	300	3,000			
1985	3,432	3,132	3,132	250	2,500	300.0	15	315
1986	3,697	3,368	3,368	259	2,590	329.0	48	693
1987	4,170	3,799	3,799	288	2,880	371.1	90	1,154
1988	4,278	3,897	3,897	288	2,880	380.7	139	1,673
1989	4,848	4,417	4,417	318	3,180	431.5	196	2,300
1990	5,077	4,625	4,625	301	3,010	451.9	262	3,014
1991	4,886	4,451	4,451	275	2,750	434.9	336	3,785
1992	4,828	4,398	4,398	270	2,700	429.7	417	4,631
1993	4,947	4,507	4,507	258	2,580	440.3	506	5,577
1994	4,995	4,550	4,550	247	2,470	444.6	605	6,627
1995	4,762	4,338	4,338	236	2,360	423.8	714	7,765
1996	4,632	5,384	4,879	974	10,490			
1997	4,886	5,694	5,073	1,033	11,141			
1998	4,992	5,826	5,539	1,063	11,469			
1999	5,056	5,903	5,760	1,078	11,632			
2000	5,131	5,990	5,865	1,091	11,767			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

col.

2 Department of Revenue January, 1984 revenue projection.

3 Revenues after effects of cash-based budgeting program. During the CBB reserve contribution period, revenues (column 3) are equal to DOR projections minus annual CBB contributions. Starting with the first cash-based budgeting year, revenues (column 3) are equal to DOR projections plus additional earnings which accrue to the general fund as a result of transferring the CBB reserve fund balance to the general fund.

4 Expenditure levels are presently limited to projected revenues (ignoring the Constitutional appropriation limit). Beginning with the first cash-based budgeting year, expenditures will be limited to the revenues collected in the previous calendar year.

5 General fund earnings are DOR projections up to the start of cash-based budgeting, at which point the general fund earnings will be augmented due to the increased earnings capacity of the general fund from that point on into the future.

6 Beginning with the first cash-based budgeting year, the general fund balance is substantially increased by the transfer of the CBB reserve fund.

8 Reserve fund earnings are calculated at a 10 percent annual interest rate compounded monthly.

9 The earnings rate of the CBB reserve fund is compounded monthly using a 10% annual interest rate.

This projection is based on a general fund unrestricted revenue contribution of 8.9 percent.
A 'grubstake' contribution is assumed in this projection for FY 85 in the amount of $ 300 million.

Appendix E

THE EFFECTS OF DECLINING REVENUES ON STATE OPERATING COSTS

It is unknown at this time what effects projected revenue declines in the 1990s will have on the State Operating Budget. Obviously, the impact of declining revenues on the Operating Budget will depend on the severity of actual drops in petroleum revenues. It will also depend on the availability of supplementary revenue sources such as Permanent Fund earnings or cash-based budgeting reserve earnings. As a measure of how critically projected revenue declines may affect the State Operating Budget if other mechanisms are not employed, this section will focus on how the size of the Operating Budget may be cut to remain within the means of projected revenues.

It should be pointed out that under the conservative Department of Revenue forecast (30th percentile projection), revenues are projected to fall below the amount needed to maintain Operating Budget expenditures at the current level (FY 84) as early as FY 93. If one assumes that the department's mean revenue forecast is more likely to compare to actual revenues received by the State, a shortfall below current Operating Budget levels is not projected to occur until FY 2000.

Consequently, this analysis will focus on the "worse" case 30th percentile forecast. Assuming that neither Permanent Fund earnings nor cash-based budgeting reserve earnings are used to supplement declining revenues, Table E1 shows how simple across-the-board Operating Budget cuts may be reflected in terms of total State employment. It is assumed in this table that a 5% cut in the overall Operating Budget translates into a 5% cut in State employment. On this basis, cuts in the number of State employees would range from a low of 384 in FY 93 to a high of between 1,400 and 1,600 employees for each of the three following years. Again, this projection assumes that as revenues fall from year to year, the Operating Budget will be reduced by a like amount.

Another alternative of the Operating Budget cut approach to keeping the costs of government within the means of the State, involves a gradual cut of the budget over the long term. With this method, the size of the Operating Budget could be slowly reduced so that when projected revenue shortfalls occur, no drastic (large) cuts will be necessitated. Table E2 shows how a 2% Operating Budget cut starting in FY 85 would affect State employment.

Table E1

PROJECTION OF STATE EMPLOYEE POSITIONS CUT
IN PROPORTION TO DECLINING REVENUES
(Assumes A 30th Percentile Revenue Forecast)

Fiscal Year	Projected Revenues	Positions Cut	Percentage Cut	Total Positions
1984	3,233			18,788
1985	3,037			18,788
1986	2,995			18,788
1987	3,131			18,788
1988	2,939			18,788
1989	3,040			18,788
1990	2,735			18,788
1991	2,382			18,788
1992	2,219			18,788
1993	2,015	384	2.0	18,404
1994	1,837	1,626	8.8	16,778
1995	1,683	1,407	8.4	15,372
1996	1,507	1,608	10.5	13,764
1997	1,450	521	3.8	13,244
1998	1,397	484	3.7	12,760
1999	1,341	511	4.0	12,248
2000	1,277	585	4.8	11,664

FY 84 total positions equal full-time equivalent positions.
The projection of positions cut is based on a decrease in the size of State employment in proportion to the decline in the Operating Budget below the present level of $2,057 million.
This projection assumes no 'real' growth in the Operating Budget prior to the revenue decline.

Table E2

IMPACT OF A 2% ANNUAL CUT IN THE OPERATING BUDGET
ON THE NUMBER OF STATE EMPLOYEES

Fiscal Year	Total Number of State Employees	Positions Cut
1984	18,788	0
1985	18,412	376
1986	18,044	368
1987	17,683	361
1988	17,329	354
1989	16,983	347
1990	16,643	340
1991	16,310	333
1992	15,984	326
1993	15,664	320
1994	15,351	313
1995	15,044	307
1996	14,743	301
1997	14,448	295
1998	14,159	289
1999	13,876	283
2000	13,599	278

FY 84 total number of employees equals full-time equivalent positions.
This projection assumes that a 2% Operating Budget cut translates into a 2% cut in total State employment.

Appendix F

PERMANENT FUND EARNINGS AS A REVENUE SOURCE FOR CASH-BASED BUDGETING
Based On A M e a n Revenue Projection
(millions of dollars)

Fiscal Year	Perm.Fund Contribs.	Perm.Fund Balance	Perm.Fund Earnings	Inflation Proofing	Perm.Fund Dividend	CBB Reserve Contribs.	CBB Reserve Balance
1986	380	6,045	551	342	0	209	209
1987	433	6,867	626	389	0	237	468
1988	481	7,789	711	441	0	270	784
1989	575	8,866	808	502	0	306	1,168
1990	606	10,040	917	568	0	349	1,634
1991	587	11,264	1,033	638	0	396	2,193
1992	592	12,568	1,156	711	0	445	2,857
1993	621	13,980	1,288	791	0	497	3,639
1994	644	15,502	1,430	877	0	553	4,556
1995	622	17,091	1,581	967	0	614	5,625
1996	622	18,776	1,740	1,063	0	677	6,865
1997	672	20,615	1,911	1,167	744	0	7,551

This projection assumes that the Permanent Fund program is revised as described in Chapter Two. Permanent Fund earnings are based on a real rate of return of 4 %, and an inflation rate of 6 %.
The earnings capacity of the CBB reserve fund alone is sufficient to reach the target amount, consequently, a zero contribution for permanent fund earnings is shown.

COMMITTEE REPORT

HOUSE

FURTHER:

(11)

5/19/83

Date: 4-18-84

Mr. Speaker:

The Committee on FINANCE has had HJR 45

"Relating to repeal of the federal estate tax.

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ______ [ ] same title [ ] new title

and recommends ______

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[X] Zero Fiscal Note Attached

[X] reports it back without recommendation

[ ] referred to the ______ Committee

MEMBERS SIGNING DO PASS

[signature]

[signature]

[signature]

[signature]

MILOH FRITZ

MEMBERS HAVING OTHER RECOMMENDATIONS:

[signature] - No rec.

[signature] - No Rec.

[signature]

CHAIRMAN

H 60

Introduced: 4/29/83
Referred: Judiciary and
Finance

IN THE HOUSE

BY TISCHER, BARNES, BETTISWORTH, BUSSELL, LISKA AND WARD

HOUSE JOINT RESOLUTION NO. 45

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

Relating to repeal of the federal estate tax.

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

WHEREAS the Economic Recovery Tax Act of 1981 made major reductions in federal estate taxes to stimulate economic growth and improve the equity of the tax system; and

WHEREAS the performance of the American economy is still far below its potential and this condition will continue if additional measures are not taken by the federal and state governments to further reduce tax inequities that will restore incentives to work, produce, save and invest, and reduce governmental interference in the workings of a free economy; and

WHEREAS the State of Alaska has eliminated the state income tax and the state estate tax to help stimulate an economic recovery in the state;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the United States Congress to repeal the federal estate tax.

COPIES of this resolution shall be sent to the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: HJR 45
Title: Repeal of the federal estate tax.
Sponsor: Tischer
Requestor: House Finance Committee
Date of Request: 4/17/84

FISCAL DETAIL
Agency Affected:
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER		0				
TOTAL		0				

POSITIONS:

FULL-TIME		0				
PART-TIME		0				
TEMPORARY		0				

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Rep. Al Adams, Chair AAA Phone: 465-3706
Division: House Finance Committee Date: 4/17/84

Approved by Commissioner: Date:
Agency:

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

12/1/83

COMMITTEE REPORT

HOUSE

(11) FURTHER:

2/22/84 Date: 3/15/84

The Committee on FINANCE has had HJR 53

Relating to the reapportionment of the legislature.

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HJR 53 (Fin) [X] same title [ ] new title

and recommends

[ ] AND attaches a "Letter of Intent" [X] New Fiscal Note 2/29/84 [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS:
[illegible signature]	Albert P. Adams - No Rec
W. Fanyone	[illegible signature] No Rec
J. Kinden	[illegible signature] (No Rec)
Jerry Ward	Fred F. Zharoff Do Not Pass
	[illegible signature]
	MILO FRITZ [illegible]

Albert P. Adams
CHAIRMAN

Original sponsor: Martin

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 53 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

Relating to the reapportionment of the legislature.

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

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

SECTION 1. ELECTION DISTRICTS. Members of the house of representatives shall be elected by the qualified voters of the [RESPECTIVE] election districts that are established in the most recent reapportionment under this article. Each member of the house of representatives shall be elected from a single member district. [UNTIL REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF REPRESENTATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE AS SET FORTH IN SECTION 1 OF ARTICLE XIV.]

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

SECTION 2. SENATE DISTRICTS. Members of the senate shall be elected by the qualified voters of the [RESPECTIVE] senate districts that are established in the most recent reapportionment under this article. Each senate district shall be composed of two election districts established under sec. 1 of this article. [SENATE DISTRICTS SHALL BE AS SET FORTH IN SECTION 2 OF ARTICLE XIV, SUBJECT TO CHANGES AUTHORIZED IN THIS ARTICLE.]

* Sec. 3. Article VI, sec. 3, Constitution of the State of Alaska is amended to read:

SECTION 3. REAPPORTIONMENT OF HOUSE AND SENATE. The governor

shall reapportion the house of representatives and the senate immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon the best available evidence of the resident [CIVILIAN] population within each election district and senate district [AS REPORTED BY THE CENSUS].

* Sec. 4. Article VI, sec. 6, Constitution of the State of Alaska is amended to read:

SECTION 6. REDISTRICTING. The governor may [FURTHER] redistrict by changing the size and area of election districts and senate districts, subject to the limitations of this article. Each [NEW] district [SO] created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. [EACH SHALL CONTAIN A POPULATION AT LEAST EQUAL TO THE QUOTIENT OBTAINED BY DIVIDING THE TOTAL CIVILIAN POPULATION BY FORTY]. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries whenever possible.

* Sec. 5. Article VI, sec. 6, Constitution of the State of Alaska is amended by adding a new subsection to read:

(b) Each election district shall contain a population as nearly equal as possible. Each senate district shall contain a population as nearly equal as possible. In no case shall the absolute value of the total percentage deviations of all districts of a house divided by the number of districts exceed one percent. In no case shall a single district have a population which varies from the average population of all districts of that house by more than three percent.

* Sec. 6. Article VI, sec. 8, Constitution of the State of Alaska is amended to read:

SECTION 8. REAPPORTIONMENT BOARD. The governor shall appoint a

reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern <u>regions of the state</u> [SENATE DISTRICTS]. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

* Sec. 7. Article VI, secs. 4, 5, and 7 and Article XIV are repealed.

* Sec. 8. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

REVISED

Revision Date: 2/29/84

REQUEST

Bill/Resolution No.: CSHJR 53(Fin)
Title: relating to reapportionment of the Legislature
Sponsor: Martin
Requestor: (H) Finance
Date of Request: 2/29/84

FISCAL DETAIL

Agency Affected: Elections
Program Category Affected:
BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		-2.0-				
400 SUPPLIES		-0-				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		-0-				
700 GRANTS, CLAIMS		-0-				
800 MISCELLANEOUS		-0-				
TOTAL OPERATING		-2.0-				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Upon recent analysis, it was determined that the six proposed amendments to the Constitution can be described on two pages of the Election Pamphlet, at a cost of 1.0 per page.

ANALYSIS: Attach a separate page for analysis

Prepared By: T.P. Thoma, Information Officer Phone: 4611
Division: Division of Elections Date: 2/29/84

Approved by Commissioner: [signature] for Date: 2/29/84
Agency: Lieutenant Governor

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

12/1/83

Bradley
3/9/84

Original sponsor: Martin

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 53 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

Relating to the reapportionment of the legislature.

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

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

SECTION 1. ELECTION DISTRICTS. Members of the house of representatives shall be elected by the qualified voters of the [RESPECTIVE] election districts <u>that are established in the most recent reapportionment under this article. Each member of the house of representatives shall be elected from a single member district</u>. [UNTIL REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF REPRESENTATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE AS SET FORTH IN SECTION 1 OF ARTICLE XIV.]

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

SECTION 2. SENATE DISTRICTS. Members of the senate shall be elected by the qualified voters of the [RESPECTIVE] senate districts <u>that are established in the most recent reapportionment under this article. Each senate district shall be composed of two election districts established under sec. 1 of this article</u>. [SENATE DISTRICTS SHALL BE AS SET FORTH IN SECTION 2 OF ARTICLE XIV, SUBJECT TO CHANGES AUTHORIZED IN THIS ARTICLE.]

* Sec. 3. Article VI, sec. 3, Constitution of the State of Alaska is amended to read:

SECTION 3. REAPPORTIONMENT OF HOUSE <u>AND SENATE</u>. The governor

shall reapportion the house of representatives and the senate immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon the best available evidence of the resident [CIVILIAN] population within each election district and senate district [AS REPORTED BY THE CENSUS].

* Sec. 4. Article VI, sec. 6, Constitution of the State of Alaska is amended to read:

SECTION 6. REDISTRICTING. The governor may [FURTHER] redistrict by changing the size and area of election districts and senate districts, subject to the limitations of this article. Each [NEW] district [SO] created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. [EACH SHALL CONTAIN A POPULATION AT LEAST EQUAL TO THE QUOTIENT OBTAINED BY DIVIDING THE TOTAL CIVILIAN POPULATION BY FORTY]. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries whenever possible.

* Sec. 5. Article VI, sec. 6, Constitution of the State of Alaska is amended by adding a new subsection to read:

(b) Each election district shall contain a population as nearly equal as possible. Each senate district shall contain a population as nearly equal as possible. In no case shall the absolute value of the total percentage deviations of all districts of a house divided by the number of districts exceed [two] one percent. In no case shall a single district have a population which varies from the average population of all districts of that house by more than [five] three percent.

* Sec. 6. Article VI, sec. 8, Constitution of the State of Alaska is amended to read:

SECTION 8. REAPPORTIONMENT BOARD. The governor shall appoint a

reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern <u>regions of the state</u> [SENATE DISTRICTS]. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

* Sec. 7. Article VI, secs. 4, 5, and 7 and Article XIV are repealed.

* Sec. 8. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

MEMORANDUM

DATE: February 10, 1984

TO: House Judiciary Committee

FROM: Mary Lou Meiners, Director
Division of Elections

RE: CSHJR 53, Relating to Reapportionment

This resolution would place six amendments to the Constitution on the 1984 general election ballot dealing with reapportionment and repeal three articles.

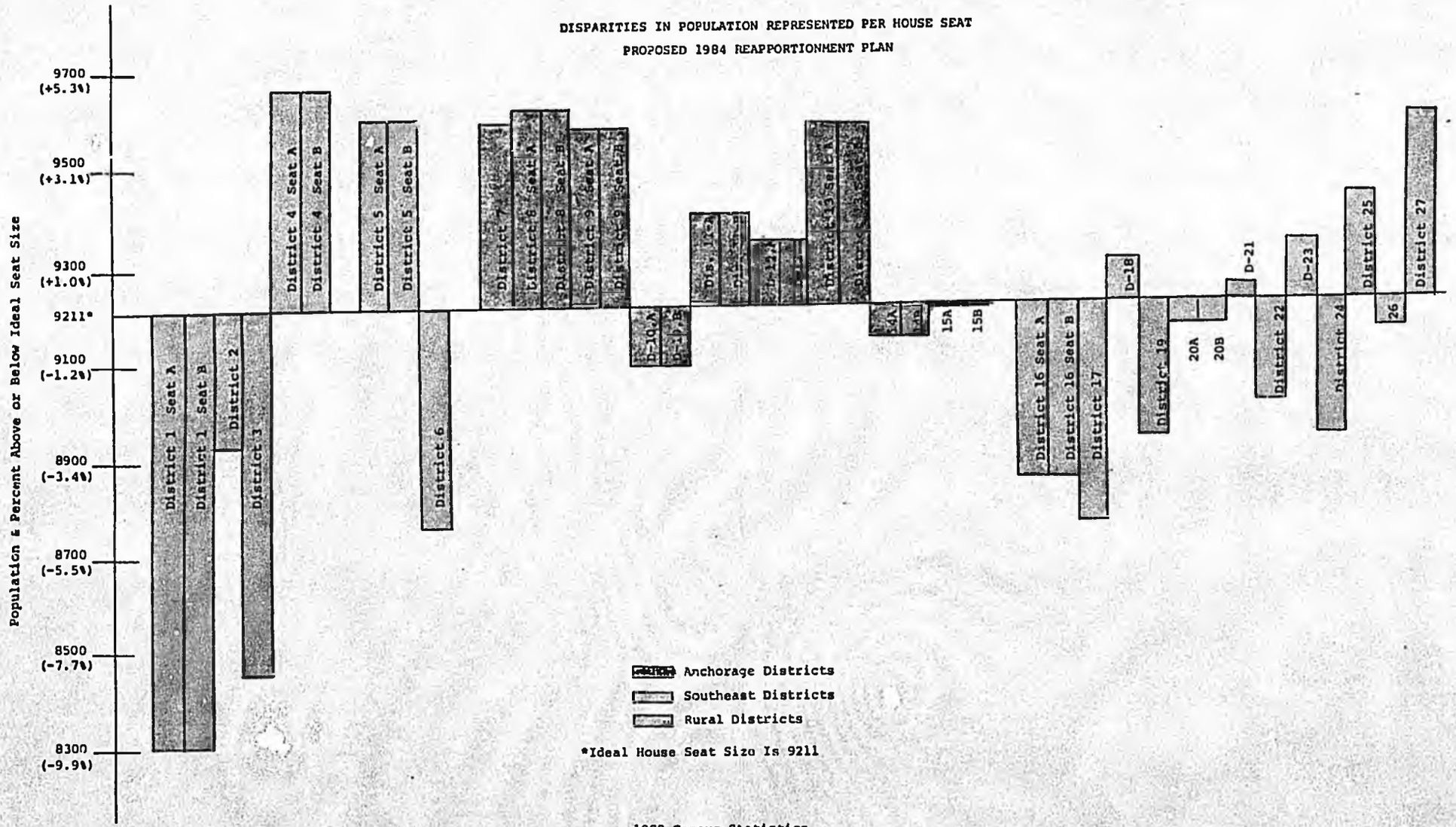
My reading of the resolution is that, should the voters approve any or all of these amendments, they would take effect at the next reapportionment in 1992. (Otherwise, a new reapportionment board must be convened in 1985 to redraw election districts and apply those amendments that passed. This latter scenario is probably not the sponsor's intent.)

The substantive changes proposed are contained in Sections 1 and 2 of the resolution, from lines 8 to 28 on page 1. This would require that any future reapportionment create only single member districts for each member of the House of Representatives. This would prohibit, for instance, the present arrangements in Districts 1, 4, 5, 8-16, and 20. I urge you to closely examine the population and geographic reasons for the two-member-district method of apportionment and consider the consequences and problems associated with single member districts. Populations may be unevenly spread over the district, by subdivision or town.

However, before constraints are placed on future reapportionment boards that could have unfortunate consequences, please do analyze these cited two member districts and determine whether they can or should be divided into single districts.

DISPARITIES IN POPULATION REPRESENTED PER HOUSE SEAT

PROPOSED 1984 REAPPORTIONMENT PLAN



*Ideal House Seat Size Is 9211

1980 Census Statistics

SOUTHEAST

Six House Seats

Population: 53,308

$6/\overline{53,308}$ = 8,885/seat

Ave S.E. Variance= -3.5%

ANCHORAGE

Seventeen House Seats

Population: 159,466

$17/\overline{159,466}$ = 9,380/seat

Ave Anch. Variance= +1.8%

RURAL

Seventeen House Seats

Population: 155,655

$17/\overline{155,655}$ = 9,156/seat

Ave Rural Variance= -0.6%

From The Last Frontier

Rep. Terry Martin
State Capitol, Pouch V
Juneau, AK 99811

Offered: 2/8/84
Referred: Judiciary and Finance

Original sponsor: Martin

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 53 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

Relating to the reapportionment of the legislature.

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

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

SECTION 1. ELECTION DISTRICTS. Members of the house of representatives shall be elected by the qualified voters of the [RESPECTIVE] election districts that are established in the most recent reapportionment under this article. Each member of the house of representatives shall be elected from a single member district. [UNTIL REAPPORTIONMENT, ELECTION DISTRICTS AND THE NUMBER OF REPRESENTATIVES TO BE ELECTED FROM EACH DISTRICT SHALL BE AS SET FORTH IN SECTION 1 OF ARTICLE XIV.]

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

SECTION 2. SENATE DISTRICTS. Members of the senate shall be elected by the qualified voters of the [RESPECTIVE] senate districts that are established in the most recent reapportionment under this article. Each senate district shall be composed of two election districts established under sec. 1 of this article. [SENATE DISTRICTS SHALL BE AS SET FORTH IN SECTION 2 OF ARTICLE XIV, SUBJECT TO CHANGES AUTHORIZED IN THIS ARTICLE.]

* Sec. 3. Article VI, sec. 3, Constitution of the State of Alaska is amended to read:

SECTION 3. REAPPORTIONMENT OF HOUSE AND SENATE. The governor

shall reapportion the house of representatives and the senate immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon the best available evidence of the resident [CIVILIAN] population within each election district and senate district [AS REPORTED BY THE CENSUS].

* Sec. 4. Article VI, sec. 6, Constitution of the State of Alaska is amended to read:

SECTION 6. REDISTRICTING. The governor may [FURTHER] redistrict by changing the size and area of election districts and senate districts, subject to the limitations of this article. Each [NEW] district [SO] created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. [EACH SHALL CONTAIN A POPULATION AT LEAST EQUAL TO THE QUOTIENT OBTAINED BY DIVIDING THE TOTAL CIVILIAN POPULATION BY FORTY]. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries whenever possible.

* Sec. 5. Article VI, sec. 6, Constitution of the State of Alaska is amended by adding a new subsection to read:

(b) Each election district shall contain a population as nearly equal as possible. Each senate district shall contain a population as nearly equal as possible. In no case shall the absolute value of the total percentage deviations of all districts of a house divided by the number of districts exceed two percent. In no case shall a single district have a population which varies from the average population of all districts of that house by more than five percent.

* Sec. 6. Article VI, sec. 8, Constitution of the State of Alaska is amended to read:

SECTION 8. REAPPORTIONMENT BOARD. The governor shall appoint a

reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern <u>regions of the state</u> [SENATE DISTRICTS]. Appointments shall be made without regard to political affiliation. Board members shall be compensated.

* Sec. 7. Article VI, secs. 4, 5, and 7 and Article XIV are repealed.

* Sec. 8. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM January 26, 1984

SUBJECT: Reapportionment of the legislature (HJR 53)

TO: Representative Mitch Abood
Chairman, House State Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described resolution.

As a preliminary matter, I must advise you that a sectional analysis or summary of a resolution should not be considered an authoritative interpretation of the resolution and the resolution itself is the best statement of its contents. If you would like an interpretation of the resolution as it may apply to a particular set of circumstances, please address a specific request to this office.

To some extent, the amendments proposed in this resolution are unusual to the extent that the changes contained in the resolution may confirm existing understandings of the constitutionally required framework for the reapportionment of the Alaska legislature; the Alaska Supreme Court has been obliged to rewrite these provisions under the mandates received from the U.S. Supreme Court in a series of reapportionment decisions delivered by the Supreme Court. See, among other decisions, Baker v. Carr, 369 U.S. 186 and Reynolds v. Sims, 377 U.S. 533. To that extent, the language does not so much indicate a change in what may be expected after ratification of the proposed amendments but rather an affirmative confirmation of existing legal and constitutional reality. The Alaska Supreme Court has invited the legislature to propose conforming amendments several times in its reapportionment decisions. See Wade v. Nolan, 414 P.2d 689 (Alaska 1966), Egan v. Hammond, 502 P.2d 856 (Alaska 1972), Groh v. Egan, 526 P.2d 863 (Alaska 1974), and Carpenter v.Hammond, 667 P.2d 1204 (Alaska 1983).

In a few instances, the sponsor of the resolution has sought to adopt improvements in the constitutional framework.

I will indicate in these comments the nature of the changes proposed.

Section 1 of the resolution proposes an amendment to art. VI, section 1 of the Alaska Constitution.

The section provides that members of the house are elected from the districts established in the most recent reapportionment of the house. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the House of Representatives in 1960; the material added to the end of the first sentence replaces that language.

The second full sentence of the section that is added by this resolution represents a policy choice by the sponsor; as you will recognize, a number of the members of the house are now elected from designated seats in multi- member districts. It is generally agreed that the gubernatorial power to reapportion in Alaska grants the governor the authority to establish single member districts; the governors have rearranged districts probably from the first reapportionment and the governors have reduced the number of candidates elected from a single district from the high of 14 in Anchorage after the 1960 reapportionment to the present formulation.

The proposed amendment mandates single member house districts in all cases.

Section 2 of the resolution amends art. VI, section 2 of the Alaska Constitution.

The section provides that members of the senate are elected from districts that are established under the most recent reapportionment of the senate. The material from the last sentence that is deleted has been obsolete since the first reapportionment of the Senate in 1964; the material added at the end of the first sentence replaces that language.

Just as each house member will be elected under the revised Section 1 to a single member district, each senator will be elected from a senate district that is composed of two house districts. This material represents a policy goal requested

From The Last Frontier
Rep. Terry Martin
State Capitol, Pouch V
Juneau, AK 99811

by the sponsor of the resolution. To a some extent, I believe that this formulation represents the existing reality; the language mandates that result.

Section 3 of the resolution amends art. VI, section 3 of the Alaska Constitution.

The amendments to the first sentence of the section conform the language of the section to the understanding of the intent of the constitutional convention. The Alaska Supreme Court concluded after Governor Egan reapportioned the senate in 1964 that if the drafters of the Alaska Constitution had understood that the senate also must represent people and not geographic areas, that they would have given the governor the authority to reapportion the senate. Wade v. Nolan, 414 P.2d 689 (Alaska 1966).

The change from "based upon civilian population" to "based upon the best available evidence of the resident population" results from Egan v. Hammond, 502 P.2d 856 (Alaska 1972) and Groh v. Egan, 526 P.2d 863 (Alaska 1974); the Alaska Supreme Court held that exclusion of the military from the population base without consideration whether the individual member of the military was a resident of the state was irrational.

My understanding of the reason for the deletion of the reference to the census was simply that the sponsor wanted the reapportionment board able to use the "best available evidence", whether that was the census reports or something else. As suggested, that represents a policy goal sought by the sponsor.

Note that sections 4 and 5 of art. VI are proposed for repeal. See resolution section 7.

Section 4 established an obsolete concept of reapportionment based on "equal proportions." Section 5 permitted the combining of house districts in certain instances. Both concepts have been obsolete since the original U. S. Supreme Court decisions mandating "one person, one vote."

Section 4 of the resolution amends art. VI, section 6 of the Alaska Constitution.

The amendment makes clear in the first sentence that it applies to senate as well as house reapportionment.

The third sentence is deleted from the section but note that its content is carried into the new subsec. (b) in Section 5 of the resolution.

Section 5 of the resolution amends art. VI, section 6 of the Alaska Constitution by adding a new subsection.

It provides that each "election district" for the election of house members and each senate district shall each contain "a population as nearly equal as possible." The last two sentences state a mathematical requirement for deviations from the ideal district population.

Note that section 7 of art. VI has been repealed. See resolution section 7.

Section 7 dealt with limitations on the modification of senate district boundaries. It has been obsolete since 1964.

Section 6 of the resolution amends art. VI, section 8 of the Alaska Constitution.

The amendment recognizes that that there have not been regional senate districts since the 1964 reapportionment.

As noted above, secs. 4, 5, and 7 of art. VI are proposed for repeal in section 7 of the resolution.

Also proposed for repeal in section 7 is art. XIV of the Alaska Constitution. Art. XIV establishes a reapportionment schedule: the listing of the various house and senate districts and their boundaries.

It should be understood that the material contained within art. XIV will continue to be necessary but since it is not truly constitutional, it will become a footnote to the provisions of art. VI, presumably secs. 1 and 2.

It is not constitutional in the sense that its provisions will necessarily receive amendment in each reapportionment but will take effect because of the reapportionment proclamation of the governor and not because they have been adopted in a constitutional amendment proposed by the legislature and ratified by the qualified voters of the state.

Section 8 of the resolution is standard language directing the election officers to put the resolution before the qualified voters of the state at the next general election in conformity with the constitution and election laws.

The amendments would become a part of the constitution 30 days after the certification of the election results by the lieutenant governor. See art. XIII, sec. 1. The implementation of the provisions would not be called for until after the reporting of the next decennial census, after 1990.

If I may be of further assistance, please advise.

RAB:ojb
J2/080

[420 US 1]

DANIEL CHAPMAN AND JACQUE STOCKMAN, Appellants,

v

BEN MEIER, etc.

420 US 1, 42 L Ed 2d 766, 95 S Ct 751

[No. 73-1406]

Argued November 13, 1974. Decided January 27, 1975.

SUMMARY

Upon the failure of the North Dakota Legislative Assembly to reapportion itself after the 1970 census, an action was instituted in the United States District Court for the Southeastern District of North Dakota for declaratory and injunctive relief, the plaintiffs alleging that the reapportionment plan then in effect, which plan had been fashioned by a federal court in 1965 and included multimember Senate districts, no longer complied with equal protection requirements. The relief sought included a request that the court fashion a new apportionment plan using single-member districts, based on the 1970 census figures. The District Court found that the 1965 apportionment plan was unconstitutional, and after considering several plans presented by a court-appointed commission, ultimately adopted a new plan which included multimember Senate districts, and which contained a population variance of 20.14 percent between the largest and smallest Senate districts (372 F Supp 371).

On direct appeal, the United States Supreme Court reversed and remanded. In an opinion by BLACKMUN, J., expressing the unanimous view of the court, it was held that (1) absent persuasive justification, a federal court's reapportionment plan for a state legislature should avoid use of multimember districts and should ordinarily achieve the goal of population equality with little more than de minimis variation, (2) when important and significant state considerations rationally mandated departure from such standards, the reapportioning court had the responsibility to articulate precisely why a plan of single-member districts with minimal population variance could not be adopted, (3) in the case at bar, the District Court had failed to articulate factors justifying multimember districting, and (4) the 20 percent population deviation involved could not be justified on the grounds

Briefs of Counsel, p 993, infra.

a federal court or a state legislature has initiated the use. The

[420 US 19]

practical simultaneity of decision in Connor v Johnson and in Whitcomb v Chavis, supra, so demonstrates. When the plan is court ordered, there often is no state policy of multimember districting which might deserve respect or deference. Indeed, if the court is imposing multimember districts upon a State which always has employed single-member districts, there is special reason to follow the Connor rule favoring the latter type of districting.

[4a, 5] Appellants do not contend that any racial or political group[13] has been discriminated against by the multimember districting ordered by the District Court. They only suggest that the District Court has not followed our mandate in Connor v Johnson, and that the court has failed to articulate any reasons for this departure. We agree. Absent particularly pressing features calling for multimember districts, a United States district court should refrain from imposing them upon a State.

The District Court cannot avoid the multimember issue by labeling it, see 372 F Supp, at 377, a political issue to be resolved by the State. The District Court itself created multimember districting in North Dakota, and it might be said to be disingenuous to suggest that the judicial creation became a political question simply by the passage of nine years. The District Court's treatment of this issue directly conflicts with its prior opinion in this case, where it allowed continuation of the multimember districts first established in the Paulson decision in 1965 only as an interim remedy. 372 F Supp, at 367. The court there noted that in the largest multimember district, a voter would be asked to evaluate the qualifications of at least 30 candidates for the state

[420 US 20]

legislature, a "most formidable" task. Id., at 366. Taking note of Connor v Johnson, the court held in 1972 that it would be improper to permit multimember districts to remain permanently, and allowed continued use only for the impending election because of the great confusion that otherwise would result. The court appears now to have abandoned that position, with no suggestion of reasons for the abrupt change. It is especially anomalous that the court would continue with the multimember districting plan, when the Special Master who initially proposed it has disavowed use of permanent multimember districts. Dobson, Reapportionment Problems, 48 ND L Rev 281, 289 (1972).

In contrast, the dissent in the District Court suggests a wide range of attributes of single-member districts. 372 F Supp, at 391. One advantage is obvious: confusion engendered by multiple offices will be removed. Other advantages perhaps are more speculative: single-member districts may prevent domination of an entire slate by a narrow majority, may ease direct communication with one's senator, may reduce campaign costs, and may avoid bloc voting. Of course, these are general virtues of single-member districts, and there is no guarantee that any particular feature will be found in a specific plan. Neither the District Court majority nor appellee, however, has

13. The only minority group of significant size in North Dakota are Indians, and the court-ordered reapportionment plan affects them no differently from any other group.

provided us with any suggestion of a legitimate state interest supporting the abandonment of the general preference for single-member districts in court-ordered plans which we recognized in Connor v Johnson.[14] The fact that no allegation of minority group discrimination is raised by appellants here does not make Connor inapplicable.

[420 US 21]

It is true that in 1973 the voters of North Dakota voted down a proposed constitutional amendment which would have re-established the State's tradition of single-member senatorial districts. At the same time the voters also rejected by referendum the Legislative Assembly's 1973 Act which would have continued the multimember format for five districts. We are unable to infer from these simultaneous actions of the electorate any particular attitude toward multimember districts. It simply appears that North Dakota's voters have not been satisfied with any reapportionment proposal, and that they are frustrated by the years of confusion since the obviously impermissible apportionment provisions of the State's Constitution were invalidated.

[4b, 6] We are confident that the District Court, with perhaps the aid of its Special Masters, will be able to reinstitute the use of single-member districts while also attaining the necessary goal of substantial population equality. Special Master Ostenson had indicated that it "'would not be teribly difficult to adopt single-member districts.'" See 372 F Supp, at 392.[15] Unless the District Court can articulate such a "singular combination of unique factors" as was found to exist in Mahan v Howell, 410 US, at 333, 35 L Ed 2d 320, or unless the 1975 Legislative Assembly appropriately acts, the court should proceed expeditiously to reinstate single-member senate districts in North Dakota.

VI

The Population Variance

The second aspect of the court-ordered reapportionment plan that is challenged by the appellants is the population divergence in the various senate districts. Since the population of the State under the 1970 census

[420 US 22]

was 617,761, and the number of senators provided for by the court's plan was 51, each senate district would contain 12,112 persons if population equality were achieved. In fact, however, one district under the plan has 13,176 persons, and thus is underrepresented by 8.71%, while another district has 10,728 persons, and is overrepresented by 11.45%. The total variance between the largest and smallest districts consequently is 20.14%, and the ratio of the population of the largest to the smallest is 1.23 to 1.

[7] Reynolds v Sims, supra, established that both houses of a state legislature must be apportioned so that districts are "as nearly of equal population as is practicable." 377 US, at 577, 12 L Ed 2d 506. While "[m]athematical exactness or precision" is not required, there must be

14. For an example of a conceivable rationale supporting multimember districts, see Carpeneti, supra, n 11, at 695-696, where it is suggested that multimember districts may insure that certain interests such as city- or region-wide views are represented.

15. See also the views of the late Special Master Smith, 372 F Supp, at 392.

counsel acknowledged that reapportionment proposed by the Legislative Assembly broke county lines, 372 F Supp, at 393 n 22, and the District Court indicated as long as a decade ago that the legislature had abandoned the strict policy. Paulson v Meier, 246 F Supp, at 42–43. Furthermore, a plan devised by Special Master Ostenson demonstrates that neither the Missouri River nor the policy of maintaining township lines prevents attaining a significantly lower population variance.[17] We do not imply that the

[420 US 26]

Ostenson plan should be adopted by the District Court, or that its 5.95% population variance necessarily would be permissible in a court-ordered plan. What we intend by our reference to the Ostenson plan is to show that the factors cited by the District Court cannot be viewed as controlling and persuasive when other, less statistically offensive, plans already devised are feasible.[18] The District Court has provided no rationale for its rejection of the Ostenson plan.

[12] Examination of the asserted justifications of the court-ordered plan thus plainly demonstrates that it fails to meet the standards established for evaluating variances in plans formulated by state legislatures or other state bodies. The plan, hence, would fail even under the criteria enunciated in Mahan v Howell and Swann v Adams. A court-ordered plan, however, must be held to higher standards than a State's own plan. With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features. We have felt it necessary in this case to clarify the greater responsibility of the District Court, when devising its own reapportionment plan, because of the severe problems occasioned for the citizens of North Dakota during the several years of redistricting confusion.

VII

[13a] We hold today that unless there are persuasive justifications, a court-ordered reapportionment plan of a state

[420 US 27]

legislature must avoid use of multimember districts, and, as well, must ordinarily achieve the goal of population equality with little more than de minimis variation.[19] Where important and significant state considerations rationally mandate departure from these standards, it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted.

[14] We say once again what has

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17. See Appendix B to memorandum opinion and order of June 30, 1972, by Judges Bright and Van Sickle (the Ostenson plan), App 12–22. The Ostenson plan would allow a total population deviation of only 5.95%.

18. Another plan appearing to be more acceptable with respect to population variance than that adopted by the District Court is the one suggested by the State's Special Committee on Reapportionment, referred to in Judge Bright's dissenting opinion, 372 F Supp, at 394 n 23.

19. [13b] This is not to say, however, that court-ordered reapportionment of a state legislature must attain the mathematical preciseness required for congressional redistricting under Wesberry v Sanders, 376 US 1, 11 L Ed 2d 481, 84 S Ct 526 (1964); Kirkpatrick v Preisler, 394 US 526, 22 L Ed 2d 519, 89 S Ct 1225 (1969); Wells v Rockefeller, 394 US 542, 22 L Ed 2d 535, 89 S Ct 1234 (1969); and White v Weiser, 412 US 783, 37 L Ed 2d 335, 93 S Ct 2348 (1973).

ıe problem of revision or redrafting where initial plans are rejected has also rated some differences of approach. One option dictates that courts redraw s themselves or appoint other apportioning authorities if they reject the first proposed. Others follow this course only when the initial apportioning ority fails twice; such a "second-try" approach is usually defended for plans h call for redistricting commissions. An underlying rationale reflects the ern that members of a nonpartisan commission, knowing that a court of political persuasion will take over the reapportionment process should the nission fail to act, might be inclined to force a deadlock. Moreover, the nission would likely have at its disposal staff, resources, and experience not ly available to the court, which it could employ in formulating a new plan. though many of the accountability provisions remain subject to debate, par- rly in their detailed content, most redistricting reformers agree that this is a l component for improvement. Similarly, while influential groups may dif- to who should make redistricting decisions and how critical these decisional s are, most seem to join forces in recognizing the importance of accoun- y factors to an equitable reapportionment process.

V. Concluding Observations

is monograph has attempted to identify roblems associated with the cur- ongressional redistricting system and to review the various proposals for ovement along with major arguments which have been advanced in favor of ainst them. It is hoped that this analysis will enhance understanding of the tant issues involved, and that it will motivate groups and individuals both and outside the legal profession to formulate their own views, consider al action and resist deterrence to change by traditional obstacles in this

improvement proposals under consideration and debate fall into two categories—structural change (largely focused on the use of special com- ns for developing reapportionment plans) and promulgation of standards ensure fairness and equity in line-drawing (based on a handful of prin- mning from population equality through encouragement of minority in-). Concurrently, two levels of legislative initiative for such reforms are consideration and debate—federal and state.

not the intent or function of this pamphlet to advocate specific reform ns. However, redistricting equity remains a problem for the nation and l solutions and conditions do not yet appear to have been devised, no less rated in existing processes. Thus, a measure of experimentation with the orm concepts seems desirable; the American Bar Association has formal- sed such a posture in relation to the 1980 census redistricting process.* ation's experience with redistricting commissions has not been sufficient- pread or intensively evaluated to draw final conclusions as to universal the most desirable subfeatures and characteristics. Thus, it would seem e who call for state initiatives in jurisdictions so inclined, rather than for te that all states establish commissions, would offer the most promise best opportunity to evolve optimal structures for reapportionment.

Federal rules governing redistricting standards, rather than governing in to apply these standards, however, may be beneficial, although existing un tainties as to the best "mix" and order of priority among the most commonly cited standards (*e.g.*, population equality, compactness, contiguity, avoidance of intentional political preference) suggest that such formulations might do well to leave some room for state flexibility and experimentation in detailed definition and ordering of any standards articulated.

Whatever the case, carefully studied and soundly conceived redistricting reform promises to aid many sectors of society:

- voters in general whose voice will be heard more clearly when election results are not predetermined by gerrymandering, when competition for congressional seats is maximized, and when representatives must focus their responsiveness on voters rather than on line-drawers;
- racial and ethnic minorities whose interests have often been subordinated in past redistricting practices;
- congressional candidates from minority parties and challenger groups who no longer need hurdle undue barriers of self-protection constructed by incumbent politicians;
- state legislators who will be liberated from political pressures which may influence them to manipulate the line-drawing process;
- courts which will have clearer guidelines concerning the acceptability of redistricting plans; and
- rural and suburban communities (when gerrymandering has been used to strengthen undaly the urban voice) and urban residents (when line-drawers have attempted to increase unduly rural representation).

Indeed, virtually all sectors of society can benefit from congressional redistricting improvement which aids the American electoral machinery in functioning according to our highest ideals of representative government. The time is right—for thought, for decision, and for new levels of achievement.

Additional Publications of ABA Special Committee on Election Law and Voter Participation

esidency. Proceedings of Symposium held December 1976, in New York City.

Order from Fordham Law Review, 140 W. 62nd Street, New York, NY 10023 ($3.50)

ncing of Elections: A Constitutional Division of the Wealth, 1975. Study by Schwarz for the ABA Special Committee on Election Reform.

Order from William S. Hein & Company, 1285 Main Bldg., Buffalo, NY 14209 ($9.50 plus 75¢ postage)

on Campaign Financing Regulation. Proceedings of Symposium held April ..ron, California.

Order from William S. Hein & Company, 1285 Main Bldg., Buffalo, NY 14209 ($9.50 plus 75¢ postage)

inancing after Buckley v. Valeo. Proceedings of Symposium held February ..hington, DC. (ABA Product No. 3570002)

er from American Bar Association, Order/Billing Department 357, 1155 East 60th Street, Chicago, IL 60637. ($5.00)

rance of the American Voter. Proceedings of Symposium held June 1978, in ..alifornia.

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Council of State

CONGRESSIONAL REDISTRICTING

ABA Special Committee on Election Law and Voter Participation

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DIVISION OF PUBLIC SERVICE ACTIVITIES
AMERICAN BAR ASSOCIATION
WASHINGTON, D.C. **JUNE 1981**

[402 US 690]

PEGGY J. CONNOR et al.

v

PAUL B. JOHNSON et al.

402 US 690, 29 L Ed 2d 268, 91 S Ct 1760, reh den
403 US 924, 29 L Ed 2d 702, 91 S Ct 2220

June 3, 1971

SUMMARY

A three-judge United States District Court for the Southern District of Mississippi, having invalidated a Mississippi legislative reapportionment statute, issued its own reapportionment plan constituting Hinds County, Mississippi, as a multimember district.

On application for stay pending direct appeal, the United States Supreme Court stayed the District Court's decree for 11 days with instructions to devise and put into effect a single-member district plan for Hinds County by that date, absent insurmountable difficulties. In a per curiam opinion expressing the views of six members of the court, it was held that single-member districts are preferable and that, given the census information apparently available and the dispatch with which the appellants devised suggested apportionment plans, the District Court could have devised single-member districts for Hinds County in the 17 days then available, and could devise and put into effect such a plan in an 11-day period.

BLACK, J., joined by BURGER, Ch. J., and HARLAN, J., dissented on the ground that the time was insufficient to fairly administer the election process.

Briefs of Counsel, p 1005, infra.

OPINION OF THE COURT

Per Curiam.

On May 14, 1971, a three-judge District Court, convened in the Southern District of Mississippi, invalidated the Mississippi Legislature's latest reapportionment statute as allowing impermissibly large variations among House and Senate districts. The parties were requested by the court to submit suggested plans, and the applicants did so on May 17. All four plans suggested by applicants utilized single-member districts exclusively

[402 US 691]

in Hinds County. The following day, May 18, the court issued its own plan, which included single- and multi-member districts in each House: Hinds County was constituted as a multi-member district electing five senators and 12 representatives. The court expressed some reluctance over use of multi-member districts in counties electing four or more senators or representatives, saying: "[I]t would be ideal if [such counties] could be divided into districts, for the election of one member [from] the district." However, in view of the June 4, 1971, deadline for filing notices of candidacy, the court concluded that: "[W]ith the time left available it is a matter of sheer impossibility to obtain dependable data, population figures, boundary locations, etc. so as fairly and correctly to divide these counties into districts for the election of single members of the Senate or the House in time for the elections of 1971." The court promised to appoint a special master in January 1972 to investigate the possibility of single-member districts for the general elections of 1975 and 1979.

Applicants moved the District Court to stay its order. The motion was denied on May 24. Applicants have now applied to this Court for a stay of the District Court's order and for an extension of the June 4 filing deadline until the District Court shall have provided single-member districts in Hinds County or until the Attorney General or the District Court for the District of Columbia approves the District Court's apportionment plan under Section 5 of the Voting Rights Act of 1965, 79 Stat 439, 42 USC § 1973c (1964 ed., Supp V).

[1] Insofar as applicants ask relief under the Voting Rights Act the motion for stay is denied. A decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act. However, other reasons lead us to grant the motion to the extent indicated below.

[402 US 692]

In failing to devise single-member districts, the court was under the belief that insufficient time remained until June 4, the deadline for the filing of notices of candidacy. Yet at that time June 4 was 17 days away and, according to an uncontradicted statement in the brief supporting this motion, the applicants were able to formulate and offer to the court four single-member district plans for Hinds County in the space of three days. Also according to uncontradicted statements, these plans were based on data which included county maps showing existing political subdivisions, the supervisory districts used by the Census Bureau for the taking of the 1970 census, official 1970 Census Bureau "final population counts," and "computer print-out from Census Bureau official computer tapes showing total and white Negro population by census enumeration dis-

tricts." Applicants also assert that no other population figures will subsequently become available.

[2, 3] The District Court's judgment was that single-member districting would be "ideal" for Hinds County. We agree that when district courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter. Furthermore, given the census information apparently available and the dispatch with which the applicants devised suggested plans for the District Court, it is our view that, on this record, the District Court had ample time to devise single-member districts for Hinds County prior to the June 4 filing deadline. While meeting the June 4 date is no longer possible, there is nothing before us to suggest any insurmountable barrier to devising such a plan by June 14, 1971. Therefore the motion for stay is granted and the judgment below is stayed until June 14. The District Court is instructed, absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by that date.

[402 US 693]

In light of this disposition, the District Court is directed to extend the June 4 filing date for legislative candidates from Hinds County to an appropriate date so that those candidates and the State of Mississippi may act in light of the new districts into which Hinds County will be divided.

It is so ordered.

The Chief Justice, Mr. Justice Black, and Mr. Justice Harlan dissent and reserve the right to file an opinion to that effect.

SEPARATE OPINION

June 4, 1971

Mr. Justice Black, with whom The Chief Justice and Mr. Justice Harlan join, dissenting.

I strongly dissent from the stay order of June 3, 1971, more particularly as it relates to a postponement of the Hinds County, Mississippi, election. Under Mississippi law and the decrees of the three-judge court, Hinds County candidates for the state legislature would be elected from the county at large. But this Court—at the eleventh hour—now commands the District Court to change its decree and divide Hinds County into single-member districts so that each voter there can vote for only one state representative and one state senator. Under Mississippi law, the final filing date for candidates is June 4. This Court's order now postpones that deadline to "an appropriate date" after June 14. The order compels candidates who had expected to run countywide to change their plans completely and to campaign only in a particular district which is part of the county. The confusion is compounded because the candidates do not yet know where the district lines will be drawn. Any candidate would be dumbfounded by the thought that his old district had suddenly been abolished on the eve

[402 US 694]

of the filing date and he must now run in a new but unspecified district which is still only a dream in the eyes of the United States Supreme Court sitting a thousand miles from Hinds County.

This abrupt order by the Court is all the more astounding since this Court has consistently approved multi-member districts for state

Opinion of Circuit Judge Bright

I have read the complete record in this case with care, and find no reasons advanced anywhere in that record for continuing multi-member senate districts as either furthering the art and science of politics or improving the conduct of state government. However, the record does disclose several arguments in favor of the more traditional single-member senate districts:

(1) It gives a voter a chance to compare only two candidates, head to head in making a choice.

(2) It prevents one political party with a heavy plurality in one or two potential districts from dominating other poential districts that might narrowly go for the candidate of the opposite party.

(3) It prevents a city wide political organization from ostracizing or disciplining a legislator, who dares stray from the machine's line.

(4) It permits a citizen to identify a legislator as his senator and makes direct communication easier.[19]

(5) It makes each senator responsible for his actions and makes it difficult for a senator to fade into the ranks of "the team" to avoid being identified with specific actions taken.

(6) It reduces campaign costs and "personalizes" a campaign.

(7) It creates greater interest in the possibility of a citizen seeking a legislative seat without the political machine blessing.

(8) It would diminish the animosity created in the legislature against multi-senate districts because of the tendency of senators elected by one political party from a city to vote as a bloc.

(9) It would tend to guarantee an individual point of view if all senators are not elected as a team.

(10) It would equalize the power of people in single senate districts with the people in the broken down multi-senate districts to *influence* the *election* of *only one* senator.

From North Dakota's earliest days, the policy of single member senate districts was an integral part of its political tradition. Section 29 of the Constitution of 1389 required such districts and controlled all elections in the state until it was invalidated as an almost accidental by-product of the federal district court's decision in *Paulson II*. *See* State ex rel. Stockman v. Anderson, 184 N.W.2d 53, 57–58 (N.D.1971). When a panel of this court adopted with some hesitancy a truly unprecedented multi-member senate plan in *Paulson II*, the court said:

> We have exhaustively considered the plan as set forth in Senate Bill 39 [which we hereby adopt]. We find it not perfect. Five "multi-member" districts are created; county lines are violated in twelve instances. * * * Insofar as the multi-member districts are concerned, if experience proves that practical difficulties or inequities result therefrom, appropriate remedial legislation may reasonably be expected. [246 F.Supp. at 44.]

In the nine years since the court in *Paulson II* first introduced multi-member senate districts to North Dakota,

19. For example, in the 21st District encompassing the cities of Fargo and West Fargo, four of the five senators live in the extreme south side of Fargo; only one resides in the northern section of Fargo. No state senator resides in West Fargo. I take judicial note of these facts and that, generally speaking, the most affluent citizens in the 21st Legislative District are concentrated on Fargo's south side. *See* Fargo Forum, January 29, 1974, at 9, c. 1 (morning edition).

Arguments in Support of Single Member Districts

From Adams, Bruce
"Model State Reapportionment Process - Continuing Quest for fair + effective Representation"
Harvard Journal on Legislation, Vol 14, No. 4 (1977) 825-904

the state supreme court as a backup authority. If members of a nonpartisan commission know that a partisan court of their political persuasion will take over the reapportionment task if the commission fails to act, they might force a deadlock.[165]

Section (c). Reapportionment Criteria.

(1) State legislative districts in each house shall have population as nearly equal as is practicable based on the population reported in the federal census taken in each year ending in zero. In no case shall the absolute value of the total deviations of all districts of a house divided by the number of districts exceed one percent. In no case shall a district have a population which varies from the average population of all districts, unless a population variance is necessary to comply with one of the other criteria set forth in this Section. In no case shall a single district have a population which varies by more than five percent from the average population of all districts. When a petition challenging a plan adopted by the commission is filed with the supreme court, the commission shall have the burden of justifying any variance between the population of a district and the average population of all districts.

COMMENT: The Model's provision that districts in each house "have population as nearly equal as is practicable" does not require mathematical equality.[166] It is based on the standard

Average Deviation Discussion

has vested the power to act in cases of commission deadlock to its secretary of state. *See* text accompanying notes 63-68 *supra*.

165 Maryland is an example of a state where judicial politics is said to have had an impact on reapportionment. In 1973, the Maryland Court of Appeals, the state's highest court, rejected the state's legislative reapportionment plan on a technicality. A special master was appointed. He found political favoritism in Baltimore and Montgomery counties and proposed a plan redrawing districts in the two counties. The Court of Appeals rejected the special master's plan and adopted its own, maintaining much of the gerrymandering that had been done in the two counties. In re Legislative Districting of State, 271 Md. 320, 317 A.2d 477 (1974), *cert. denied* 419 U.S. 840 (1974). The order was not accompanied with an explanation of the Court's method. It was pointed out at the time that the chief judge was running for re-election in Baltimore County and one of the associate judges was under challenge in a Montgomery County primary. *See* Rascovar, *Court Adopts Mandel-Style Redistricting Plan*, Balt. Sun, Mar. 23, 1974, at B20; *Judicial Politics?*, Balt. Evening Sun, Mar. 26, 1974, at A10.

166 Some state constitutions provide for a more rigorous population standard - the Missouri Constitution, for example, provides for districts with population "as nearly as possible" equal. Mo. Const. art. III, § 2. But, as Justice Fortas pointed out in a concurring opinion in Kirkpatrick v. Preisler:

> Arithmetically, it is *possible* to achieve division of a State into districts of precisely equal size, as measured by the decennial census or any other population base. To carry out this theoretical possibility, however, a legislature might have to ignore the boundaries of common sense, running the congressional district line down the middle of the corridor of an apartment house or even dividing the residents of a single family house between two districts.

394 U.S. 526, 538 (1969) (emphasis added).

established by the Supreme Court in *Reynolds*, in which the Court held that a state must "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."[167]

This subsection establishes two standards with which the plan must comply. The first standard is that of "average deviation". The second is the maximum allowable deviation from the average.

Most discussions of population deviation focus on the deviations from the least populous to the most populous district. The model recognizes that this is an important test of substantial population equality, but also recognizes that the average deviation — the absolute value of the total deviations of all districts in a house divided by the number of districts — is an even more significant test.[168] As illustration, consider two hypothetical plans for a state with fifty districts: Plan A has one district five percent greater in population than the average and another five percent lower than the average. The other 48 districts are exactly the average. Plan B has twenty-five districts at four percent greater than the average and twenty-five districts at four percent lower than the average. If maximum deviations were the only test, plan B would appear to be the preferred plan. However, in a state where one party controls the reapportioning authority, this could lead to significant malapportionment. The majority party would try to make most underpopulated districts majority party districts and most overpopulated districts minority party districts.[169]

167 377 U.S. at 577 (1964). *See also* text accompanying notes 29-31 *supra*.

168 In 1962, the Advisory Commission on Intergovernmental Relations discussed its model apportionment proposal's population standard: "the suggested amendment provides for specifying a maximum percentage deviation. To avoid having all the districts at the maximum deviation figure, an average deviation figure also could be included." *Reprinted in* 1 ACIR STATE LEGISLATIVE PROGRAM 14 (1975) [hereinafter cited as ACIR].

169 An example of this situation can be found in a New York plan drawn by the majority Republican party in the 1950's; the Republican 12th District had a population of 317,635 while the five Democratic districts which surround it had populations ranging from 367,000 to 382,000. International Ladies' Garment Workers' Union, Legislative Representation in New York State 9 (Oct. 1957).

The Model establishes five percent as the maximum allowable deviation from the average.[170] Thus, the largest district may be ten percent greater than the smallest. This figure was selected to provide the flexibility necessary to allow the commission to comply with the other important reapportionment criteria of this Section while prohibiting the commission from undermining the requirement of substantial population equality. A ten percent deviation from the largest to the smallest district is within the limits tolerated by the Supreme Court.[171]

Unlike recent Supreme Court decisions,[172] the Model Amendment requires justification for all deviations from the average. This requirement does not pose a difficult burden. Once the commission knows that it must justify variances, it will routinely record the necessary data.

170 The Ohio Constitution has a similar provision. OHIO CONST. art. XI, §§ 3-4. The Colorado Constitution allows only a five percent deviation from the most populous to the least populous district. COLO. CONST. art. V, § 46.

171 The Court upheld a Virginia legislative reapportionment plan with a maximum percentage deviation from the largest to the smallest district of 16.4 percent on grounds that it "may reasonably be said to advance the rational state policy of respecting the boundaries of political subdivisions." Mahan v. Howell, 410 U.S. 315, 328 (1973). But the Court noted that 16.4 percent "may well approach tolerable limits." *Id.* at 329.

Moreover, according to the Council of State Governments, most state reapportionment plans presently in effect satisfy the Model's requirement by having no legislative district with a deviation of greater than five percent from the average.

The Special Masters appointed by the California Supreme Court in 1973 to prepare a reapportionment plan established the following standard: "The population of Senate and assembly districts should be within 1% of the ideal except in unusual circumstances, and in no event should a deviation greater than 2% be permitted." Legislature v. Reinecke, 10 Cal. 3d 396, 410, 516 P.2d 6, 15, 110 Cal. Rptr. 718, 727 (1973). The Special Masters pointed out that the U.S. Supreme Court had allowed greater deviations but that California's legislative districts are so large that "even a 1% or 2% variance in population affects a large number of persons." *Id.* at 16. While a one percent population deviation is large in California, a larger figure might be acceptable in a state with a large legislature and a small population.

172 In White v. Regester, the Court reversed a district court judgment that had found a population differential of 9.9 percent between the largest and smallest districts made out a *prima facie* equal protection violation under the 14th amendment, absent special justification. The Court pointed out, however, that: "Very likely, larger differences between districts would not be tolerable without justification." 412 U.S. 755, 763-64 (1973).

In Kirkpatrick v. Preisler, 394 U.S. 526 (1969), the Court rejected *de minimus* deviations for Congressional districts, noting that "to consider a certain range of variance *de minimis* would encourage legislators to strive for that range rather than for equality as nearly as practicable." 394 U.S. at 531.

In another case supporting this logic, the Iowa Supreme Court rejected an apportionment plan for the Iowa General Assembly after finding that a maximum deviation figure of 3.83 percent was used and that "[o]nce the highest and lowest acceptable figures were fixed by the legislative leaders all efforts to achieve voter equality ceased." Noun v. Turner, 193 N.W.2d 784, 788 (Iowa 1972).

(2) Congressional districts shall have population as nearly equal as is practicable based on the population reported in the federal census taken in each year ending in zero. No district for election of members to the United States House of Representatives shall have a population which varies by more than one percent from the average population of all congressional districts in the state. When a petition challenging a plan adopted by the commission is filed with the supreme court, the commission shall have the burden of justifying any variance between the population of a district and the average population of all districts.

COMMENT: This subsection reflects the strict population equality standard established by the Court for congressional districts.[173] The Commission is required to use a stricter standard for congressional than for state legislative districts. No deviations in excess of one percent may be justified. Deviations of less than one percent may be permitted to stand if justified based on other criteria. The state carries the burden of justifying any variance from the average.

(3) To the extent consistent with subsections (1) and (2), district lines shall be drawn to coincide with the boundaries of local political subdivisions.

COMMENT: The Supreme Court has struck down state constitutional provisions that guarantee each county representation in the legislature,[174] but it has recognized the states' interests in respecting local subdivision boundaries for two reasons. First, use of political subdivision boundaries places limits on the reapportionment authority's discretion to gerrymander.[175]

173 Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969). 385 of the existing 435 congressional districts are within one percent of the average within their states. CONGRESSIONAL QUARTERLY *supra* note 6, at 1. *See* note 172 *supra*. As noted above, the Court has drawn the distinction between the population standard established in Article I, section 2 of the Constitution for congressional districts and the less demanding standard required of state legislative districts by the Fourteenth Amendment. *See* text accompanying notes 35-37 *supra*.

174 Reynolds v. Sims, 377 U.S. 533, 568 (1964).

175 *Id.* at 578-79. The legal prohibitions and traditions against breaking political subdivision lines acted as a constraint against gerrymandering before the U.S. Supreme Court's one person, one vote mandate. Baker, *supra* note 90, at 201. Without such a constraint, legislatures can cut up subdivisions for political purposes under the guise of ensuring population equality. For instance, in Illinois in 1973, the General Assembly crossed the city line of Chicago nine times in drawing state legislative lines. The

Also the Model seeks to balance the requirements of subsections (1), (2), (3), and (4) with the aims of compactness. Thus, the Amendment requires that the aggregate length of boundary lines be "as short as practicable" consistent with other criteria. Significantly, the Model adopts a more flexible requirement than, for example, the Colorado "as short as possible" standard,[185] because in some circumstances it would be unjust to ignore legitimate considerations such as geography, political subdivision lines, and highways. But the flexibility built into the Act should not be an invitation for abuse. The concrete explanations of the factors in subsections (1), (2), (3), and (4) and the explicit definition of compactness in this subsection will provide the courts with the tools with which to enforce this Model. In order to ensure compactness in political subdivisions of high population density, the Model imposes a special requirement upon districts within these subdivisions.

(6) No district shall be drawn for the purpose of favoring any political party, incumbent legislator, or other person or group. In preparing a plan, the commission shall not take into account the addresses of incumbent legislators. The commission shall not use the political affiliations of registered voters, previous election results, or demographic information other than population head counts for the purpose of favoring any political party, incumbent legislator, or other person or group.

COMMENT: This subsection expands upon the antigerrymandering provisions in the Delaware Code and the Hawaii Constitution.[186]

The Supreme Court has held that the use of political data in the formulation of district lines does not violate the Constitution.[187] Thus limitations on the use of political data in planning apportionment are a necessary addition to the other criteria in the Model Amendment. Without limitations on the use of political data, the Amendment would invite politically motivated gerrymandering. The explicit prohibition against the use of addresses of incumbent legislators eliminates a special threat to fair districting.

Under the Model Amendment a plan is not rendered voidable merely because it happens to favor a political party, incumbent legislator, or other person or group. All reapportionment plans favor some party, person, or group. Challengers must demonstrate that the districts were drawn for the purpose of favoring some party, person, or group. The limitations on the use of data traditionally used in political gerrymandering will be judicially enforceable.

(7) No district shall be drawn for the purpose of diluting the voting strength of any language or racial minority group.

COMMENT: The ability of the reapportionment authority to dilute the voting strength of minorities is limited by the opera-

by the perimeter of a circle equal to the district in area or by dividing the area of the district by the area of the smallest possible circumscribing circle. *Political Gerrymandering*, *supra* note 39, at 413 (footnotes omitted). *See also* Edwards, *The Gerrymander and 'One-Man, One Vote'*, 46 N.Y.U. L. Rev. 879, 894 (1971) [hereinafter cited as Edwards]. Generally, such formulas have had one of two faults. On the one hand, exotic compactness definitions are difficult for the public and even those most affected to understand. This results in an unnecessary loss of political support without a commensurate gain in the substance of the proposal. On the other hand, rigid formulas do not contain the flexibility necessary to allow the use of other reapportionment criteria. Political subdivision boundaries, for example, are often far from compact. Attempts to follow these boundaries might violate a rigid compactness formula even though they serve another important public interest. *See* Gaffney v. Cummings, 412 U.S. 735, 752 n.18 (1973). Somewhat ragged districts often result from attempts to meet the requirement of substantial population equality. Schneider v. Rockefeller, 31 N.Y.2d 420, 340 N.Y.S.2d 889, 293 N.E.2d 67 (1972).

185 COLO. CONST. art. V, § 47(1). *See Political Gerrymandering*, *supra* note 39, at 411 n.68.

186 Delaware law provides that districts must "not be created so as to unduly favor any person or political party." DEL. CODE tit. 29, § 806 (1975). *See also* HAWAII CONST. art. III, § 4.

187 *See* text accompanying notes 41-43 *supra*. *But see* Nolan v. Turner, 193 N.W.2d 784 (Iowa 1972). In an exception to the general rule, the Iowa Supreme Court voided a legislative reapportionment plan upon a finding that population equality was improperly sacrificed to the General Assembly's goal of protection of incumbent legislators. *Id.* at 788. The court pointed out that superior apportionment plans could be developed without reliance on the political data:

> The relevance of the League of Women Voters' plan is not its availability as an alternate plan but rather its demonstration of applicants' principal thesis; namely, that plans more equal in population can be developed. The same census information was used in both the legislature's plan and the L.W.V. plan. Both plans used contiguity and compactness as necessary and permissible criteria; both plans successfully avoid subdivision of townships; both plans cross county and city lines where necessary. The difference between the two plans is in the elimination of residence of incumbent legislators and other political considerations in formulation of the L.W.V. plan.

Id. at 790.

From The Last Frontier

Single Member Districts

tion of two other elements of this Amendment. The Model requires the creation of single-member districts[188] and mandates the adherence to political subdivisions.[189] These two factors tend to ensure that geographically compact minority groups will not be gerrymandered. But, because minorities have been historically the special victims of gerrymandering,[190] this subsection establishes an explicit guarantee.[191] The federal courts and Congress have recognized the problem of racial gerrymandering. In the few cases in which the courts have held reapportionment plans unconstitutional on grounds other than population inequality, the plans were found to dilute the voting strength of racial or ethnic minorities.[192] Congress began to deal with this problem when it enacted the Voting Rights Act of 1965, which was designed to extend the voting guarantees of the Fourteenth and Fifteenth Amendments to state electors.[193] The "racial" and "language" minority classifications in the Model Amendment follow the Voting Rights Act of 1965, as amended.[194]

188 Model Constitutional Amendment, subsection (c)(1) *infra*.

189 *Id.*, subsection (c)(3) *infra*. Unnecessary fragmentation of political subdivisions undermines the ability of constituencies to organize for political action in an effective manner. The special masters appointed by the California Supreme Court in 1973 to prepare a reapportionment plan pointed out:

> It is clear that in many situations county and city boundaries define political, economic and social boundaries of population groups. Furthermore, organizations with legitimate political concerns are constituted along local political subdivision lines. Therefore, unnecessary division of counties and cities in reapportionment districting should be avoided.

Legislature v. Reinecke, 10 Cal. 3d 396, 516 P.2d 6, 110 Cal. Rptr. 718 (1973).

190 *See* text accompanying notes 72-74 *supra*.

191 The Advisory Commission on Intergovernmental Relations suggested that "[T]he aim of [a] reapportionment plan [should] be to provide fair and effective representation to avoid cancelling out the voting strength of racial or political elements of the voting population." ACIR, *supra* note 168.

192 White v. Regester, 412 U.S. 755 (1973); Moore v. Leflore County Board of Election Commissioners, 502 F.2d 621 (5th Cir. 1974); Robinson v. Commissioners Court, Anderson County, 505 F.2d 674 (5th Cir. 1974). In Klahr v. Williams, 339 F. Supp. 922 (D. Ariz. 1972), the court realigned several district boundaries in order to place an Indian reservation entirely within a single legislative district.

193 *See* 42 U.S.C.A. § 1971 (West Supp. 1977); Congressional Research Service, Library of Congress, The Voting Rights Act of 1965, As Amended: History, Effects, and Alternatives (1975). In a recent case, the Supreme Court had the unenviable task of adjudicating conflicting claims between two minorities. A New York plan had deliberately established two legislative districts with non-white majorities of 65 percent. The closely knit Hassidic community protested that the plan split its strength and submerged it in a predominantly non-white district. Relying on the specific mandate of the Voting Rights Act of 1965, the Supreme Court upheld the plan. United Jewish Organizations v. Carey, 97 S.Ct. 996 (1977).

194 42 U.S.C.A. §§ 1971, 1973b(f)(1) (West Supp. 1977).

Against Socio-economic Test

Four state constitutions have designed provisions to protect socio-economic communities of interest in the reapportionment process.[195] This protection of socio-economic communities defines the interests to be protected in much broader terms than the Model's formulation of "language or racial minority group". The states' broad socio-economic provisions represent an effort to achieve an admirable public policy goal.[196] But in striving to attain the desired ends, the broad formulation grants the reapportionment authority too much discretion. The notion of "socio-economic communities of interest" is so broad that a reapportionment authority could knowingly demark geographically overlapping communities. As a result, the reapportionment authority would have to favor some communities of interest over others. It is possible, therefore, that under the broad provision those communities of interest that have been the traditional victims of discrimination will gain no additional protection. Thus, in order to avoid the pitfalls of the broad socio-economic approach, this subsection focuses its constitutional safeguard on those specific communities of interest — linguistic and racial minorities — that are most in need of protection.

195 The Colorado Constitution provides that, consistent with other criteria, "communities of interest, including ethnic, cultural, economic, trade area, geographic, and demographic factors, shall be preserved within a single district wherever possible." Colo. Const. art. V, § 47(3). The Hawaii Constitution provides: "Where practicable, submergence of an area in a larger district wherein substantially different socio-economic interests predominate shall be avoided." Hawaii Const. art. III, § 4. Alaska provides: "Each new district . . . shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socioeconomic area." Alaska Const. art. VI, § 6. *See* Groh v. Egan, 526 P.2d 863, 878-80 (Alaska 1974). The Oklahoma Constitution provides that "consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors, to the extent feasible." Okla. Const. art. 5, § 9A.

196 The 1973 Hawaii Legislative Reapportionment Commission interpreted its standard, *supra* note 195, as one of political fairness. In its final report, the Commission explained its method:

> The Commission consciously pursued an effort to avoid clear cases of one socio-economic group being submerged and disadvantaged by reason of its placement in a district in which another socio-economic class heavily predominates. Where a socio-economic group of people (such as those living in the Papakolea or Waimanalo area) cannot, by reason of its number or otherwise, be a district by itself, the commission structured the district so that such a group would at least have a fighting chance to compete with other socio-economic groups in the same district in selecting a legislator.

Hawaii Legislative Reapportionment Commission Report and Reapportionment Plan of the 1973 Legislative Reapportionment Commission 17 (July 16, 1973) (on file at Common Cause, Washington, D.C.).

apportionment plan was invalid, where there was no adequate justification for variances which ranged from plus 23.35 to minus 45.93% in house districts and from plus 26.14 to minus 7.2% in senate districts, but that some military personnel might be excluded as permissible device for limiting impact of transients and nonresidents on legislative districting.

Objections overruled.

Decision of Superior Court affirmed in part and reversed in part and the case remanded with directions.

Boochever, J., dissented and filed opinion as to objections to interim plan.

1. States ⇐27
It is constitutionally impermissible to discriminate against a class of individuals in legislative reapportionment plan merely because of nature of their employment. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

2. States ⇐27
Census data was required to be employed in determining total population base for purposes of formulating an interim reapportionment plan for legislative elections. Const. art. 6, § 3; U.S.C.A. Const. Amend. 14.

3. States ⇐27
In fashioning interim apportionment plan for legislative elections, military personnel or civilians who were living in Alaska and enumerated in most recent census but who did not at time possess intent of making Alaska their home would not be excluded from total population. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

Opinion of Sept. 29, 1972

4. Constitutional Law ⇐225(1)
The equal protection clause requires that the states make an honest and good-faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable. U.S.C.A.Const. Amend. 14.

5. States ⇐27
Two separate justifications for deviation from ideal population figures in the apportionment of state legislatures are: variance occurring because of uncontrollable factors, despite a good-faith effort to achieve mathematical precision, and factors incident to effectuation of a rational state policy, but the latter justification is greatly limited. U.S.C.A.Const. Amend. 14.

6. States ⇐27
Only after good-faith effort has been made to achieve precise mathematical equality in reapportionment of state legislatures may variances be permitted and then state has burden of justifying in detail each such variance. U.S.C.A.Const. Amend. 14.

7. States ⇐27
Need for numerical adjustment is very focus of mandate to reapportion state legislatures. U.S.C.A.Const. Amend. 14.

8. States ⇐27
Legislative reapportionment plan was invalid, where there was no adequate justification for variances which ranged from plus 23.35 to minus 45.93% in house districts and from plus 26.14 to minus 7.2% in senate districts. U.S.C.A.Const. Amend. 14.

9. Elections ⇐18
States ⇐27
Military personnel as a class cannot be deprived of right to vote and cannot be arbitrarily eliminated in population base used to design legislative apportionment scheme. U.S.C.A.Const. Amend. 14.

10. Constitutional Law ⇐225(1)
States ⇐27
Alaska constitutional provision specifying that reapportionment shall be based upon civilian population within each election district violated Federal Constitution insofar as it sought to exclude military as a class. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

11. States ⇐27
Although it is unconstitutional to exclude military as a class in reapportioning state legislature upon basis of popula-

tion, some military personnel may be excluded as permissible device for limiting impact of transients and nonresidents on legislative districting. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

12. States ⇐27

If even one person is disenfranchised on any irrational ground, legislative districting scheme rendering that result is invalid. U.S.C.A.Const. Amend. 14.

13. States ⇐27

With respect to legislative districting, attempt must be made to arrive at best approximation of population without losing sight of fact that right of equal representation is also an individual and personal right. U.S.C.A.Const. Amend. 14.

14. Constitutional Law ⇐225(1)
States ⇐27

Upon adequate notice and opportunity to register before use of master voter registration list for legislative reapportionment purposes, plan based upon current voter registration would be permissible under Federal Constitution in attempt to give accurate assessment of military population present in state with intent to make Alaska their home and also plans based on accurate data of state citizenship or state residency could meet standards of federal equal protection clause. U.S.C.A.Const. Amend. 14.

15. Constitutional Law ⇐49

Unconstitutional provisions of Alaska Constitution requiring that reapportionment be based upon civilian population within each election district as reported by the census is not severable; thus the entire provision is invalid. Const. art. 6, § 3; U.S.C.A.Const. Amend. 14.

16. Action ⇐6

Inasmuch as the apportionment plan was unconstitutional, question as to political affiliation of members composing advisory reapportionment board was moot and, since appointments to board were made many months before final plan was promulgated by governor and interested parties had ample time to appeal from moment appointments were made, judgment on the issue as to composition of board was not required. Const. art. 6, § 8.

17. States ⇐27

Inasmuch as governor in creating legislative reapportionment plan was not acting from political considerations and performed his function in good faith, any error in composition of advisory reapportionment board with respect to political affiliation of its members was rendered harmless error. Const. art. 6, § 8.

18. States ⇐27

Purpose of constitutional provision that appointment to advisory reapportionment board shall be made without regard to political affiliation is to prevent appointment of board whose efforts might result in politically motivated reapportionment plan. Const. art. 6, § 8.

19. States ⇐27

Constitutional requirement that appointments to advisory reapportionment board be made without regard to political affiliation was not equivalent of requiring a bipartisan board but, in reviewing validity of appointment, germane considerations include: the political affiliation of members of board, nature of their activities in partisan politics, particularly if from one political party only, and the expertise and general qualifications which members bring to the board. Const. art. 6, § 8.

20. States ⇐27

Creation of single-member legislative districts from multimember districts was within powers available to governor under constitutional provision authorizing him to redistrict by changing size and area of election districts. Const. art. 6, § 6.

21. States ⇐27

Governor's general power to reapportion legislature includes right to utilize tool of designated seats within multimember districts. Const. art. 6, § 6.

22. States ⇐27

A need to truncate terms of incumbents may arise when reapportionment results in permanent change in district lines which

either exclude substantial numbers of constituents previously represented by incumbent or include numerous other voters who did not have voice in selection of that incumbent. Const. art. 6, § 6.

23. States ⇐27

Governor has power to terminate state senate terms as incidental to his general reapportionment powers. Const. art. 6, § 6.

24. States ⇐27

Under Alaska Constitution, governor, with assistance of reapportionment board, has implied power to reapportion senate on interim basis. Const. art. 6, § 6.

John E. Havelock, Atty. Gen., Richard W. Garnett, III, Asst. Atty. Gen., Juneau, for petitioners.

Clifford J. Groh, of Groh, Benkert, Greene & Walter, Anchorage, for respondents.

OPINION IN RE OBJECTIONS TO INTERIM REAPPORTIONMENT PLAN

Before BONEY, C. J., and RABINOWITZ, CONNOR, ERWIN and BOOCHEVER, JJ.

RABINOWITZ, Justice.

In our Decision and Order of May 26, 1972,[1] this court declared the reapportionment plan embodied in the December 30, 1971, Proclamation of Reapportionment and Redistricting unconstitutional under the equal protection and supremacy clauses of the Constitution of the United States of America. We reached this conclusion for the reason that the proposed plan in its overall reapportionment of the Senate and House of Representatives would have established election districts which failed to encompass "as nearly equal population proportions as is practicable." To insure compliance with the equal protection requirements of Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), and its progeny, it was further determined that an interim reapportionment and redistricting plan, designed to meet the imminent 1972 elections, required formulation. In furtherance of this task, two Masters were appointed to assist the court in fashioning an appropriate interim reapportionment plan.

On May 26, 1972, the appointed Masters were given the following instructions in pertinent part:[2]

1. By use of the official Census of 1970, you should establish a population base for the State of Alaska. This population base should include military personnel who were enumerated in the 1970 Census.

2. You should make an inquiry to determine whether or not the number of nonresident military personnel included in the 1970 Census can be determined. If a determination can be made, then you should subtract the number from the total which you have arrived at in paragraph 1 above. You should also state the methods in detail by which you arrived at this determination.

After receipt of the Masters' Report,[3] an "Order Establishing an Interim Reapportionment Plan for 1972 Legislative Elections" was entered on June 14, 1972.[4] In its relevant part this order stated:

By use of the Official Census of 1970, the Court determines that the total population base for the State of Alaska shall

1. This document is attached hereto as part of an appendix to this opinion. Also included in the appendix are the Reference to Masters, Masters' Report, Order Establishing an Interim Reapportionment Plan, and Order Denying Objections to Interim Reapportionment Plan.

2. The complete letter of instructions to the masters is attached hereto as part of the appendix.

3. The Report is included in the appendix attached hereto.

4. This document is included in the appendix attached hereto.