

**ALASKA LEGISLATURE**

**2183**

**HOUSE and SENATE FINANCE COMMITTEE FILES,**

**2001 - 2002**

SUGGESTION FOR NEW STATUTORY CHANGES TO HELP REDUCE THE FISCAL GAP.

(SLIDE 12)

## **Senate Finance Long-Range Fiscal Plan: The First Steps**

- 1) Maintain budget discipline by holding any General Fund spending increases to below increases in population and inflation
- 2) Continue to utilize outcome based budgeting to increase government efficiency
- 3) Fix the Constitution by passing SJR 23 and SJR 24
- 4) Adopt fiscal gap reducing legislation

EVEN SO, THE SENATE FINANCE COMMITTEE DEVELOPED A PACKAGE OF FISCAL REFORM LEGISLATION THAT CONTINUES THE REPUBLICAN MAJORITY'S COMMITMENT TO FISCAL RESPONSIBILITY AND GOVERNMENT REFORM BEFORE NEW TAXES.

THIS PACKAGE PRESENTS THE FIRST STEP OF A NEW LONG-RANGE FISCAL PLAN THAT HAS THE POTENTIAL OF REDUCING THE FISCAL GAP BY OVER \$12 ½ MILLION A YEAR AT FIRST WITH REDUCTIONS INCREASING TO OVER \$100

13

MILLION A YEAR WITHIN 10 YEARS. THAT IS A VERY CONSERVATIVE ESTIMATE NOT INCLUDING THE CUMULATIVE IMPACT OF THESE SAVINGS.

WE DO NOT CONTEND THAT THIS IS A COMPREHENSIVE LONG-RANGE FISCAL PLAN, BUT WE DO SAY IT HAS THE ESSENTIAL FIRST INGREDIENTS THAT ANY NEW LONG-RANGE FISCAL PLAN MUST HAVE TO BE SUCCESSFUL.

THE BASIS OF GOVERNMENT IN AMERICA IS OUR CONSTITUTIONS. WHEN WE START TO CREATE A NEW FINANCIAL PLAN WE NEED TO LOOK AND MAKE SURE THAT OUR STATE CONSTITUTION IS FUNCTIONING PROPERLY.

IT'S CLEAR THAT THERE ARE TWO PARTS OF OUR STATE CONSTITUTION THAT DEAL WITH FISCAL POLICY THAT ARE NOT FUNCTIONING PROPERLY. THEY ARE THE EXISTING CONSTITUTIONAL APPROPRIATION LIMIT AND THE EXISTING CONSTITUTIONAL BUDGET RESERVE PROVISION.

(SLIDE 13)

## **SJR 23**

# **Reforming the Constitutional Spending Limit**

- The current constitutional appropriation limit is not working
- The language is misleading
- The language is unclear
- The limit has grown too large

ONE THING WAS CLEAR FROM THE OVERWHELMING REJECTION IN SEPTEMBER 1999 OF THE LAST FISCAL PLAN PROPOSAL. . . .

ALASKANS DO NOT WANT TO GIVE GOVERNMENT A BLANK CHECK.

THAT WAS ONE OF THE MAIN REASONS I STRONGLY OPPOSED THE SEPTEMBER 1999 PROPOSAL – BECAUSE IT LACKED CLEAR ENFORCEABLE FISCAL RESTRAINTS.

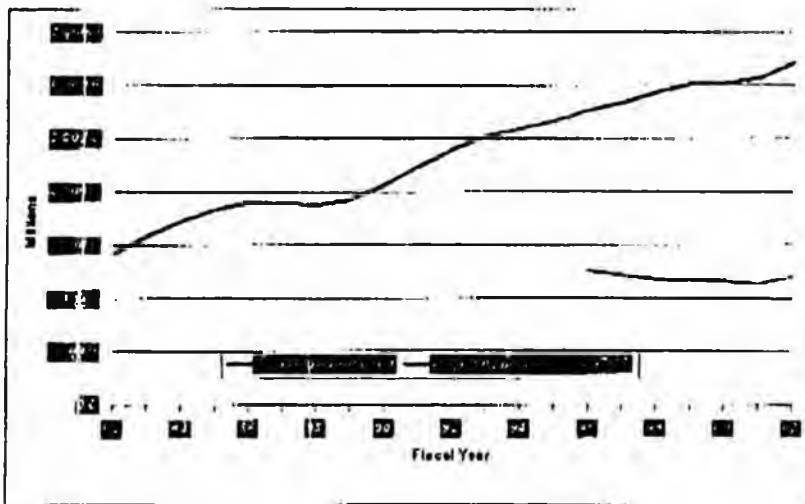
TO BE ACCEPTABLE TO THE MAJORITY OF ALASKANS, ANY NEW PLAN MUST START WITH REASONABLE LIMITS ON GOVERNMENT SPENDING.

THE FIRST STEP TO THE SENATE FINANCE COMMITTEE'S FISCAL PLAN IS EXACTLY THAT. . . .

TO LIMIT THE EXPANSION OF GOVERNMENT SPENDING THROUGH THE ADOPTION OF SENATE JOINT RESOLUTION 23 REVISING THE EXISTING CONSTITUTIONAL APPROPRIATION LIMIT.

TALK ABOUT SLIDE 13 (SLIDE 14)

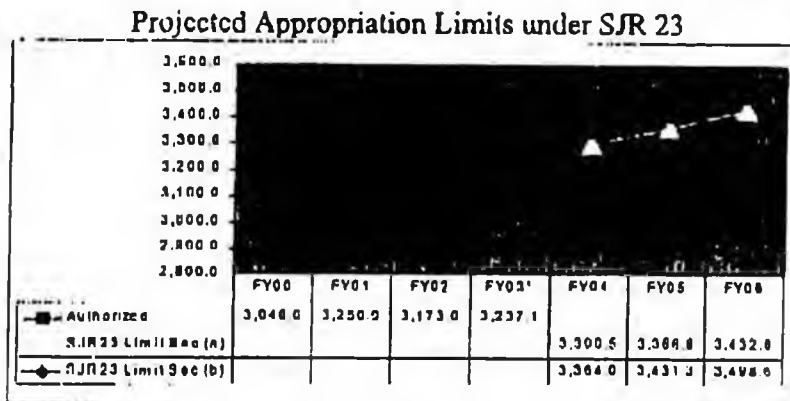
The Current Spending Limit vs Recent Appropriations



THE EXISTING CONSTITUTIONAL APPROPRIATION LIMIT WAS ADOPTED BY THE VOTERS IN 1982. THIS PROVISION CURRENTLY LIMITS GOVERNMENT SPENDING TO ABOUT \$6 BILLION; HOWEVER, WE ONLY CURRENTLY SPEND ABOUT \$3 BILLION. THE ENORMOUS SIZE OF THE CURRENT APPROPRIATION LIMIT OCCURRED BECAUSE THE CONSTITUTIONAL PROVISION HAS A BUILT-IN ESCALATOR CLAUSE FOR INFLATION AND POPULATION. TO CORRECT THIS, OUR MOST RECENT VERSION OF SJR 23 PROPOSES TO BASE ANY ALLOWABLE INCREASES ON PREVIOUS YEAR'S BUDGETS AND TO LIMIT THOSE INCREASES

TO ONLY 2 PERCENT. SJR 23 ALSO CLARIFIES WHAT IS AND IS NOT INCLUDED IN THE APPROPRIATION LIMIT.

(SLIDE 15)



FY00 Authorized Budget estimated at 2% increase over FY99  
 Sec (a) shows for up to a 4% increase over the amount appropriated 2 years prior  
 Sec (b) shows an additional 2% may be appropriated with a two-thirds vote of both houses  
 Not included in SJR 23 Limit: Permanent Fund Dividends, G.O. & revenue local projects, joint appropriations, duplicate Gov. 1, and funds from non-State sources  
 All numbers in \$ million FY00 Fiscal Summary in Summary of Appropriations

IN REVISING THE EXISTING CONSTITUTIONAL APPROPRIATION LIMIT, WE ARE LEARNING FROM THE MISTAKES OF THE PAST. WE RECOGNIZE, HOWEVER, THAT CIRCUMSTANCES CHANGE. THAT'S WHY OUR MOST RECENT VERSION OF SJR 23 CONTAINS A SPECIAL PROVISION TO HAVE VOTERS REVIEW IT AGAIN IN 4 YEARS AND THEN EVERY 6 YEARS THEREAFTER. IF IT IS NOT FUNCTIONING CORRECTLY, IF PEOPLE WANT TO SPEND MORE THAN THE LIMIT ALLOWS, OR IF WE SOLVE THE FISCAL CRISIS, ALASKANS CAN VOTE IT OUT OF THE CONSTITUTION.

(SLIDE 16)

## **SJR 24**

### **Restoring the Original Intent of the 1990 CBR Amendment**

- The CBR is functioning well as a fiscal shock absorber, but is not working as intended to control spending
- Small groups of legislators can force increased spending by withholding CBR votes
- Last year this budget blackmail increased spending by about \$150 million
- What will this cost grow to in future years?

THE CONSTITUTIONAL BUDGET RESERVE LANGUAGE OF THE CONSTITUTION IS WORKING WELL AS A FISCAL SHOCK ABSORBER, BUT IT IS NOT WORKING AS INTENDED TO CONTROL SPENDING.

THE CONSTITUTIONAL BUDGET RESERVE (CBR) WAS ESTABLISHED IN 1990, AND HAS BEEN USED TO HELP FILL THE GAP BETWEEN STATE REVENUES AND EXPENDITURES. WHEN THE CBR WAS CREATED, THE ORIGINAL INTENT WAS THAT FUNDS COULD BE WITHDRAWN WITH A SIMPLE MAJORITY VOTE TO HELP COVER A BUDGET DEFICIT AS LONG AS CURRENT SPENDING DID NOT EXCEED THE PREVIOUS YEAR'S SPENDING, BUT A THREE-QUARTERS VOTE OF THE

LEGISLATURE WOULD BE NECESSARY TO WITHDRAW ANY FUNDS IN EXCESS OF THE PREVIOUS YEAR'S SPENDING.

IN 1994, THE ALASKA SUPREME COURT MISINTERPRETED THIS PROVISION TO REQUIRE A  $\frac{3}{4}$  VOTE TO WITHDRAW ANY FUNDS FROM THE CBR. THIS CREATES A SITUATION IN WHICH A SMALL GROUP OF LEGISLATORS CAN "BLACKMAIL" THE MAJORITY AND HOLD THE BUDGET. THESE LEGISLATORS CAN TRADE THEIR VOTES, WHICH ARE CRUCIAL TO WITHDRAW CBR FUNDS AND BALANCE THE STATE'S BUDGET, IN EXCHANGE FOR ADDITIONAL SPENDING.

**WE ESTIMATE THE COST THIS YEAR TO ACCESS THE CBR WITH A  $\frac{3}{4}$  MAJORITY VOTE TO BALANCE THE BUDGET WAS NEARLY \$150 MILLION.**

SENATE JOINT RESOLUTION 24 CORRECTS THIS BIZARRE IMBALANCE OF SPENDING POWER BY PROPOSING A CONSTITUTIONAL AMENDMENT THAT MAKES IT CLEAR A  $\frac{3}{4}$  VOTE IS NOT NECESSARY WHEN SPENDING DOES NOT EXCEED THE PREVIOUS YEAR'S.

IF THIS RESOLUTION PASSES, THE AMENDMENT WILL BE PLACED ON THE NEXT STATE GENERAL ELECTION BALLOT IN FALL 2002 FOR APPROVAL BY THE PEOPLE OF ALASKA.

(SLIDE 17)

## **Senate Finance Long-Range Fiscal Plan: The First Steps**

- 1) Maintain budget discipline by holding any General Fund spending increases to below increases in population and Inflation
- 2) Continue to utilize outcome based budgeting to increase government efficiency
- 3) Fix the Constitution by passing SJR 23 and SJR 24
- 4) Adopt fiscal gap reducing legislation

BOTH THESE PROPOSED CONSTITUTIONAL AMENDMENTS HAVE ALREADY PASSED THE SENATE AND ARE SCHEDULED FOR HEARINGS IN THE HOUSE. OUR PLAN ALSO INCLUDES SEVEN OTHER FISCAL GAP REDUCING PROPOSALS, THREE OF WHICH HAVE ALREADY PASSED THE SENATE.

ALL TOGETHER, THE SAVINGS ASSOCIATED WITH THESE REFORMS GROW EXPONENTIALLY IN THE OUT YEARS TO FAR EXCEED THEIR PRESENT DAY VALUE OF OVER \$12 MILLION THE FIRST YEAR, GROWING TO OVER \$100 MILLION A YEAR WITHIN TEN YEARS.

ONCE AGAIN, WE DO NOT CONTEND THAT THIS LEGISLATION ALONE  
CONSTITUTES A COMPLETE PLAN, BUT THESE PROPOSALS ARE ALL IN PLACE  
TO PASS NEXT YEAR AND THEY ARE AN EXCELLENT AND NECESSARY FIRST  
STEP FOR ANY COMPREHENSIVE NEW PLAN TO BE ACCEPTABLE TO THE  
MAJORITY OF ALASKANS.



# Alaska State Senate

## Senate Finance Committee

Official Business

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### MEMORANDUM

October 20, 2001

TO: Senate Finance Committee Members

FROM: Senator Dave Donley, Co-Chair  
Senate Finance Committee

RE: Senate Finance Committee Meeting

The following items are attached for your information:

- Agenda
- Committee Substitute to Senate Joint Resolution 23 (FIN)am "P" Version  
(Adopted by House Judiciary on October 19, 2001)
- Existing Article IX, Section 16 of the Alaska Constitution
- Sectional Summary
- Sponsor Statement to CS SJR 23 (FIN)am
- Talking Points for CS SJR 23 (FIN)am
- Charts
- Fiscal Note on SJR 23
- Committee Substitute to Senate Joint Resolution 24 (Rules)
- Existing Article IX, Section 17 of the Alaska Constitution
- Sectional Summary
- Sponsor Statement to CS SJR 24 (Rules)
- Talking Points for CS SJR 24 (Rules)
- Quotes from the 1990 Voters Guide Statement on the Budget Reserve Constitutional Amendment
- 1990 Election Pamphlet information regarding the original Constitutional Budget Reserve Fund amendment
- *Hickel v. Cowper*, 874 P.2d 922 (1994) in which the Supreme Court interprets "amount available for appropriation"
- Fiscal Note on SJR 24



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### Agenda For Senate Finance Committee Meeting 10/20/01

- I. Introduction by Senator Donley
  
- II. Senate Finance Committee Long Range Fiscal Plan Overview by Senator Donley
  
- III. Leg Finance Director David Teal on New Committee Substitute for SJR 23
  
- IV. Public Testimony
  - a. 3 minute maximum (more if available)
  
- V. Report on Supplemental Funding needed for FY 02 by David Teal  
(Time Permitting)

22-LS0734P

Cook

9/4/01

HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 23( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATORS DONLEY, Halford, Ward, Taylor, Cowdery, Phillips, Austerman, Leman, Kelly

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to an  
2 appropriation limit and a spending limit.

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

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

6 Section 16. Appropriation and Spending Limit. (a) Appropriations made  
7 for a fiscal year shall not exceed by more than four percent the amount appropriated  
8 for the fiscal year two years preceding the fiscal year for which the appropriations are  
9 made. This subsection does not apply to

- 10 (1) an appropriation to the Alaska permanent fund;
- 11 (2) an appropriation of Alaska permanent fund income for a program  
12 that provides permanent fund dividends to State residents;
- 13 (3) an appropriation to meet a state of disaster declared by the  
14 governor as prescribed by law;
- 15 (4) an appropriation for the Alaska Railroad;
- 16 (5) an appropriation of State general obligation and revenue bond

1 proceeds;

2 (6) an appropriation required to pay obligations under general  
3 obligation bonds, revenue bonds, and certificates of participation issued by the State;

4 (7) an appropriation of money received from the federal government;

5 (8) a reappropriation of money already appropriated under an  
6 unobligated appropriation that is not void under Section 13 of this article;

7 (9) an appropriation of money for expenditure by a State agency to  
8 provide services to another State agency that has also received an appropriation of the  
9 same money; and

10 (10) an appropriation made under (b) of this section.

11 (b) An appropriation that exceeds the limit under (a) of this section may be  
12 made for any public purpose upon affirmative vote of two-thirds of the members of  
13 each house of the legislature. The total amount of appropriations under this subsection  
14 made for a fiscal year may not exceed two percent of the amount appropriated for the  
15 fiscal year two years preceding the fiscal year for which the appropriations are made.

16 (c) If appropriations for a fiscal year exceed the amount that may be  
17 appropriated under (a) or (b) of this section, the governor shall reduce expenditures by  
18 the executive branch for its operation and administration to the extent necessary to  
19 avoid spending more than the amount that may be appropriated under (a) or (b) of this  
20 section.

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

23 **Section 30. Reconsideration of Appropriation and Spending Limit.** If the  
24 2002 amendment relating to an appropriation and spending limit (art. IX, sec. 16) is  
25 adopted, the lieutenant governor shall place the ballot title and proposition for the  
26 amendment on the ballot again at the general election in 2006 and every six years  
27 thereafter unless it is rejected. If the majority of those voting on the proposition  
28 rejects the amendment, Section 16 of Article IX is repealed on the date the election is  
29 certified.

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

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

**Existing Provision  
Alaska Constitution  
Article IX, Section 16**

**Section 9.16 - Appropriation Limit.**

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

# LEGAL SERVICES

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

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

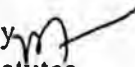
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

October 4, 2001

**SUBJECT:** Constitutional appropriation and spending limit; sectional summary for HCS CSSJR 23( ) (Work Order No. 22-LS0734\P; 9/14/01)

**TO:** Senator Dave Donley

**FROM:** Pamela Finley   
Revisor of Statutes

**Sec. 1. (a)** Rewrites the existing constitutional spending limit formula. With the exception of certain types of appropriations and reappropriations, provides that appropriations made for a fiscal year shall not exceed by more than four percent the amount appropriated for the fiscal year two years preceding the fiscal year for which the appropriations are made.

(b) Permits an appropriation that exceeds the limit to be made by affirmative vote of two-thirds of the members of each house, and establishes a limit on the amount of these types of appropriations.

(c) If appropriations for a fiscal year exceed the limits under (a) or (b), the governor is directed to reduce expenditures by the executive branch for its operation and administration to the extent necessary to avoid spending that exceeds the limits.

**Sec. 2.** The lieutenant governor is directed to place this proposition on the ballot again at the general election in 2006 and every six years thereafter unless it is rejected.

**Sec. 3.** The proposed amendments will be voted on during the 2002 general election.

PF:glc  
01-328.glc



# Alaska State Senate

## Senate Finance Committee

Official Business

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

Sponsor Statement  
for

**Committee Substitute for Senate Joint Resolution 23 (FIN)am  
Including Explanation of Proposed "P" Version House Committee Substitute  
"Proposing amendments to the Constitution of the State  
of Alaska relating to an appropriation limit and a spending limit"**

The Senate Finance Committee believes adoption of an effective, reasonable constitutional spending limit to be an essential first step to developing any new long-range fiscal plan for the state.

Senate Joint Resolution 23 would amend Article IX, sec 16 of Alaska's Constitution by lowering the existing appropriation limit to better reflect Alaska's current revenue picture. Passage of SJR 23 would ensure a limit on the growth of state government and force the state to further reasonably reduce non-essential state spending.

The existing constitutional appropriation limit, adopted by voters in 1981, has not worked as anticipated and has never been effective in restraining state spending. A main reason for its failure is that the starting amount of \$2.5 billion was too high and its escalator factor based on population and inflation was too liberal. In fact, given the increases in inflation and population over the last 19 years, the general fund spending limit imposed by Article IX, Section 16 will be over \$6 billion. That is about \$3 billion more than general fund spending in the Fiscal Year 2000. SJR 23 would more accurately reflect today's spending by amending the existing appropriation limit.

SJR 23, as it passed the Senate, would allow the legislature to exceed the limit by no more than 1/2 of the annual increase in both population levels and the consumer price index. SJR 23 also contains a mechanism allowing the legislature to increase the base limit to 75% of the increase in population and inflation with a 2/3 vote of each house.

Working with Legislative Finance and Legal during the 2001 interim, we have developed a proposed committee substitute (P version).

The appropriation limit that the "P" version of SJR 23 proposes would be based on a non-cumulative amount appropriated from 2 years prior and would allow for up to a 2% increase per year (4% total) requiring a simple majority vote. An additional 2% may be appropriated bringing the total to 6%. This additional 2% would require a two-thirds vote of both houses.

If, for example 6% was appropriated for FY04, the FY06 limit would be based on the original 4% increase that passed with a simple majority, not the full 6%.

Sponsor Statement  
CS SJR 23 (FIN)am "P" Version  
October 8, 2001

If the amount appropriated exceeds the limit, the governor shall reduce expenditures by the executive branch for its operation and administration in order to bring expenditures back in line with the constitutional limit.

SJR 23 also removes the requirement that one-third of the budget be appropriated for capital expenditures. Over the years, several attorney general opinions have been written on the meaning of the constitutional limit; those opinions counter the plain English meaning of the language and have allowed the legislature and the administration to avoid this requirement. SJR 23 removes this arbitrary and superfluous requirement.

SJR 23 simplifies and clarifies exactly what spending counts towards the appropriation limit, something that is not clear in the existing constitutional language.

Without a meaningful constitutional amendment in place that limits the amount of state general fund expenditures, there is absolutely no guarantee that the state will restrain, let alone reduce, spending. SJR 23 would limit state spending and is a key component of any new long-range plan to ensure Alaska's long-term fiscal health.

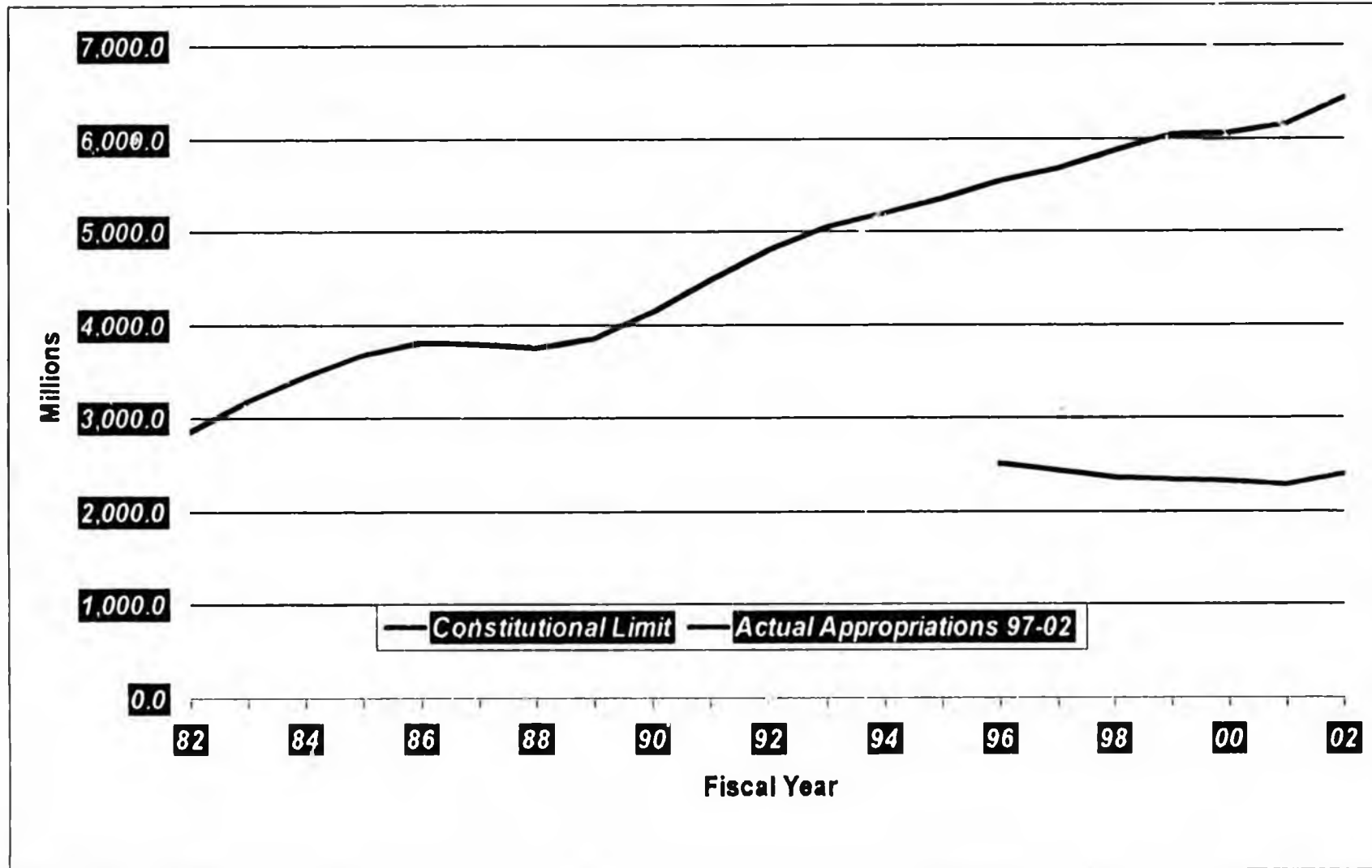
DD/jja

**Existing Constitutional Appropriation Limit  
vs. the "P" Version of SJR 23 Appropriation Limit  
(Includes explanation of charts)  
Prepared by Senator Donley's Office**

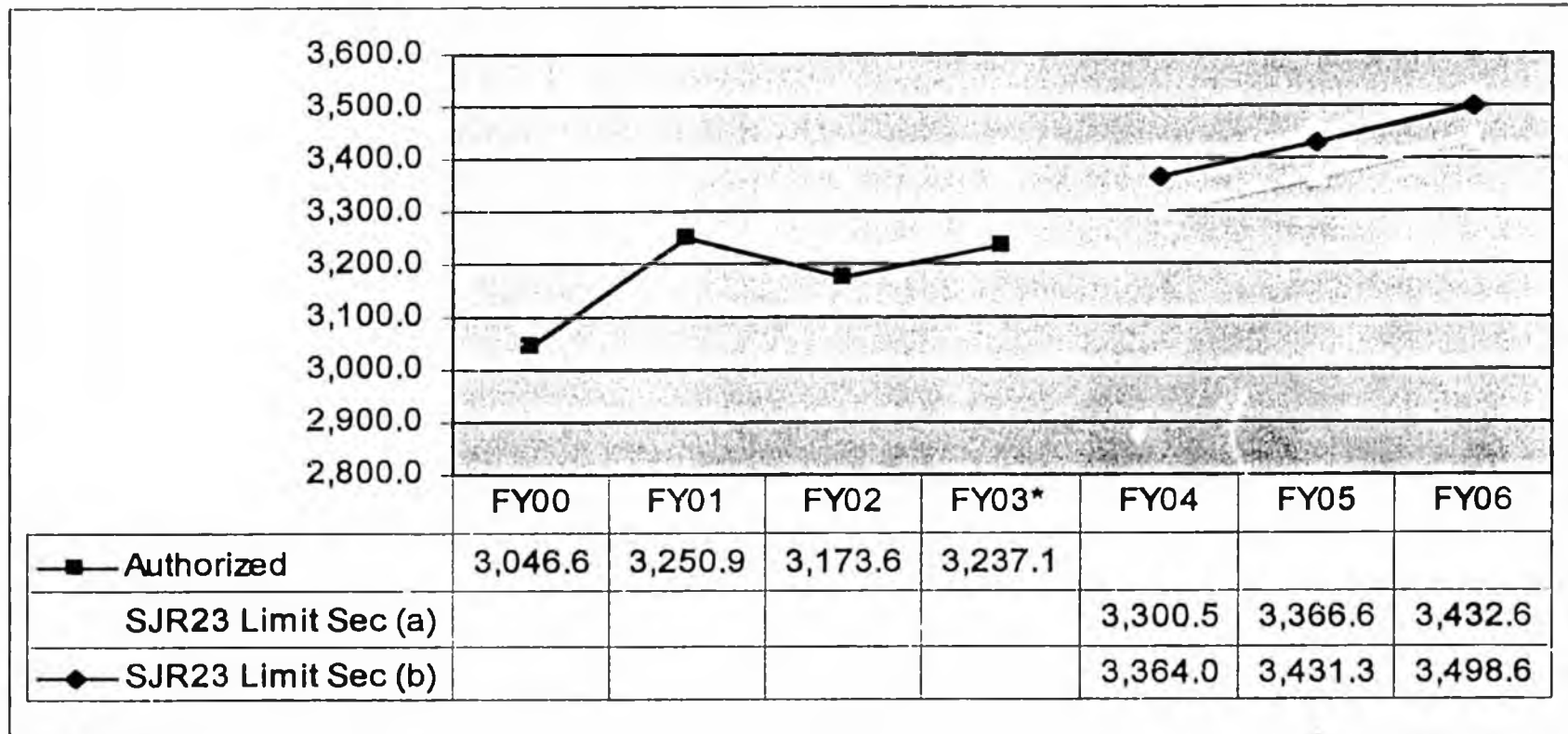
- A constitutional spending limit is a key component of any long-term fiscal plan
- Lowers existing appropriation limit to reflect the current budget situation
- The current appropriation limit, based on population growth and inflation rates, is addressed in Article 9, Section 16 of the Alaska Constitution which took effect December 24, 1982. The limit for FY02 is \$6.4 billion.
- The graph shows the existing spending limit based on numbers provided by OMB and includes actual GF appropriations for FY96 to FY02. It is obvious that the existing constitutional limit is obsolete since it allows for an FY02 appropriation of \$6.4 billion and the actual GF appropriated is only \$2.4 billion.
- Simplifies and clarifies exactly what spending counts toward the appropriation limit and more importantly, what does not.
- The following items are excluded from the limit:
  1. appropriations by the governor to meet a state disaster
  2. revenue bond proceeds
  3. principle & interest payments of general obligation bonds
  4. reappropriations
  5. interagency receipts (appropriations to one agency which are then paid to another agency for services)
  6. federal funds
  7. appropriations having to do with the Alaska railroad
  8. appropriations having to do with the permanent fund, including permanent fund dividends.
- The current limit excludes PFDs, revenue bond proceeds, general obligation bond principal/interest payments and "money received from a non-State source in trust for a specific purpose. . ." This is ambiguous.
- The appropriation limit that SJR 23 proposes would be based on a non-cumulative amount appropriated from 2 years prior and would allow for up to a 2% increase per year (4% total) requiring a simple majority vote. The chart assumes SJR 23 would be in effective for the FY04 budget process and would be based on the appropriated amount for FY02.
- An additional 2% may be appropriated bring the total to 6%. This additional 2% would require a two-thirds vote of both houses.

- If, for example 6% was appropriated for FY04, the FY06 limit would be based on the original 4% increase that passed with a simple majority, not the full 6%.
- If the amount appropriated exceeds the limit, the governor shall reduce expenditures by the executive branch for its operation and administration in order to bring expenditures back in line with the constitutional limit.
- Removes the requirement that 1/3 of the appropriations be used for capital projects. This is an arbitrary number and Attorney General Opinions have negated the original intent of the language, thus allowing the legislature and administration to currently avoid this requirement
- Alaska voters are given the opportunity after four years (2006) to reaffirm their wish to maintain this appropriation limit and again every six years after that. In the event they choose not to approve it, Article IX Section 16 is repealed and removed from the constitution.
- SJR 23 ensures a limit on state government growth and will encourage the state to reasonably reduce non-essential state spending.

# The Current Spending Limit vs Recent Appropriations



## Projected Appropriation Limits under SJR 23



\*FY03 Authorized budget estimated at 2% increase over FY02.

Sec (a) allows for up to a 4% increase over the amount appropriated 2 years prior.

Sec (b) states an additional 2% may be appropriated with a two-thirds vote of both houses.

**Not Included in SJR23 Limit:** Permanent Fund dividends, G.O. & revenue bond proceeds, reappropriations, duplicated funds, and funds from non-State sources.

All numbers taken from LFD Fiscal Summaries In Summary of Appropriations

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: SJR 23  
 (S) Publish Date: 5/3/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
 Title: Constitutional Amendment relating to an BRU: Elective Operations  
appropriation limit and a spending limit Component: Elections  
 Sponsor: Senator Donley  
 Requester: Senate Finance Committee Component Number: 21

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Gail Fenumial Phone 465-3935  
 Division: Division of Elections Date/Time 04/10/01 4:25PM  
 Approved by: Lieutenant Governor Fran Ulmer Date 04/10/2001  
 Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office

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

BY THE SENATE RULES COMMITTEE

Offered: 5/1/01  
Referred: Rules

Sponsor(s): SENATE FINANCE COMMITTEE

A RESOLUTION

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

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

4 \* Section 1. Article IX, sec. 17(b), Constitution of the State of Alaska, is amended to read:

5 (b) If the amount available for appropriation for a fiscal year is not sufficient  
6 to fully fund the amount appropriated for that year [LESS THAN THE AMOUNT  
7 APPROPRIATED FOR THE PREVIOUS FISCAL YEAR], an appropriation may be  
8 made from the budget reserve fund and used to fund appropriations from the  
9 unrestricted general fund. However, the amount appropriated from the fund under  
10 this subsection may not exceed the amount necessary, when added to other funds  
11 available for appropriation, to provide for total funding [APPROPRIATIONS] equal  
12 to the amount of appropriations made [IN THE PREVIOUS CALENDAR YEAR] for  
13 the previous fiscal year. For purposes of applying this subsection, amounts  
14 available for appropriation or appropriated from federal funds, income of the  
15 permanent fund, or this budget reserve fund may not be considered. For  
16 purposes of this subsection, "unrestricted general fund" shall be defined by law.

- 1     \* Sec. 2. Article IX, sec. 17(d), Constitution of the State of Alaska, is repealed.
- 2     \* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of
- 3     the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
- 4     State of Alaska, and the election laws of the state.

**Existing Provision  
Alaska Constitution  
Article IX, Section 17**

**Section 9.17 - Budget Reserve Fund.**

(a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund.

Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

(b) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund.

However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year.

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

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

# LEGAL SERVICES

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

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


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

## MEMORANDUM

October 5, 2001

**SUBJECT:** Budget Reserve Fund; sectional summary for CS SJR 24(RLS)  
(Work Order No. 22-LS0794\O)

**TO:** Senator Dave Donley

**FROM:** Pamela Finley   
Revisor of Statutes

Sec. 1. Amends subsection (b) of art. IX, sec. 17 (constitutional budget reserve fund). Permits transfers from the constitutional budget reserve fund to be used to fund appropriations from the unrestricted general fund if the amount otherwise available for appropriation is not sufficient to fully fund the appropriations. The amount transferred under subsection (b) is limited to that amount necessary to provide for total funding, when added to other funds available for appropriation, equal to the amount of appropriations made for the previous fiscal year. In applying this subsection, federal funds, income of the permanent fund, or constitutional budget reserve fund money is not to be considered. "Unrestricted general fund" is to be defined by law.

Sec. 2. The budget reserve fund repayment or "sweep" provision is repealed.

Sec. 3. The proposed amendments are to be submitted to the voters in 2002.

PF:glc  
01-329.glc



# Alaska State Senate

## Senate Finance Committee

Official Business

Sponsor Statement  
for  
CS SJR 24 (Rules)

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### "Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund"

Senate Joint Resolution 24 would amend Article IX, sec 17 of Alaska's Constitution to promote fiscal discipline and provide a more efficient budgetary process. The purpose of SJR 24 is to restore the legislative intent of subsection (b). That section was intended to allow the legislature to fill a portion of the fiscal gap using funds from the Constitutional Budget Reserve (CBR) with a majority vote when the amount available for appropriation for a fiscal year is less than the amount available in the previous year.

The Alaska Supreme Court, in Hickel v Cowper, determined that "the amount available for appropriation" was improperly defined in statute. The Court improperly interpreted the true legislative intent of the  $\frac{3}{4}$  vote, which is now required to access the CBR. This has allowed a small minority of legislators to "blackmail" the majority into increased spending each year.

SJR 24 addresses this problem by clearly defining subsection (b), and allows the legislature to transfer the difference between *current year revenue* and *appropriations for the previous year* from the CBR to the General Fund (GF) without a  $\frac{3}{4}$  vote. Funds appropriated from the CBR may be spent only as unrestricted GF. That is, the CBR couldn't be used to fill gaps in GF program receipts or in any of the fund codes the legislature classifies as "other." If current year appropriations exceed appropriations for the previous year, that gap will not be covered by the transfer from the CBR, but additional money can be appropriated from the CBR with a  $\frac{3}{4}$  vote, just as it is done now.

SJR 24 amends Article IX, sec 17 of Constitution by:

- reestablishing the trigger mechanism for accessing the CBR with a majority vote when;  
*Available money (this year) is less than Appropriations (last year)*  
The original trigger, declared invalid in Hickel v Cowper, was:  
*Available money (this year) is less than Appropriations (this year)*
- redefining the CBR gap-filler provision (subsection b), which is not used because it was declared unconstitutional, as an appropriation.
- defining money available for appropriation (it will exclude federal receipts, income of the Permanent Fund, and the CBR).
- specifying that money transferred from the CBR can be used only to replace unrestricted GF appropriations.
- repealing the repayment provision

The existing trigger comparing revenue in the current year to appropriations in the prior year has little to do with determining whether a fiscal gap exists or how large it might be. The revised trigger is based on revenue and appropriations for the same fiscal year, making the comparison a valid indicator of a fiscal gap.

In addition, the original intent of using the CBR to fund no more than the level of appropriations for the prior year without a  $\frac{3}{4}$  vote is not changed under SJR 24.

Definitions of the terms "amount available for appropriation" and "amount appropriated" are the root of problems with interpreting the CBR provision. The revised language in SJR 24, in addition to the court decision, makes it clear that federal receipts, Permanent Fund earnings (PFDs, inflation proofing and excess income) and the CBR are excluded from both definitions, as are monies excluded from the existing "sweep" provision (subsection d).

Essentially, that leaves the GF fund group and many of the "other" fund codes subject to the trigger. However, appropriations under the revised subsection (b) of SJR 24 can be used only to fund appropriations from the unrestricted general fund. The purpose of this limitation is to make sure that the CBR is not used when non-general fund receipts fall short of expectations. For example, the CBR could not be used to make up a shortfall in University tuition or Aerospace Corporation receipts without a  $\frac{3}{4}$  vote.

The appropriation from the CBR is limited to prior year appropriations less the amount available for appropriation in the current year. If appropriations in the current year exceed appropriations in the prior year, only getting the  $\frac{3}{4}$  vote can fill that portion of the fiscal gap.

Money withdrawn from the CBR with a  $\frac{3}{4}$  vote can be used for any purpose.

SJR 24 also repeals the "sweep" provision because it can be reversed only with a  $\frac{3}{4}$  vote. Since the sweep reversal would be an annual requirement, failing to delete it would defeat the purpose of the proposed amendments to subsection (b).

DD/jja

CS SJR 24 (Rules) —Budget Reserve Fund  
Talking Points  
Prepared by Senator Donley's Office

- Adoption of CS SJR 24 promotes fiscal discipline and provides a more efficient budgetary process.
- CS SJR 24 clarifies the situations under which funds are withdrawn from the CBRF and restores the legislature's original intent regarding the circumstances under which a ¾ vote is required.
- The original intent of the legislature was to allow the use of the CBR by majority vote to fund no more than the level of prior year appropriations. If appropriations for the new budget year are more than the prior year's, that gap can only be filled with a CBR draw by a ¾ vote.
- The existing trigger compares revenue in the current year with appropriations from the prior year. This has little to do with determining how large a fiscal gap exists. The trigger under CS SJR 24 compares revenue and appropriations from the same fiscal year making the determination of a fiscal gap more relative to the actual situation
- CS SJR 24 clarifies that federal receipts, PF earnings and CBR are excluded from the definition of both "amount available for appropriation" and "amount appropriated." The lack of clarification under the existing provision is the root of the problem with the court interpretation of when a ¾ vote is required.
- Under CS SJR 24, transfers from the CBR which may be made by majority vote are limited to prior year appropriations less the amount available for appropriation in the current year. These funds may only be used as unrestricted GF. They cannot be used to fill gaps in program receipts or "other funds." The original resolution was written in a way that made this transfer automatic. The CS is written to provide that although not automatic, this amount of money needs approval by only a majority of each house.
- Additional CBR funds may still be made, but require approval by a ¾ vote of each house.
- CS SJR 24 also repeals the "sweep" provision. The sweep reversal is an annual requirement and failing to delete it works counter to the purpose of this change.



# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

## Quotes from the 1990 Voters Guide Statement on the Budget Reserve Constitutional Amendment in 1990

In 1990, the voters approved the Budget Reserve Constitutional Amendment which created the Constitutional Budget Reserve Fund (CBRF). In the ballot measure presented to the voters, there were several references to how the fund could be used. The statements clearly indicate that the intent was that in years where there is a budget shortfall, monies from the CBRF can be accessed by a simple majority vote.

- The ballot language explanation prepared by the Lt. Governor's office said, in part, *"The fund could be used when money available for appropriation in the year is less than the year before, but only to make up the shortfall."*
- The summary prepared by the Legislative Affairs Agency said, in part, *"Appropriations may be made from the fund if money available for a fiscal year is less than the amount appropriated for the prior year."*
- The Statement in Support of the Ballot Measure said, in part, *"Ballot Measure 1 is the first step Alaskans can take to effectively control state spending." and "revenues are less than the amount appropriated in the previous year, in which case money could be appropriated from the Budget Reserve in an amount not to exceed the shortfall".*

These statements were signed by Senator Faiks and Representatives Brown and Randy Phillips.

- The Statement in Opposition to the Ballot Measure said, in part, *"Under paragraph (b) of the proposed constitutional change, a simple majority in the legislature could 'harrow' funds from the reserve, to make up any shortfall in revenues, up to the amount appropriated in the previous year."*  
This statement was signed by Representative Martin.
- In addition, in 1994, the Legislature passed AS37.10.420, which reiterated that CBR funds could be used in this manner with a simple majority vote.

Prepared By Senator Donley

Co-Chair: Senate Finance Committee

Vice-Chair: Senate Judiciary Committee

Member: Legislative Budget and Audit Committee • Legislative Council

# BALLOT MEASURE NO. 1

## Budget Reserve Constitutional Amendment

[HCS CSSSSJR 5 (Fin) am H]

### BALLOT LANGUAGE

This proposal would create the "Budget Reserve Fund" in the state treasury. Money the state receives from mineral revenue lawsuits or administrative actions would be deposited in the Fund, and invested at competitive rates. The Fund could be used when money available for appropriation in the year is less than the year before, but only to make up the shortfall. The legislature could only appropriate from the Fund for other purposes with a 3/4 vote. At the end of each year, the Fund would have to be paid back from money left in the treasury's general fund.

Should this constitutional amendment be adopted?

Yes  No

### VOTES CAST BY MEMBERS OF THE 16TH ALASKA LEGISLATURE ON FINAL PASSAGE

House: Yeas 38 Nays 2 Senate: Yeas 15 Nays 5

### LEGISLATIVE AFFAIRS AGENCY SUMMARY

This measure will amend the state constitution by creating the budget reserve fund. Money from certain mineral revenue sources received by the state from an administrative proceeding or litigation is placed in the fund. Income of the fund is kept in the fund.

Appropriations may be made from the fund if money available for a fiscal year is less than the amount appropriated for the prior year. When this occurs the amount that may be taken from the fund is limited. Only the money needed to make up the difference may be appropriated.

Money may also be appropriated from the reserve fund by special vote of the legislature. Three-fourths of the members of each house must approve. The amount that may be taken is unlimited when this vote is obtained.

Money that is appropriated from the reserve fund must be repaid. Surplus general fund money must be deposited in the reserve fund at the end of each year until the reserve fund is repaid.

### FULL TEXT OF PROPOSED LAW

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

SECTION 17: BUDGET RESERVE FUND. (a) There is

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

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

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

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

\*Section 2. The amendment 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.

### STATEMENT IN SUPPORT

Cut the budget.  
Reduce state spending.  
Get state spending under control.

Each year these battle cries are raised by Alaskans. While elected officials say they listen and promise to do all they can, the simple fact is the Legislature's record shows it consistently spends most or all of the money available in the treasury. Alaska is confronted with an impending fiscal crisis of staggering proportions as a result of an inevitable "gap" between general fund revenues and current state spending levels. Present levels

# BALLOT MEASURE NO. 1

of state general fund expenditure simply cannot be sustained over the long term.

Ballot Measure Number 1 is the first step Alaskans can take to *effectively* control state spending.

The measure creates the Budget Reserve Fund in the Constitution. Revenues from mineral or oil and gas legal settlements and administrative proceedings will be deposited into the Budget Reserve. The Legislature will be able to spend money from the Budget Reserve only if:

• revenues are less than the amount appropriated the previous year, in which case money could be appropriated from the Budget Reserve in an amount not to exceed the shortfall; or

• three-fourths of the members of both the House and Senate vote to spend money from the Budget Reserve for a public purpose, such as a disaster.

The Legislature will be required to repay any money it appropriates from the Budget Reserve. If the next year revenues are insufficient the Legislature cannot afford to replenish the Budget Reserve, the "debt" will carry forward until it is repaid.

Legal settlements involving mineral or oil and gas revenues received after July 1, 1990, will be deposited into the Budget Reserve. As an example, if voters approve this ballot measure, \$216 million of the amount the state received in September from ARCO's settlement of royalty litigation will be deposited into this Budget Reserve. Should voters not approve this measure, these funds will be available to the legislature to spend next year. Approval of Ballot Measure Number 1 is the first step toward a long-term spending plan. With Alaska's revenues subject to the whims of the world oil market, trying to take steps which will provide some stability in Alaska's spending is especially difficult. If approved, the Budget Reserve Fund will help hold down spending by removing from the table the oil and gas revenue "windfalls" that result from pending litigation and tax disputes. At the very least, this ballot measure will establish a savings account that can help minimize the effects of a "boom" one year, and a "bust" the next.

While other major budget decisions will be necessary to close the future's fiscal gap, this Ballot Measure is a major step toward a long-term spending plan for the state. It is a step we urge Alaskans to support.

If approved by the voters, the Budget Reserve Fund will be a significant help in managing the transition to sustainable spending.

Senator Jan. Faiks  
Representative Kay Brown  
Representative Randy Phillips

## STATEMENT IN OPPOSITION

In sharp contrast to what proponents have been telling us, the proposed budget reserve fund

- will *not* save any windfalls,
- does *not* require a 3/4 vote to gain access to it.

- *endorses* the legislature's bloated \$3 billion budget
- will result in *slower growth* of the Permanent Fund, and
- will *reduce the amount* of future PFD checks.

Your vote *against* Ballot Measure #1 will send a signal to the legislature that you do not approve of their excessive spending, and that you want the windfalls deposited into the Permanent Fund.

The most significant danger of this proposal is that it will establish a budget floor at \$3 billion, and allow it to increase every year. Under paragraph (b) of the proposed constitutional change a simple majority in the legislature could "borrow" funds from the reserve, to make up any shortfall in revenues, *up to the amount appropriated in the previous year*. This year the legislature spent more than \$3 billion. Some of that was vetoed by the governor, but it is expected the legislature will restore the funding and add supplemental appropriations in January. In other words, *the total amount appropriated for FY 91 has not yet been determined. A "yes" vote on this ballot measure amounts to rubber-stamping a blank check of at least \$3 billion!*

How would the budget continue to increase? Legislative leaders can easily get a 3/4 vote out of their members by dangling capital project plums in front of them.

The appeal of this ballot measure is to save the "windfalls" of oil tax settlements, variously estimated at between \$2 billion and \$5 billion. This can easily be spent in three years.

Constitutionally, 25% of our oil income is dedicated to the Permanent Fund. And under state law, an additional 25% of income from certain leases is put into the Permanent Fund. In other words, as much as 50% of the windfalls should be deposited in the Permanent Fund, by law. The language in this constitutional amendment is unclear regarding the second 25%, and could be interpreted by big-spending legislators to rationalize putting only the constitutionally-dedicated 25% into the Permanent Fund, and leaving 75% for them to spend.

It would be better to save all of these anticipated windfalls, by putting 100% into the Permanent Fund. There, these funds will help the Permanent Fund produce greater annual income, for use as Permanent Fund Dividends to all Alaskans, or to fund necessary functions of state government. In the Permanent Fund, the windfalls would definitely be saved, and would not be accessible by big spenders in the legislature.

If you are one of the 65% of Alaskans who in opinion polls consistently ask the legislature to cut the budget, or if you believe the windfalls should *truly* be saved, you owe it to yourself not to be taken in by the proponents of Ballot Measure #1. Vote NO on the budget reserve amendment.

Representative Terry Martin

Walter J. HICKEL, Governor of the State of Alaska, Darrel J. Rexwinkel, Commissioner of the Department of Revenue for the State of Alaska, and the State of Alaska, Petitioners and Cross-Respondents,

v.

Steve COWPER, Respondent and Cross-Petitioner.

Nos. S-6294, S-6304.

Supreme Court of Alaska.

May 27, 1994.

Action was brought challenging as unconstitutional statute defining terms contained within section of the Alaska Constitution establishing budget reserve fund. The Superior Court, Third Judicial District, John Reese, J., declared statute unconstitutional, and the state petitioned for emergency review. Petitioner cross-petitioned on same issue. After granting petitions, the Supreme Court, Matthews, J., held that statute was unconstitutional because it did not provide accurate definition of constitutional terms.

Affirmed.

#### 1. Appeal and Error $\Rightarrow$ 8-42(1)

Proper interpretation of a constitutional provision is a question of law to which Supreme Court applies its independent judgment.

#### 2. States $\Rightarrow$ 131

"Amount available for appropriation" within meaning of section of the Constitution authorizing appropriation from budget reserve fund if amount available for appropriation for fiscal year is less than amount appropriated for previous fiscal year includes all monies over which legislature has retained power to appropriate and which require further appropriation before expenditure; in addition, all amounts actually appropriated, whether or not they would have been considered available prior to appropriation, are "available" within meaning of section; illiquid assets, such as land and unexploited natural

resources, are not "available" so long as they remain illiquid. Const. Art. 9, § 17(b).

See publication Words and Phrases for other judicial constructions and definitions.

#### 3. States $\Rightarrow$ 131

Statute defining "amount available for appropriation," for purposes of constitutional provision allowing appropriation from budget reserve fund if amount available for appropriation for fiscal year is less than amount appropriated for previous fiscal year, is unconstitutional, as it does not provide accurate definition of constitutional term; statute fails to include several funds in the "amount available for appropriation" which are in fact available within meaning of the constitutional provision, including trust receipts, "restricted accounts" within the general fund, and permanent fund earnings reserve account. AS 37.10.420(a)(1); Const. Art. 9, § 17(b).

#### 4. States $\Rightarrow$ 131

Statute defining term "amount appropriated for the previous fiscal year" for purposes of constitutional provision authorizing appropriation from budget reserve fund if amount available for appropriation for fiscal year is less than amount appropriated for the previous fiscal year, is unconstitutional because it does not include all actual appropriations made for previous fiscal year in the "amount appropriated for the previous fiscal year," and thus it does not accurately reflect meaning of constitutional term. AS 37.10.420(a)(2); Const. Art. 9, § 17(b).

#### 5. States $\Rightarrow$ 131

Statutory section defining "amount of appropriations made in the previous calendar year for the previous fiscal year" for purposes of constitutional provision authorizing appropriation from budget reserve fund if amount available for appropriation for fiscal year is less than amount appropriated for previous fiscal year, is unconstitutional, since it relies primarily on unconstitutionally limited number of appropriation sources identified in other statutory sections, and it cannot be severed from such subsections. AS 37.10.420(a)(1-3); Const. Art. 9, § 17(b).

## 6. States ⇐131

Statutory section designating means by which appropriations from budget reserve fund are paid back to fund is unconstitutional because it fails to consider all amounts which are "available for appropriation" within meaning of constitutional provision. AS 37.10.420(b); Const. Art. 9, § 17(d).

James L. Baldwin, Stephen C. Slotnick, Juneau, Jenifer A. Kohout, Anchorage, Asst. Attys. Gen., and Bruce M. Botelho, Atty. Gen., Juneau, for petitioners and cross-respondents.

Douglas Pope, Thomas A. Ballantine, Wagstaff, Pope & Katcher, Anchorage, for respondent and cross-petitioner.

Before MOORE, C.J., RABINOWITZ, MATTHEWS and COMPTON, JJ., and BRYNER, J. Pro Tem.\*

MATTHEWS, Justice.

## OPINION

In *Hickel v. Halford*, 872 P.2d 171 (1994) (*Halford*), we addressed the meaning of the term "administrative proceeding" as used in article IX, section 17 of the Alaska Constitution.<sup>1</sup> This is one of the terms which de-

\* Sitting by assignment made pursuant to article IV, section 16 of the Alaska Constitution.

## 1. Article IX, section 17 provides as follows:

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

scribes state revenues which must be deposited into the budget reserve fund. We are now required to interpret several other key terms of section 17, including "amount available for appropriation" and "amount appropriated for the previous fiscal year." § 17(b). These terms govern the legislature's ability to withdraw from the budget reserve fund by a simple majority vote.

This case arises out of a legislative attempt to define these terms. While final decision in *Halford* was pending, the Alaska Legislature passed and Governor Hickel signed Senate Committee Substitute for Committee Substitute for House Bill 58 (FIN) (the Act). Chapter 5, SLA 1994. Section 1 of the Act amends AS 37.10 by adding new sections AS 37.10.410 and .420. Alaska Statute 37.10.410 defines what money is received as a result of the termination of an administrative proceeding under article IX, section 17(a) of the Alaska Constitution. Alaska Statute 37.10.420 defines several other key phrases and concepts used in section 17, including "amount available for appropriation," "amount appropriated for the previous fiscal year," and "amount of appropriations made in the previous calendar year for the previous fiscal year." Alaska Statute 37.10.420 also establishes the means by which appropriations from the budget reserve fund are

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

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

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

repaid.<sup>2</sup> Section 2 of the Act states that the provisions of section 1 "are declaratory of existing law and represent the intent of the legislature when the Sixteenth Alaska State Legislature passed [the resolution proposing the constitutional amendment creating section 17]." Ch. 5 SLA 1994.

Following passage of the Act, the current respondent and cross-petitioner, former Governor Steve Cowper, applied to this court for a limited remand in the pending *Halford* case so that he could challenge the constitutionality of the Act.<sup>3</sup> Petitioners and cross-respondents, Governor Walter J. Hickel, Commissioner of Revenue Darrel J. Rexwinkel, and the State of Alaska (hereafter referred to as the State), applied to this court for original jurisdiction to consider the constitutionality of the Act. We granted a limited remand to the superior court so that Gov. Cowper could

move to amend his complaint in order to challenge the constitutionality of the Act.<sup>4</sup>

On remand, the consolidated cases were severed and Gov. Cowper was allowed to amend his complaint to allege that the Act was unconstitutional. He then moved for partial summary judgment on this question. The State also moved for a partial summary judgment declaring the Act constitutional. The superior court granted expedited consideration of the summary judgment motions. Following briefing and oral argument, the court declared the Act unconstitutional on April 8, 1994.<sup>5</sup> In a written decision the superior court held that AS 37.10.420 is unconstitutional because it unduly limits the funds counted as available for appropriation. The court explained that "[i]f a simple majority vote can withdraw the funds ... it is

2. AS 37.10.420 provides:

(a) For purposes of applying art. IX, sec. 17(b), Constitution of the State of Alaska,

(1) "the amount available for appropriation" or "funds available for appropriation" means

(A) the unrestricted revenue accruing to the general fund during the fiscal year;

(B) general fund program receipts as defined in AS 37.05.146;

(C) the unreserved, undesignated general fund balance carried forward from the preceding fiscal year that is not subject to the repayment obligation imposed by art. IX, sec. 17(d), Constitution of the State of Alaska; and

(D) the balance in the statutory budget reserve fund established in AS 37.05.540;

(2) "the amount appropriated for the previous fiscal year" means the amount appropriated from the

(A) constitutional budget reserve fund under the authority granted in art. IX, sec. 17, Constitution of the State of Alaska; and

(B) same revenue sources used to calculate the money available for appropriation for the current fiscal year; and

(3) "the amount of appropriations made in the previous calendar year for the previous fiscal year" means appropriations made from sources identified in (2) of this subsection for a fiscal year that were enacted during the calendar year that ends on December 31 of that same fiscal year.

(b) If the amount appropriated from the budget reserve fund has not been repaid under art. IX, sec. 17(d), Constitution of the State of Alaska, the Department of Administration shall transfer to the budget reserve fund the amount of money comprising the unreserved, undesignated general fund balance to be carried forward as of June 30 of the fiscal year, or as much of it as is necessary to complete the repayment. The transfer shall be made on or

before December 16 of the following fiscal year.

(c) In this section, "unrestricted revenue accruing to the general fund" or "unreserved, undesignated general fund balance carried forward" is money not restricted by law to a specific use that accrues to the general fund according to accepted principles of governmental or fund accounting adopted for the state accounting system established under AS 37.05.150 in effect on July 1, 1990.

(d) An appropriation under art. IX, sec. 17(b), Constitution of the State of Alaska, requires an affirmative vote of the majority of the members of each house of the legislature. An appropriation under art. IX, sec. 17(c) requires an affirmative vote of three-fourths of the members of each house of the legislature.

3. See *Halford*, 872 P.2d at 174-76, for a full statement of the earlier proceedings in this case.

4. This court does not possess original jurisdiction over the case. AS 22.05.010. In addition, no Alaska court could normally adjudicate an action by the State seeking to have a statute declared constitutional, in the absence of the willing participation of a truly adverse party. See *Greater Anchorage Area Borough v. City of Anchorage*, 504 P.2d 1027, 1036 (Alaska 1972) ("Parties seeking a judicial determination of a hypothetical, advisory or moot question will be denied relief.").

5. The superior court found AS 37.10.410 unconstitutional based on an inconsistency between the statute and this court's interpretation of the term "administrative proceeding" in *Halford*. The State does not challenge this portion of the court's decision in this petition.

available for appropriation ... [unless] it belongs to someone else ... or would not be there without the purpose and permission of the source." The superior court also ruled that AS 37.10.420(b), which provides for repayment of funds appropriated out of the budget reserve, unconstitutionally limits the source of these funds. The superior court did not attempt to identify which funds were and were not available for appropriation under section 17(b).

The State petitioned this court for emergency review of the superior court's decision with respect to AS 37.10.420. Gov. Cowper cross-petitioned on the same issue. We granted both petitions. After expedited briefing, we heard oral argument on April 22, 1994.

### I. STANDARD OF REVIEW

The State argues that this court should defer to the legislature's interpretation of section 17. The State bases this argument on a "strong presumption" in favor of legisla-

tive interpretations, *State ex rel. Udall v. Colonial Penn Ins. Co.*, 112 N.M. 123, 812 P.2d 777, 783 (1991), and the presumption that statutes are constitutional, *Bonjour v. Bonjour*, 592 P.2d 1233, 1237 (Alaska 1979). Further, the disputed terms in section 17(b) involve appropriations, and the power to appropriate is wholly legislative, Alaska Const. art. IX, § 13. The State misconstrues the applicable standard of review.

The cases cited by the State do not support the proposition that courts should defer to legislative interpretations of ambiguous constitutional provisions. On the contrary, in each of the cases cited by the State, the court clearly is engaged in interpreting the constitutional provision.<sup>6</sup> Nor does the legislature's role in making appropriations somehow alter or increase its authority to define constitutional terms merely because the terms contain the word "appropriation." This court retains the same power to interpret constitutional terms regardless of the subject matter of the term.<sup>7</sup>

6. See *Heckendorn v. City of San Marino*, 42 Cal.3d 481, 229 Cal.Rptr. 324, 327, 723 P.2d 64, 67 (1986) ("We must determine what the term 'ad valorem tax' means in Article XIII A."); *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal.3d 208, 149 Cal.Rptr. 259, 257, 583 P.2d 1281, 1300 (1978) (en banc) (discussing rules of construction used by courts in interpreting constitutional provisions); *State ex rel. Udall v. Colonial Penn Ins. Co.*, 112 N.M. 123, 812 P.2d 777, 782-83 (1991) ("We interpret our constitution to carry out its spirit."); *Coronado Oil Co. v. Grievor*, 603 P.2d 406, 411 (Wyo.1979) ("Though the legislature's interpretation of the constitution is not binding on the supreme court, we would be loath to interpret the constitution otherwise. We must give weight to legislative interpretation, though not conclusive.") (citations omitted).

7. The legislature's interpretation of the constitutional terms at issue in this case may be considered more persuasive than otherwise because of its greater familiarity with appropriations. Deference in such circumstances is at most, however, a single tool for use by this court in interpreting the constitution. If the legislature adopted AS 37.10.420 contemporaneously with its approval of the Legislative Resolve No. 129 (eventual Article IX, section 17), that would be considered a significant indication of the actual meaning of section 17. A statement by the Eighteenth Legislature of the intent of the Sixteenth Legislature would not bear great weight even if the subject was the meaning of a statute; the applicable degree of deference is lessened by the fact

that at issue is the meaning of a constitutional amendment for which the legislature is not the ultimate adopting authority. Our discussion of the weight to be afforded a subsequent legislative statement of the meaning of an earlier statute in *Hillman v. Nationwide Mut. Fire Ins. Co.*, 758 P.2d 1248, 1252-53 (Alaska 1988), is relevant here.

While the legislature is fully empowered to declare present law by legislation, it is not institutionally competent to issue opinions as to what a statute passed by an earlier legislature meant. If the legislature were in some form to declare its opinion as to the meaning of prior law, that declaration would be entitled to the same respect that a court would afford to, for example, an opinion of a learned commentator; that is, the court would examine the reasoning offered in support of the opinion and either reject or accept it based on the merit of the reasons given. It is possible to argue that the legislature has knowledge superior to a disinterested commentator because there may be some legislators in the current legislature who were also members of the legislature which passed the prior law and thus have special insight into the intent of the legislature. However, the force of this is dispelled when one considers that it is not permissible to allow a legislator to testify on the question of his unexpressed legislative intent or on the unexpressed legislative intent of others.

*Id.* (citing *Kenai Peninsula Borough Sch. Dist. v. Kenai Peninsula Educ. Ass'n*, 572 P.2d 416 (Alaska 1977)).

[1] This court's task, therefore, is identical to that faced whenever a statutory enactment is claimed to run afoul of a constitutional provision. "Questions concerning the constitutionality of a statute are questions of law and are reviewed *de novo*." *Sun v. State*, 830 P.2d 772, 775 n. 4 (Alaska 1992). We must first determine what the constitution actually means. The proper interpretation of a constitutional provision is a question of law to which this court applies its independent judgment. *Arco Alaska, Inc. v. State*, 824 P.2d 708, 710 (Alaska 1992). We then examine the statute to see whether it conflicts with the constitutional requirement. "[S]tatutes should be construed if reasonably possible to avoid the conclusion that they are unconstitutional." *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992).

The appropriate approach to interpreting language in the Alaska Constitution is well established. "Constitutional provisions should be given a reasonable and practical interpretation in accordance with common sense. The court should look to the plain meaning and purpose of the provision and the intent of the framers." *Arco Alaska*, 824 P.2d at 710; *see also Kochutin v. State*, 739 P.2d 170, 171 (Alaska 1987).

Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe ab-

strusely any constitutional term that has a plain ordinary meaning. Rather, absent some signs that the term at issue has acquired a peculiar meaning by statutory definition or judicial construction, we defer to the meaning the people themselves probably placed on the provision. Normally, such deference to the intent of the people requires "[a]dherence to the common understanding of words."

*Citizens Coalition for Tort Reform, Inc. v. McAlpine*, 810 P.2d 162, 169 (Alaska 1991) (citations omitted) (quoting *Division of Elections v. Johnstone*, 669 P.2d 537, 539 (Alaska 1983)).

## II. DISCUSSION

### A. "Amount Available for Appropriation"

[2] The primary issue in this case is the meaning of the term "amount available for appropriation" as used in article IX, section 17(b) of the Alaska Constitution.<sup>8</sup> The State asserts, in accordance with the definition set forth in AS 37.10.420(a)(1), that the "amount available for appropriation" consists only of 1) unrestricted revenue accruing to the general fund during the fiscal year; 2) general fund program receipts as defined in AS 37.05.146;<sup>9</sup> 3) the unreserved, undesignated

fore, these funds are not made dedicated funds by virtue of the Act.

### 9. AS 37.05.146 provides:

In AS 37.05.142—37.05.146 and AS 37.07.080, "program receipts" means fees, charges, income earned on assets, and other state money received by a state agency in connection with the performance of its functions; all program receipts except the following are general fund program receipts:

- (1) federal receipts;
- (2) University of Alaska receipts (AS 14.40.491);
- (3) individual, foundation, or corporation gifts, grants, or bequests that by their terms are restricted to a specific purpose;
- (4) receipts of the following funds:
  - (A) highway working capital fund (AS 44.68.210);
  - (B) correctional industries fund (AS 33.32.020);
  - (C) loan funds;
  - (D) international airport revenue fund (AS 37.15.430);

8. As preliminary matters, Gov. Cowper argues that the statutes are invalid irrespective of their substantive content because (1) they violate the separation of powers doctrine; (2) they constitute an impermissible attempt by the legislature to influence an ongoing judicial controversy; (3) they intrude on the judicial realm of constitutional interpretation; and (4) the statute violates article IX, section 7's prohibition against dedicated funds. The "influencing" claim pertains entirely to AS 37.10.410 and therefore is not relevant to the present petitions which deal exclusively with AS 37.10.420. The "intrusion on the judicial realm" argument is without merit.

Gov. Cowper's argument that the Act establishes a dedicated fund is also without merit. Although the Act defines certain funds as not available for appropriation under section 17(b), it does not prohibit the executive branch from requesting that these funds be reassigned to different purposes or the legislative branch from allocating these funds differently. *Sonneman v. Hickel*, 836 P.2d 936, 940 (Alaska 1992). In addition, because the Act does not dedicate any state revenue to any particular fund, it cannot implicate the prohibitions of section 7. There-

general fund balance carried forward from the preceding fiscal year; and 4) the balance in the statutory budget reserve fund, AS 37.05.540. In addition to the program receipts excluded under AS 37.05.146, this definition excludes the funds listed in AS 37.05.146, several other funds which have been established by the legislature,<sup>10</sup> and the surplus assets of public corporations.<sup>11</sup> Gov. Cowper argues that the "amount available for appropriation" includes the total amount accessible by the legislature, including all of the funds and assets referred to above. Under this argument, funds are available for appropriation so long as a simple majority can make the funds available.

We reject both interpretations. The text of section 17 cannot support the State's narrow interpretation. However, Gov. Cowper's position would require a complete restructuring of the established financial system of the State government. We are unwilling to add "missing terms" to the Constitution or to

interpret existing constitutional language more broadly than intended by the framers or the voters. Instead, we consider it appropriate, as well as consistent with both the language of the amendment and the intent of the framers, to focus on the legal status of the various funds implicated in relationship to the legislative power of appropriation. The "amount available for appropriation" must include all funds over which the legislature has retained the power to appropriate and which are not available to pay expenditures without further legislative appropriation. It must also include all amounts which the legislature actually appropriates for the fiscal year, whether or not they could have been considered available prior to the appropriation.

Our analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself. We are not vested with the authority to add missing terms or hypothesize differently worded pro-

(E) funds managed by the Alaska Housing Finance Corporation (AS 18.56.020), the Alaska Railroad Corporation (AS 42.40.010), the Municipal Bond Bank Authority (AS 44.85.020), the Alaska Aerospace Development Corporation (AS 14.40.821), or the Alaska Industrial Development and Export Authority (AS 44.88.020);

(F) fish and game fund (AS 16.05.100);

(G) school fund (AS 43.50.140);

(H) training and building fund (AS 23.20.130);

(I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and former AS 39.37);

(J) permanent fund (art. IX, sec. 15, Alaska Constitution);

(K) public school fund (AS 37.14.110);

(L) second injury fund (AS 23.30.040);

(M) fishermen's fund (AS 23.35.060);

(N) FICA administration fund (AS 39.30.050);

(O) receipts of the employee benefits program established under AS 39.30.150—39.30.180;

(P) receipts of the deferred compensation program established under AS 39.45;

(Q) clean air protection fund (AS 46.14.260);

(R) receipts of the group insurance programs established under AS 39.30.090.

(S) receipts of or from the trust established by AS 37.14.400—37.14.450, except reimbursements described in AS 37.14.410.

10. These additional funds include the Railbelt energy fund, AS 37.05.520, the Alaska marine highway system vessel replacement fund, AS 37.

05.530, the educational facilities maintenance and construction fund, AS 37.05.560, the oil and hazardous substance release response fund, AS 46.08.010, the power cost equalization and rural electric capitalization fund, AS 42.45.100, the power project fund, AS 42.45.010, the Alaska science and technology endowment, AS 37.17.020, and the permanent fund earnings reserve account, AS 37.13.145.

11. In 1985, the Department of Law issued an informal opinion, written by Assistant Attorney General James L. Baldwin, which concluded that "unrestricted money in the [Alaska Housing Finance Corporation] revolving fund is probably available for appropriation." 1985 Informal Op. Att'y Gen. 307 at 309 (emphasis added). The Opinion recommended that the statute governing the Alaska Housing Finance Corporation (AHFC) be amended to specifically authorize interim transfers of unrestricted surplus assets of AHFC to the general fund and to provide that the board of directors annually determine the amount of surplus available for transfer. *Id.* at 310-11.

The statutes governing the AHFC and the Alaska Industrial Development and Export Authority (AIDEA) now require each organization to annually determine whether it has assets in excess of the amount required to fulfill its purposes. See AS 18.56.089(b)(1); AS 44.88.205(b)(1). Each organization must present this determination to the legislature by January 10 of each year. AS 18.56.089(b)(2); AS 44.88.205(b)(2). See Ch. 12 SLA 1991.

visions in order to reach a particular result.<sup>12</sup> Our task is to identify the meaning that the people probably placed on the term. *Halford*, 872 P.2d at 176. The dictionary definitions of the controlling words "amount" and "available" provide a helpful starting point. *Webster's Third New International Dictionary* defines "amount" as "a: the total number or quantity . . . ; b: the sum of individuals . . . ; c: the quantity at hand or under consideration." *Id.* at 72. Relevant definitions of "available" are "3: such as may be availed of: capable of use for the accomplishment of a purpose: immediately utilizable . . . ; 4: that is accessible or may be obtained . . . : at disposal esp. for sale or utilization." *Id.* at 150.

From similar dictionary definitions, Gov. Cowper paraphrases "amount available for appropriation" as meaning "the total funds accessible by the legislature for appropriation." He further interprets this paraphrase as meaning that all funds which the legislature can make available to itself by a majority vote, whatever their current use or designation, are "available for appropriation."<sup>13</sup> At the outer limits, this construction would

12. On this basis alone, we must reject the State's plea to convert the term "amount available for appropriation," as used in section 17(b), to either "amount available for appropriation from the [unrestricted] general fund" or "revenues available for appropriation." If the definition of "amount available for appropriation" in AS 37.10.420 is to withstand constitutional scrutiny, it must be because it is in conformity with the text of section 17(b), and not because section 17(b) is missing words which would make it conform to AS 37.10.420.

13. The State argues that the "common understanding" of the phrase "available for appropriation" is more limited. It states that the term should have the same meaning in the Constitution that it has in the budget process, meaning only "revenue sources customarily considered by the legislature." The State asserts that only unrestricted revenues are so considered. To be distinguished are "restricted revenues," the use of which is restricted in some way, usually by the source of the funds, predominantly the federal government.

The State never asserts or shows evidence, however, that the term "available for appropriation" is actually used in any particular way in the budget process. Rather, it argues that the term "should be interpreted with reference to revenue sources customarily considered by the legislature

require that all net assets held by the State, however liquid, be considered available in determining whether the amount available was less than the amount appropriated for the previous year.<sup>14</sup> Such an expansive reading of the constitutional language would render section 17(b) superfluous for all practical purposes.<sup>15</sup> It would also involve the adoption of a radically different approach to government financing. Neither result is consistent with the purpose of the amendment, the intent of the framers, or extrinsic indications of the voters' probable understanding of section 17's terms.

Section 17(b) allows a simple legislative majority to use the constitutional budget reserve fund in order to make up the difference between the "amount available for appropriation" for a given fiscal year and the "amount appropriated for the previous fiscal year." If net state assets are included in the total amount available, then they would have to be actually expended before the budget reserve fund could be reached by a simple majority to keep spending at a constant level. Even if we consider only net assets which exist in a cash form—such as the balances contained in

when it considers the state budget." It is also not clear that the legislative definition of "amount available for appropriation" includes all monies "customarily considered by the legislature." Although it probably does include all revenues customarily considered, it may not include all amounts so considered.

14. Gov. Cowper does limit his argument to cash funds, presumably because of the relative ease with which cash funds can be converted to different purposes, as compared to illiquid assets. This is a reasonable limitation. Although we have held, in a different context, that property other than money may be "appropriated," see *McAlpine v. University of Alaska*, 762 P.2d 81, 87-89 (Alaska 1988), it does not follow that it is necessarily "available for appropriation" within the meaning of section 17(b).

There does not appear to be any significant difference, however, in the type of legislative action necessary to reach cash funds and less liquid state assets. Gov. Cowper's interpretation therefore recognizes that "available," as used in section 17(b), requires more than mere accessibility.

15. Under this interpretation, if state assets are in excess of annual appropriations, even a total lack of revenue would not allow a simple majority to withdraw from the budget reserve fund.

any one of the State's several revolving loan funds<sup>16</sup>—the existing state programs dependent on these funds would have to be curtailed if these funds were expended on another purpose. These funds are maintained, however, because in the judgment of the legislature they serve worthwhile purposes. Therefore, one of the uses the legislature presumably would want to make of the newly available money would be to reestablish these funds. Yet, to the extent that any of these funds were started and funded before the previous year, there would not be an equivalent appropriation in the previous year to balance out the appropriation required in the present year. Gov. Cowper's interpretation of section 17(b)'s majority access formula would, in effect, require reductions in the level of government service until no liquid funds remained before a simple majority could reach the budget reserve.

One of the purposes of the budget reserve amendment, however, was to provide a "stabilizing mechanism" in the budgetary process.<sup>17</sup> The formula in section 17(b), which compares funds currently available to the amount appropriated for the previous fiscal year, and allows simple majority appropriation from the budget reserve fund to the extent necessary "to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year," Alaska Const. art. IX, § 17(b), reflects this purpose and clearly anticipates use of the budget reserve fund to maintain "equal" appropriation levels from year to year. Gov. Cowper's interpretation is inconsistent with this purpose because it would only allow simple majority access to the budget reserve fund if all state programs involving cash funds were eliminated or if

state spending were reduced by the total amount retained in such funds.

Similarly, both the legislative history of section 17 and extrinsic evidence of the voter's understanding of the amendment's provisions indicate that elimination of state services and/or liquidation of state assets was not considered a necessary prerequisite to simple majority access to the budget reserve. Both Representative Rieger and Representative Brown stated in committee that if revenues declined, a simple majority could appropriate from the fund to make up the difference.<sup>18</sup> Statements in the voter pamphlet indicated similar conditions to appropriation. The statement in support of the amendment in the voter pamphlet states:

The Legislature will be able to spend money from the Budget Reserve only if:

- revenues are less than the amount appropriated the previous year, in which case money could be appropriated from the Budget Reserve in an amount not to exceed the shortfall[.]

At the very least, this ballot measure will establish a savings account that can help minimize the effects of a "boom" one year, and a "bust" the next.

The statement in opposition expresses a similar understanding:

Under paragraph (b) of the proposed constitutional change, a simple majority in the legislature could "borrow" funds from the reserve, to make up any shortfall in revenues, up to the amount appropriated in the previous year.

(Emphasis eliminated.)

These statements demonstrate that Gov. Cowper's expansive reading of "amount avail-

16. See, e.g., AS 03.10.040 (agricultural revolving loan fund); AS 14.43.090 (scholarship revolving loan fund); AS 14.43.630 (teacher scholarship revolving loan fund); AS 16.10.340 (commercial fishing revolving loan fund); AS 42.45.010 (power project fund); AS 42.45.250 (bulk fuel revolving loan fund); AS 44.29.210 (alcoholism and drug abuse revolving loan fund); AS 44.88.400 (small business economic development revolving loan fund); AS 45.95.060 (small business revolving loan fund); AS 45.98.010 (historical district revolving loan fund).

17. See, e.g., Testimony of budget officer Mary Halloran, House Finance Comm. TR. 37, May 1, 1990.

18. See Statement of Rep. Rieger, H. Finance Comm., HFC tape 90-97, tr. at 31 (May 3, 1990) ("[I]f oil prices went to \$9, it would take a simple majority to use the Budget Reserve Fund to bring you back to what you had last year."); Statement of Rep. Brown, *Id.* at 30 ("[T]o get back to last year's spending level, a simple majority could appropriate from the budget reserve.").

able for appropriation" is not consistent with the purpose of the amendment or the probable understanding of the drafters and voters.

On the surface, these statements may appear to support the State's interpretation of "amount available for appropriation" as including only revenues received by the State within the fiscal year.<sup>19</sup> This interpretation is, however, plainly inconsistent with the language of section 17(b). If the drafters of the amendment had intended that a decline in revenues alone would trigger access, it would have been easy to formulate a test which compared current revenues to prior revenues. The formula in section 17(b), however, compares the "amount available for appropriation" to the amount previously appropriated. In order to accept the various secondary indications of the people's possible understanding as dispositive, it would be necessary to read "amount available for appropriations" as meaning only current revenue. Yet it is clear that in the normal functioning of state government, other funds are routinely available including, at a minimum, the general fund balance carried forward. Nor is an understanding that the reserve fund could be reached by a simple majority when revenues decline necessarily inconsistent with requiring some standing funds to be considered available for appropriation. The State concedes that the statutory budget reserve and the general fund balance would have to be considered available. See 37.10.420(a)(1)(C)-(D). Eliminating even these funds from the calculation would allow majority access to the budget reserve whenever there was even the slightest decline from year to year in revenues, even if in the prior year a huge sum was left unappropriated or placed in the statutory budget reserve. The language of sec-

19. The State asserts that this reading is further supported by newspaper descriptions of the amendment prior to the 1990 general election. Some of the statements in these articles do support the State's position:

If State revenues decline, money could be taken out to fill the gap. For example, let's say our state earned \$2.5 billion in fiscal year 1995. For some reason, such as a drop in production or a drop in price, we earned just \$1.5 billion in fiscal year 1996. The legislature could tap into the Budget Reserve Fund to make up the gap.

tion 17 and the purposes behind the establishment of the fund do not support such easy access.

The flaw in Gov. Cowper's analysis of the text of section 17(b) is in his assumption that "available" can only mean "accessible by any means." The dictionary definitions of the word indicate narrower meanings which are more consistent with the purpose and intent of the provision and with the probable understanding of the voters. As quoted above, one of the definitions of "available" is "immediately utilizable," indicating that the ease with which funds may be accessible is a factor in determining their availability. This is in accord with a common sense understanding of section 17. As demonstrated above, the purpose and common understanding of the language in section 17(b) allows the budget reserve to be used by a simple majority as necessary to maintain state appropriations at a constant level. Although all funds might be available by some means, counting funds already validly appropriated to a specific purpose as still "available" would disrupt existing state programs and would constitute an inflexible constitutional intrusion on the legislature's authority to evaluate the wisdom of particular appropriations. Although such a constitutional intrusion is conceivable, we are unwilling to read it into a provision with quite a different purpose.

It is far more reasonable to interpret "amount available for appropriation" in light of the relative consequences of and circumstances attendant in making appropriations from different sources. In this light, monies which already have been validly committed by the legislature to some purpose should not

"Vote Yes on Ballot Measure No. 1," *Fairbanks Daily News-Miner*, Nov. 2, 1990, at 4; see also John Enders, "Cowper pushes for economic stability in form of state budget reserve fund," *Juneau Empire*, Oct. 25, 1990, at 3; John Enders, "Budget Reserve-Account Would Cushion State Revenue," *Anchorage Daily News*, Oct. 28, 1990, at M16; John Enders, "Ballot measure would set up budget reserve," *Fairbanks Daily News-Miner*, Oct. 22, 1990, at 6 ("[I]f state revenues fell from one year to the next the Legislature could tap the reserve to make up the difference."). These articles cannot, however, control over contrary wording in the constitution.

be counted as available.<sup>20</sup> In addition, illiquid assets owned by the state are not available so long as they remain illiquid. Given the "stabilizing" purpose of the amendment, it would make little sense to interpret section 17 as requiring the costly and time-consuming process of liquefying state assets before allowing majority access to the constitutional budget reserve fund. See *supra* note 14. The "amount available for appropriation" would include, however, all monies from which the legislature can make an appropriation and which require a legislative appropriation before they can be expended, as well as any amount which would not otherwise be counted as "available" but from which the legislature does in fact appropriate. This interpretation is consistent with the stabilizing purpose of section 17 and with the extrinsic evidence of the voter's understanding of the amendment. Most importantly, it is consistent with the text of section 17(b), as it is based on a reasonable and practical interpretation of the words of that section, in accordance with common sense.<sup>21</sup>

20. To do otherwise would be to continue to count sums of money as "available for appropriation" after they have been appropriated, so long as they have not been paid out or converted from cash to some other type of asset. Instead, we recognize that any given sum of money can only be appropriated once during a given time period. Of course, if an appropriation lapses or if the legislature does in fact reappropriate money from an excluded fund to another purpose, it is no longer necessary to exclude that money from the "amount available for appropriation" in order to protect the legislature's authority to make such decisions.

21. This interpretation is related to the State's argument that AS 37.10.420 properly excludes "restricted funds" because those funds, at least in part, have already been appropriated. We reject, however, the State's conception of relevant fund restrictions and the State's definition of when an amount has been validly appropriated. Therefore, our definition of the "amount available for appropriation" includes several funds excluded by the statutory definition.

22. "Trust receipts" include all funds, whatever the source, which the State can only use for a specific stated purpose under applicable law. The largest "trust receipt" category is federal funding, which may only be appropriated by the State for the purposes prescribed by the federal government. Private entities may also grant the

This definition necessarily includes all amounts which are in fact appropriated for a fiscal year, including "trust receipts."<sup>22</sup> There is nothing in the text or history of section 17 which would justify classifying money actually appropriated as *unavailable* for appropriation.<sup>23</sup>

The State argues that "[s]ound policy" requires that these trust receipts be excluded because they "are not available for discretionary appropriation by the legislature." Even if we were to agree that policy considerations favored a system which compared only amounts available for discretionary appropriation to the previous year's appropriations from such amounts, we could not impose that policy choice on a differently worded constitutional provision.

Moreover, it is not clear that excluding these receipts would constitute a better policy. The appropriations made from these receipts represent a significant portion of state spending. The purposes to which these funds are restricted include many core state government functions, including education,

State money to use for specific purposes. State appropriations from trust accounts, such as the Public Employees Retirement Fund, for purposes relating to the trust, such as fund administration, are also properly characterized as trust receipts. Although the amount of the appropriation is apparently set by the legislature, it must be made in accordance with trust principles. Therefore, the amount which the legislature appropriates in accordance with trust principles is the amount available to the legislature for such appropriation. Finally, amounts appropriated by the legislature out of other funds within executive agencies for purposes of administering these funds, under explicit statutory authority, may also be treated as a type of trust receipt. See, e.g., AS 03.10.040(b) (agricultural revolving loan fund); AS 16.10.340 (commercial fishing revolving loan fund); AS 45.95.060(o) (small business revolving loan fund). Although these funds are not trust funds, the statutes do limit legislative authority to appropriate from them.

23. Money appropriated from the AHFC and the AIDEA therefore must be counted as available for appropriation. However, money which either organization determines to be in excess of the amount required to fulfill its purposes, see AS 18.56.089(b)(1); AS 44.88.205(b)(1), should not be counted unless actually appropriated to another purpose or transferred to the general fund. The statutes do not automatically transfer these funds out of the respective organizations.

health, social services, public safety, and transportation. See State of Alaska, Dep't of Revenue, *Revenue Sources Book* (Fall 1993) at 54 (listing historical grants-in-aid by category). Because these funds are an integral part of the State's annual spending, changes in the amounts received would certainly affect other budget decisions. Policy considerations therefore appear to favor including trust receipts in the amount available, so that, for example, declines in federal funding might result in increased access to the budget reserve fund. The budget reserve amendment does anticipate that all budget decisions be made in relation to one another. We need not choose between these alternative policies, however. Regardless of which policy argument is in fact more compelling, the text of section 17(b) clearly requires that all funds which are in fact appropriated be counted as "available for appropriation."

The key question in applying our interpretation of the term "amount available for appropriation" to particular funds<sup>24</sup> is what constitutes a valid appropriation such that the funds involved are no longer available. "Appropriation" is defined as

something that has been appropriated; *specif.*: a sum of money set aside or allotted by official or formal action for a specific use (as from public revenue by a legislative body that stipulates the amount, manner, and purpose of items of expenditure).

24. In this regard, the State argues that the question of whether funds outside the unrestricted general fund are "available for appropriation" is "not justiciable in a court of law." To the extent the State argues that this court cannot decide the meaning of the term "available for appropriation" or the legal status of different funds under this definition, its position is without merit. The meaning of the constitution and its application to particular facts are questions squarely within the jurisdiction and inherent power of the judiciary. "[T]he judicial branch of government has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution, including compliance by the legislature." *McAlpine v. University of Alaska*, 650 P.2d 351, 356 (Alaska 1982). The State's error is in assuming that the "power of appropriation necessarily includes the power to determine what amounts are available to finance appropriations enacted." Compare *Abood v. Gorsuch*, 703 P.2d 1158, 1161-62 (Alaska 1985) ("What quorum is necessary for the

*Webster's Third New Int'l Dictionary* 106 (1969). *Black's Law Dictionary* defines "appropriation" as

[t]he act of appropriating or setting apart; prescribing the destination of a thing; designating the use or application of a fund

....  
In governmental accounting, an expenditure authorized for a specified amount, purpose, and time.

....  
*Public law.* The act by which the legislative department of government designates a particular fund, or sets apart a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object of governmental expenditure, or to some individual purchase or expense. Authority given by legislature to proper officers to apply distinctly specified sum from designated fund out of treasury in given year for specified object or demand against the state.

*Black's Law Dictionary* 101-02 (6th ed. 1990); see generally *McAlpine v. University of Alaska*, 762 P.2d 81, 87-88 (Alaska 1988) (discussing definitions of "appropriation").

In *Thomas v. Rosen* we cited with approval the following definition of appropriation by the Wisconsin Supreme Court:

An appropriation is the setting aside from the public revenue of a certain sum of money for a specified object, in such man-

confirmation votes is a question of Alaska constitutional law. It is therefore a question to which the nonjusticiability doctrine does not apply."). Although the court cannot say what particular funds should be used for appropriations, or set the amount of appropriations, it can and must determine the status of particular funds when such a determination is necessary for constitutional interpretation or enforcement.

The State is correct, however, insofar as it asserts that decisions to appropriate certain funds and withdraw other appropriations are political questions. All this means, however, is that the court cannot second guess the wisdom of individual appropriation or non-appropriation decisions. This limitation supports a definition of "available for appropriation" which does not require amounts validly appropriated to specific purposes to be counted. As these amounts have already been appropriated, counting them as available is functionally equivalent to questioning the wisdom of the original appropriation.

ner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other. 569 P.2d 793, 796 (Alaska 1977) (quoting *State ex rel. Finnegan v. Dammann*, 220 Wis. 143, 264 N.W. 622, 624 (1936)). Finally, in *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, in determining that a local initiative did not make an appropriation, we asked "whether the initiative would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that is executable, mandatory, and reasonably definite with no further legislative action." 818 P.2d 1153, 1157 (Alaska 1991).

Under these definitions, it is clear that one of the fundamental characteristics of an appropriation, in the public law context, is that it authorizes governmental expenditure without further legislative action. Therefore, funds established by the legislature which may be used to pay state expenditures without further legislative action are not available for appropriation, to the extent that expenditures are authorized. This is true regardless of whether the fund is nominally established within the general fund or within a state agency. For example, the oil and hazardous substance release response fund is a restricted fund within the general fund. AS 46.08.010. The commissioner of environmental conservation is authorized to

use money from the fund to

(1) investigate and evaluate the release or threatened release of oil or a hazardous substance, and contain, clean up, and take other necessary action, such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance that poses an imminent and substantial threat to the public health or welfare, or to the environment.

AS 46.08.040(a). The entire balance of the fund could potentially be used by the com-

25. AS 46.08.040 lists eight other purposes for which the commissioner of environmental conservation may use money from the fund. See AS 46.08.040(a)(2)-(7) and (d)(1)-(2). Except as provided for in AS 46.08.040(d)(1), however, expenditures for these purposes are limited to amounts available from appropriations made specifically for the purposes listed. AS 46.08.-

missioner of environmental conservation under this provision without any further authorization by the legislature.<sup>25</sup> In addition, AS 46.08.040(b) authorizes the governor to use money from the fund to respond to an oil or hazardous substance discharge emergency during the effective period of such an emergency declared under AS 26.23.020(c). Because the legislature has made the entire balance of this fund available for expenditure, the amounts deposited into the fund are validly appropriated and therefore no longer available for appropriation.

On the other hand, funds which require further legislative appropriation before expenditures can be made against them are available for appropriation. Thus, the Railbelt energy fund, AS 37.05.520, the Alaska marine highway system vessel replacement fund, AS 37.05.550, and the educational facilities maintenance and construction fund, AS 37.05.560, remain "available for appropriation," within the meaning of section 17(b). Each of these funds has the same general structure. Each is established as a "restricted" fund within the general fund, and each consists of money "appropriated" to it by the legislature. AS 37.05.520, .550(a), .560(a). These initial appropriations, however, are not sufficient to support any expenditure. Further legislative appropriations are necessary. See AS 37.05.520 ("The legislature may appropriate money from the fund for programs, projects, and other expenditures to assist in meeting Railbelt energy needs, including projects for retrofitting state-owned buildings for and facilities for energy conservation."); AS 37.05.550(a) ("The legislature may appropriate money from the fund for refurbishment of existing state ferry vessels, or replacement of retired or outmoded state ferry vessels."); AS 37.05.560(b) ("Money in the fund may be appropriated (1) to finance the design, construction, and maintenance of public school facilities; and (2) for mainte-

040(c). AS 46.08.040(d)(1) provides that the commissioner of environmental conservation shall, upon request of the Alaska Legislative Council, "use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances."

nance of University of Alaska facilities."').<sup>26</sup> Because the initial "appropriations" to these funds cannot support any expenditure, the money in these funds remains "available for appropriation" until further appropriations are made.<sup>27</sup>

A similar analysis applies to the permanent fund earnings reserve account (earnings reserve account), AS 37.13.145. This fund is established as a separate account within the permanent fund under the authority of the last sentence of Article LX, § 15 of the Alaska Constitution: "All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law." AS 37.13.145(a) provides otherwise: "The earnings reserve account is established as a separate account in the fund. Income from the fund shall be deposited by the corporation into the account as soon as it is received." Therefore, money in the earnings reserve account never passes through the general fund, and is never appropriated as such by the legislature.

A percentage of the money in the reserve account is automatically transferred to the

26. The lists of specific purposes in each statute for which these second appropriations "may" be made are not sufficient to make the assignment of money to these funds "appropriations." Further appropriations are necessary before expenditures can be made. In addition, we have previously recognized that statutory statements that the legislature "may" appropriate money from funds within the general fund for specific purposes "impose no legal restraint on the appropriations power of the legislature." *Sonneman v. Hickel*, 836 P.2d 936, 939-40 (Alaska 1992).

27. In a hybrid situation, where expenditures can be made from part but not all of a fund, the fund is not available for appropriations to the extent that it is subject to expenditure without further legislative approval. We express no opinion on the possible status of funds which technically are subject to full expenditure, but which are funded well beyond any reasonably expectable need, as there is no evidence in the record before us that any such fund exists.

We also make no attempt to name and classify as "available" or "unavailable" every fund within the treasury of the State of Alaska. We leave it, in the first instance, to executive and legislative branch officials more familiar with all of the funds involved to apply the general definition we adopt today.

28. In a May 1990 memorandum describing the budget reserve amendment, budget officer Mary

dividend fund at the end of each fiscal year, AS 37.13.145(b). After that transfer has been made, an additional amount is transferred from the earnings reserve account to the principal of the permanent fund in order to "offset the effect of inflation on principal of the fund." AS 37.13.145(c). No regular provision is made for amounts in the earnings reserve account in excess of that necessary to fund dividends and inflation proof the permanent fund principal. Absent an appropriation, this excess accumulates from year to year. The unencumbered balance of this account was \$1.087 billion as of February 28, 1994.

The balance remaining in the earnings reserve account each year after the dividend and inflation-proofing transfers have been made is liquid, has never been appropriated by the legislature, and is not subject to expenditure without further legislative action. There are no statutory or constitutional prohibitions against direct appropriations from this account.<sup>28</sup> The earnings reserve account is therefore available for appropriation.<sup>29</sup>

Halloran states that the amount available for appropriation includes "all revenue sources, such as permanent fund earnings, federal funds and other restricted funds."

In addition, the language of section 17, and specifically the difference in language between sections 17(b) and (d), suggests that at least some funds outside the general fund may be available for appropriation. Compare § 17(b) ("the amount available for appropriation for a fiscal year") with § 17(d) ("the amount of money in the general fund available for appropriation").

29. In oral argument before the superior court, the State argued that the earnings reserve account should not be considered available because, under current projections of the Alaska Permanent Fund Corporation, the entire balance will be used for dividend payments and inflation proofing by the year 2010. This argument rests on reasoning similar to that which prompted us to conclude that the oil and hazardous substance release response fund was not available for appropriation: the entire account may be expended without further legislative action. Unlike the release response fund, which may be needed for expenditure at any time, the earnings reserve account balance will not be used for many years to come. In the meantime, there are no restrictions on its use. Something more than a possibility of future use is necessary before a fund is considered no longer available for appropriation.

[3] Alaska Statute 37.10.420 fails to include several funds—including trust receipts, “restricted” accounts within the general fund which require further legislative appropriation before they can be expended, and the permanent fund earnings reserve account—in the “amount available for appropriation” which are in fact available within the meaning of article IX, section 17 of the Alaska Constitution. It therefore does not provide an accurate definition of the constitutional term. Therefore, although we differ from the superior court in our analysis of the “amount available for appropriation,” we affirm the superior court’s decision declaring AS 37.10.420(a)(1) unconstitutional.

In summary, the “amount available for appropriation” within the meaning of article IX, section 17 of the Alaska Constitution includes all monies over which the legislature has retained the power to appropriate and which require further appropriation before expenditure. In addition, all amounts actually appropriated, whether or not they would have been considered available prior to appropriation, are available within the meaning of section 17. Illiquid assets, such as land and unexploited natural resources, are not available so long as they remain illiquid. For these reasons, trust receipts are available for appropriation, as are funds like the Railbelt energy fund and the educational facilities maintenance and construction fund, which are not available for expenditure without additional appropriations. In contrast, the oil and hazardous substance release response fund is not counted as available because the entire balance of the fund may be expended at any time without further legislative action. The availability of funds not specifically discussed in this opinion must be determined in accordance with this opinion. Finally, the permanent fund earnings reserve account must be counted as available for appropriation, because appropriations may be made from it and it is not subject to expenditure without legislative action.

30. This amount would include appropriations made from the constitutional budget reserve fund. It would not include “appropriations” made to funds from which additional appropriations are necessary before expenditures can be made. If the legislature both appropriates mon-

B. “Amount appropriated for the previous fiscal year”

[4] The meaning of the term “amount appropriated for the previous fiscal year” in article IX, section 17(b) of the Alaska Constitution follows logically from the definitions of the word “appropriation” listed above. The “amount appropriated for the previous fiscal year” means all amounts set aside for the previous fiscal year by the legislature “for a specific purpose or object in such a manner that is executable, mandatory, and reasonably definite with no further legislative action.” *Fairbanks Convention and Visitors Bureau*, 818 P.2d at 1157. In short, the “amount appropriated” includes every dollar appropriated by the legislature, whatever its source.<sup>30</sup> Because our definition of the amount available for appropriation includes all amounts actually appropriated, it is unnecessary to exclude artificially any amount actually appropriated from the “amount appropriated” in order to achieve symmetry in the comparison. The State correctly argues that this symmetry is necessary in order to insure that the comparison required by section 17(b) fairly measures the need for access to the budget reserve fund. Contrary to the State’s argument, however, symmetry can be obtained without abandoning the plain meaning of the words used in the constitution. Because AS 37.10.420(a)(2) does not include all actual appropriations made for the previous fiscal year in the “amount appropriated for the previous fiscal year,” it does not accurately reflect the meaning of the constitutional term. We therefore affirm the superior court’s decision declaring AS 37.10.420(a)(2) unconstitutional.

C. “Amount of appropriations made in the previous calendar year for the previous fiscal year”

[5] Alaska Statute 37.10.420(a)(3) defines the “amount of appropriations made in the previous calendar year for the previous fiscal

ty into a fund which is not available for appropriation and removes money from the same fund to appropriate to a different purpose in the same year, the amounts should be offset so that the same amount of money is not counted twice in determining the total amount appropriated.

year" in terms of the unconstitutionally limited number of appropriation sources identified in subsection (a)(2) of the statute, which itself relies primarily on the sources identified in subsection (a)(1). It cannot be severed from these subsections and therefore is also unconstitutional, as the superior court properly held.

This term is meant to prevent the legislature from increasing prior year appropriations in order to increase access to the budget reserve in the present year.<sup>31</sup> Other than its unduly narrow interpretation of what counts as an appropriation, the definition of the term in AS 37.10.420(a)(3) appears to be consistent with this purpose. The "amount of appropriations made in the previous calendar year for the previous fiscal year" means the amount of all appropriations made in the calendar year in which the previous fiscal year began.

#### D. Constitutionality of AS 37.10.420(b)

[6] Alaska Statute 37.10.420(b) designates the means by which appropriations from the budget reserve fund are paid back to the fund. Article IX, § 17(d) provides:

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

Pursuant to the authority granted it by § 17(d), the legislature enacted AS 37.10.420(b), which provides:

If the amount appropriated from the budget reserve fund has not been repaid under art. IX, sec. 17(d), Constitution of the State of Alaska, the Department of Admin-

31. See Halloran memorandum, at 5 ("The phrase 'in the previous calendar year' was inserted by the House Finance Committee specifically to preclude stratagems whereby a supplemental appropriation to the current fiscal year ... could be made in order to increase the allowable size of a Budget Reserve Fund appropriation for the fiscal year being budgeted.")

32. We see no reason to give "available for appropriation" a different meaning in subsection (d)

istration: shall transfer to the budget reserve fund the amount of money comprising the unreserved, undesignated general fund balance to be carried forward as of June 30 of the fiscal year, or as much as necessary to complete the repayment. The transfer shall be made on or before December 16 of the following fiscal year.

This definition excludes restricted funds within the general fund from the calculation of the amount available to pay back appropriations from the budget reserve fund. As discussed above, some of these funds remain "available for appropriation" within the meaning of section 17.<sup>32</sup> Although the constitution gives the legislature authority to implement subsection (d), the legislature's authority must be exercised within the constraints of subsection (d)'s own requirements. Because AS 37.10.420 fails to consider all amounts which are "available for appropriation" within the meaning of section 17 in determining the State's repayment obligation, it is unconstitutional. The superior court's decision declaring AS 37.10.420(b) unconstitutional is therefore affirmed.

### III. CONCLUSION

The decision of the superior court is AFFIRMED, for the reasons stated in this opinion.



than we did in subsection (b). We recognize, however, that the payback provision in section 17(d) is limited to only those funds which are "available for appropriation" and "in the general fund." Thus, available amounts outside the general fund, such as the earnings reserve account, need not be deposited in the budget reserve. This additional limitation has no effect on funds which exist within the general fund.

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SJR 24  
(S) Publish Date: 4/23/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
Title: Constitutional Amendment relating to the BRU: Elective Operations  
budget reserve fund Component: Elections  
Sponsor: Senate Finance Committee  
Requester: Senate Finance Committee Component Number: 21

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2001 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

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

Prepared by: Gail Fenumial Phone 465-3935  
Division: Division of Elections Date/Time 04/10/01 4:28PM  
Approved by: Lieutenant Governor Fran Ulmer Date 04/10/2001  
Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office



# Alaska State Legislature

Please enter into the record my testimony to the

Senate Finance

committee name

Committee on

Long Range Plans

, dated

10/20/01

bill # / subject

I support placing a CAP on the State Government similar to the Kenai Peninsula Borough cap. The cap would allow the State to provide needed services without creating a huge budget deficit.

Signed:

Jack E. Brown

Testifier

Representing (optional)

P.O. Box 7073

Niisk., AK 99635

Address

776-3670

Phone number



**Subject: Capping Budget and Spending**

**Date:** Fri, 19 Oct 2001 10:16:26 -0800

**From:** William Arnold <wildbill@corecom.net>

**To:** SYDA\_Linda Reynolds <linda3@ptialaska.net>,  
Senator Jerry Ward <Senator\_Jerry\_Ward@legis.state.ak.us>,  
Senator Dave Donley <Senator\_Dave\_Donley@legis.state.ak.us>,  
Senator Pete Kelly <Senator\_Pete\_Kelly@legis.state.ak.us>,  
Loretta Brown <Loretta\_Brown@legis.state.ak.us>,  
Mark Gage <Mark\_Gage@legis.state.ak.us>

Dear Senators and Alaska Voters Statewide,

Myself and my wife Samon vote and we are Charter Members of Save Your Dividend Alaskans. We hope the Budgeting and Spending is capped at the numbers authorized the past spring devoid of supplementals period!

The next task is to utilize the Alaska Constitution in one hand to review all the agencies of each department to determine what is necessary. There are a handful of items authorized by the Alaska Constitution. Most of that handful we do pretty poorly. The excess budgeting and spending beyond that is what will be excised by the executive and legislative ax.

All Departments of our State and their their respective agencies are dollar driven by statutes and formulas going back to 1959. It is time to review those statutes and formulas to repeal all the outdated items plus the ones that do not conform with what was provided by our Constitution.

Federal Funds come at a heavy price. The match portion has a cumulative effect, which impacts state earnings.

The General Fund Budget and Spending only covers a portion of government spending. The remaining portion that adds up to 7.2 billion has to be reviewed in a similar fashion, supra.

We will not entertain any new taxes, embellished Permanent Fund Earnings formulas until we are entirely satisfied that our government has shrunk to a decent size to fit our population of about 627,000.

My wife and I will not be able to attend the 10-19-01 meeting in Kenai but we would like someone to utilize our combined 6 minute time frame allotment to read this word for word slowly into the record. Any questions feel free to contact us infra.

Thank you for your time and attention.

Bill and Samon Arnold  
SYDA Charter Members  
P.O. Box 1392  
Sterling, Alaska 99672-1392

Contact us at:  
e mail wildbill@corecom.net  
(907) 260-5463

Headquarters:  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323 FAX 463-5515  
[ascciumo@ptialaska.net](mailto:ascciumo@ptialaska.net)



Regional Office:  
P.O. Box 91896  
Anchorage, Alaska 99509  
(907) 278-2722 FAX 278-6643  
[ascceanch@ptialaska.net](mailto:ascceanch@ptialaska.net)

October 19, 2001

Senator Dave Donley  
Co-Chairman, Senate Finance Committee  
Alaska State Legislature  
716 W. 4th Avenue  
Anchorage, Alaska 99501-2133

Dear Senator Donley:

Please accept my apology, but I find that I am unable to provide testimony on behalf of the State Chamber when the Senate Finance Committee meets tomorrow, Saturday, October 20. We are preparing for our annual convention next week, and I have realized that I have a conflict because of a project we are working on on Saturday.

Attached is a letter I sent to Representative Rokeberg today regarding HJR 15, SJR 23, and SJR 24 that were heard today in a meeting of the House Judiciary Committee. As stated in the letter, we will be able to provide more input on these issues once they have been addressed by our membership.

I will look forward to learning the results of your meeting.

Sincerely,



Pamela La Bolle  
President

Headquarters:  
217 2nd Street, Suite 201  
Juneau, Alaska 99801  
(907) 586-2323 FAX 463-5515  
[ascjiuno@ntialaska.net](mailto:ascjiuno@ntialaska.net)



Regional Office:  
P.O. Box 91896  
Anchorage, Alaska 99509  
(907) 278-2722 FAX 278-6643  
[ascanch@ntialaska.net](mailto:ascanch@ntialaska.net)

ALASKA  
★ STATE ★  
CHAMBER  
OF COMMERCE

October 19, 2001

Representative Norm Rokeberg  
Chairman, House Judiciary Committee  
Alaska State Legislature  
716 W. 4th Avenue  
Anchorage, Alaska 99501-2133

Re: Committee hearing on HJR 15, SJR 23 and SJR 24

Dear Chairman Rokeberg:

We would like to offer some comments on the above-cited resolutions taken up by your committee in a hearing held today in Anchorage. These are important resolutions, which I am certain the public will want to speak to when the regular legislative session convenes.

At a meeting to be held on October 30, 2001, the Alaska State Chamber of Commerce will develop its positions on issues to be considered during the upcoming legislative session. At that time we will consider the resolutions discussed in your meeting today and we will provide your committee with our position on these issues.

In the meantime, I am able to provide you with our general position regarding development of a long-range fiscal plan. Our policy adopted last December is attached, and from this you can see that we believe a fiscal plan should contain many elements. We have wanted the legislature to develop a blueprint, if you will, a plan for managing Alaska's fiscal future with lessening oil revenue. With a blueprint in place, it can then be determined what actions will be needed to carry out the plan.

The news release announcing the hearing says that these resolutions represent the foundation of a long-range fiscal plan and that the Senate-passed resolutions are essential cornerstones in the structure of a long-range fiscal plan. We have not seen a plan, so we are unable to determine how essential these resolutions are to the plan.

Sincerely,

Pamela La Bolle  
President

## ALASKA STATE CHAMBER OF COMMERCE

Priority 2001 - 1

## Long Range Fiscal Planning

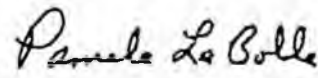
The Alaska State Chamber of Commerce urges the Administration and Legislature to adopt and implement a unified long-range fiscal plan for the state. The plan should address a strategy to bring state spending in line with revenues, encourage and promote economic investment and business development, maintain the state's infrastructure and implement a deferred maintenance plan for all state-owned facilities, and further establish performance measures for state services in concert with results-based government.

The plan should implement a biennial state budget; privatize state services which could be competitively provided by the private sector; promote development of new businesses that could competitively provide goods or services currently provided by the state; and utilize a systematic funding mechanism, such as general obligation bonds, to meet the state's capital needs. The budget shall disclose all revenue and expense items.

ADOPTED

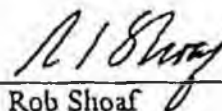
December 1, 2000

BY



Pamela La Bolle  
President

BY



Rob Shoaf  
Chairman

SITE: WRANGELL LIO

COMMITTEE: SFIN

DATE: 10/20/01

SUBJECT OF MEETING:

Update status of SFIN fiscal plan

UPDATE #:



## PLEASE SIGN IN

PLEASE PRINT:

NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

DO YOU WANT

TO TESTIFY?

Y or N

NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY? Y or N
<input checked="" type="checkbox"/> Don McConnochie	Box 361 Wrangell, Alaska 99929 <i>Fiscal discipline / \$ for security</i>	Wrg Councilman	Y
<input checked="" type="checkbox"/> Bruce E. Harding	Box 1062 Wrangell, Alaska 99929	Wrg. Mayor	Y
<i>Moses Smith</i>	<i>Vice Mayor of Lower Kallay</i>		
<i>City of</i>			
<i>P.O. Box 69</i>	<i>(907) 471 - 2228</i>		
<i>Lower</i>	<i>Fax (907) 471 - 2363</i>		
<i>99626</i>			

SITE: Kenai LIO

COMMITTEE: SFIN

DATE: 10-20-01

SUBJECT OF MEETING:

Long Range Fiscal Plan

UPDATE #: No. 1



## PLEASE SIGN IN

PLEASE PRINT:

DO YOU WANT  
TO TESTIFY?  
Y or N

NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY? Y or N
Sen. Jerry Ward		Legislature	Y
✓ Linda Reynolds	PO Box 763 Soldotna, AK <i>- Cap on spending -</i>	SYDA chair	Y

Testimony

# Legislative Teleconference Network

SPONSOR: Senate Finance

SUBJECT: Fiscal Plan

START TIME: 1:00 DATE: 10/20/01

## Please Print

	Name/Representing	Address	Zip	Phone No.	Testify Yes or No	Bill No.
1	✓ <u>Chuck Ahlberg</u> <u>Common Sense for Alaska</u>	<u>6610 Lakeview</u> <u>Fiscal discipline</u> <u>SPR 2001</u>	<u>99502</u>	<u>243 2029</u>	<u>YES</u>	<u>SJR 21</u>
2.	<u>Barbara Huff</u> <u>Tuckness</u>	<u>520 E 34</u>	<u>99503</u>	<u>565-8230</u>	<u>NO</u>	
3	✓ <u>Virgil Norton</u>	<u>Save Your Dividend Alaskans</u>			<u>Yes</u>	
4.	<u>Gov Jay Hammond</u>	<u>* will have to deal with indivi. interests</u>			<u>Yes</u>	
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						

**Testimony**

# Legislative Teleconference Network

SPONSOR: Senate Finance

SUBJECT: Fiscal Plan

START TIME: 1:00

DATE: 10/20/01

**Please Print**

	Name/Representing	Address	Zip	Phone No.	Testify Yes or No	Bill No.
1.	<i>VIRGIL NORTON</i>	<i>P O Box 141796</i>		<i>7706489</i>	<i>YES</i>	
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						

**3/05/02**

**PRESENT.**

**BY**

**AK**

**RAILROAD**

SFIN

FILE

**Presentation to the Senate Finance Committee  
March 6, 2002**

The Alaska Railroad spent 2001 demonstrating the kind of partnership the State, communities, and businesses can depend on to support growth and development across Alaska.

We enhanced safety, responsiveness, capacity, and fiscal stewardship. We brought new services online. We improved environmental protection measures, coordinated community planning, and commenced construction on many capital projects. In light of September 11, the Railroad also took steps to assess and address security risks along the Railbelt.

**Customers and revenue.** With total revenues of \$104.6 million and total expenses of \$97.5 million, the Alaska Railroad netted \$7.1 million in 2001. This was 9% better than forecast. Real estate once again proved to be a strong performer with gross revenues reaching \$10.5 million – up from \$9.28 million last year. Freight revenue also set a record, reaching nearly \$80 million. Gravel was up and oil field freight exceeded expectations. A record number of fuel cars were hauled from North Pole, exceeding several daily, weekly and even monthly thresholds. Passenger revenue was up. Collectively, these revenue streams continue to provide the cash flow for our work force and our Railroad services.

**Environmental measures.** The Railroad significantly enhanced emergency and spill response through the purchase of new equipment, extensive employee training, and an overhaul of our spill response plan. Crafted to meet new state regulations, the plan has been filed with the Department of Environmental Conservation and is available for public review. ARRC also joined Alaska Chadux Corporation, a primary spill response co-op whose considerable experience in Alaska will contribute significantly to our spill response capability.

**Community involvement and planning.** Our people have worked hard this year to better coordinate railroad planning efforts with the communities we serve. ARRC was named as a participant in the Anchorage Metropolitan Area Transportation Study (AMATS) Technical Advisory Committee (TAC) and member of the Fairbanks Metropolitan Area Transportation Study (FMATS) TAC. We are working with several other groups, including the Anchorage and Fairbanks Chambers of Commerce, Anchorage Economic Development Corporation, Seward Centennial Committee, Resource Development Council, and the Alaska 20/20 effort to ensure the Railroad's vision complements and supports the overall plans and strategies developed by our State, municipalities and community groups

The Alaska Railroad's continued commitment to safety paid further dividends in 2001.

**Low Train Accident Rate** - For the second consecutive year train accident rates fell well below the national average of 3.8 accidents per million train miles. ARRC's 1.5 accidents per million train miles in 2001 compares with 2000's 1.49 average. Both were well below our historical average of over 4 accidents per million train miles. Success can be attributed to significant investments in infrastructure and employee dedication.

**Spill Contingency Plan** - The Alaska Railroad submitted a revised, improved Spill Contingency Plan to the Alaska Department of Environmental Conservation in the fall of 2001. After an extensive public comment and review process, we hope to have the plan finalized by mid-2002.

**Track Improvement** - The Maintenance of Way (MOW) department focused on track repair to improve safety. MOW replaced 30,600 crossties, 350 switch ties and 58,000 feet of worn rail. They built nearly 40,000 feet of new track, and resurfaced another 242 track miles. Surfacing is the equivalent of grading a road, accomplished by equipment that lifts the rails and redistributes ballast to smooth out the rail. About 1,800 cars of ballast rock were unloaded in the effort.

**Traffic Flow** - Other track improvements included major new sidings at Bear Creek (about 15 miles north of Healy) and Pittman (just north of Wasilla) which, along with improvements at existing sidings, helped smooth traffic flow along the track. This improved efficiency played an important part in increasing the number of units moved by 23% - to over 96,000 units - and increasing tonnage by 26%.

**Reliability** - During 2001, the mechanical department enhanced reliability of the Railroad's locomotive fleet. Their preventative maintenance efforts have resulted in an incredible jump from 65% reliability to 97% reliability, translating into better, safer customer service.

In 2001 transportation of commodities generated freight revenues of \$79.5 million, an average sustained growth of about nine percent per year over the past six years. Products moved by the Railroad include petroleum products, coal, gravel, oilfield and mining supplies, chemicals and some consumer goods.

Coal shipments, which move south from Usibelli Coal Mine in Healy to Seward for export to Korea and north to Fairbanks, were steady until December, when the Koreans began renegotiating their contract.

The Passenger Services and Marketing & Logistics departments merged in July 2001 to enhance coordination of marketing, transportation services, and sales efforts.

The new division saw passenger travel levels on the Alaska Railroad remain comparable to 2000. Passenger revenues were up slightly. Given the fact that tourism dropped across the state in 2001, that the Railroad did not experience a significant passenger reduction was an accomplishment.

The Real Estate department continued as a strong performer exceeding 2001 projected revenue by \$300,000, generating \$10.5 million – thus breaking the \$10 million revenue mark for the first time. A number of activities along the railbelt have contributed to the continuing growth of real estate income.

In order to more accurately reflect the scope of work conducted by the Capital Projects division, it was renamed Projects, Engineering, Technology & Signals (PETS) in July 2001.

The year 2001 was full of accomplishments. On the projects front, the Seward Dock, Whittier Underpass, South Anchorage Double Track, Anchorage Airport Rail Depot, Anchorage-Wasilla line changes, Southcentral Commuter Rail study, and Fairbanks-North Pole reconnaissance study all saw significant progress or completion. (Descriptions of the 2001 Program of Projects follow in the next section). The 2002 construction season promises to be at least as busy as we continue to invest in infrastructure in order to provide safer, more reliable service to customers.

The engineering staff managed many challenges this year posed by everything from meeting complex federal grant regulations to the rigors posed by Alaska's extreme weather. Our engineers are taking lead roles in working directly with communities to resolve road-rail, trail-rail, and rail-river conflicts.

The technology staff made significant progress on upgrading infrastructure. They commenced upon a three-year plan to upgrade Railroad computer systems, and they tapped new technology to move trains more efficiently through use of a computer aided dispatch system.

More sophisticated signalization was installed during the second of a five-year effort by the Railroad to more clearly mark road-rail crossings, and to install numerous powered switches. Both efforts, which will continue in 2002, improve safety and increase efficiency.

## 2001 Capital Improvements Program Review

### Seward

**Freight Dock** - In 2001, the Railroad finished constructing a new freight dock located just east of the existing dock. The 640-by-200-foot bulkhead fill dock features a low maintenance ship fendering system, a mooring dolphin, and catwalk at the seaward end. The \$7.7 million project was funded by FRA, FHWA and the Railroad.

**Passenger Dock** - In conjunction with the freight dock project in 2001, the Railroad began overhauling the existing dock to serve as a passenger-only facility. This will greatly improve safety and efficiency, and bring the existing facility into compliance with State and Federal regulations. Funded by FRA, FHWA and the Railroad, the project included \$2.7 million spent to improve the passenger dock, including connection to the city sewer service. Another \$3.5 million (80% FTA funds, 20% ARRC funds) is budgeted to complete the renovation in 2002-2004.

**Roundhouse** - The Seward roundhouse (engine house) was upgraded to accommodate maintenance and custodial services for cruise trains operating between Seward and Anchorage. The project included installation of potable water stations, upgrade of electrical systems, a new office facility, and a train-washing apparatus with wash water collection, cleaning and recirculation. Completed in 2001, the project was funded 80% by FTA and 20% by the Railroad.

### Whittier

**Whittier Intermodal Planning Study** - The Railroad commissioned an Intermodal Planning Study on improving passenger-related amenities to facilitate tourism growth in Whittier. Goals include better passenger and pedestrian safety, increased passenger service, segregated passenger and freight operations and construction of new passenger and maintenance facilities. Due for completion in 2002, the \$282,500 study and conceptual design is funded 80% by FTA and 20% by the Railroad.

**Pedestrian Underpass** - Part of the Whittier master plan called for a pedestrian underpass that would provide safe passage across the rail yard, which lies between the town and the waterfront. Construction on the 300-foot-long, 10-foot-diameter underpass began in spring 2001. Funded 80% by FTA and 20% by the Railroad, the \$2.285 million project will be completed in spring 2002.

**Equipment Maintenance Facility** - Design was accomplished on a new equipment maintenance building in Whittier to be located in the southeast corner of the railyard. The 4,793-square-foot building will store and maintain heavy equipment, such as graders and bulldozers. Funded 80% by the FTA and 20% by the Railroad, the \$2.225 million project will be constructed in 2002.

**Barge Dock** - Design was also completed on a project to accommodate unloading from the side of the Railroad's existing barge dock. Construction of two 34-by-60-foot elevated platforms is scheduled to begin in spring 2002. Funded 100% by the Railroad, the \$1.6 million project will significantly improve safety and efficiency of barge operations.

## **Anchorage**

**Anchorage Airport Rail Station** - Construction is well underway on a new rail terminal at the Ted Stevens Anchorage International Airport. The \$28 million project includes construction of an elevated track leading to a 17,300-square-foot depot building. Funded 100% by FRA, the project is scheduled for completion by October 2002.

**Anchorage Airport Spur / South Leg of the Wye** - Construction began on a new "south leg of the wye," at the Airport Spur junction, which will allow southbound travel from the new airport rail station. The project improves the spur leading from Minnesota Drive to the airport. Funded by FRA, the \$970,000 project will be complete by summer 2002.

**South Anchorage Double Track** - Construction began on a project to add about five miles of new mainline track between 120<sup>th</sup> Avenue (near Klatt Road) and the Minnesota Drive overpass, within the Railroad's right-of-way. The second track will improve efficiency and safety along the currently congested mainline through Anchorage. Funded 80% by FTA and 20% by the Railroad the \$11.5 million project, which includes signalization, will be complete in winter 2003.

**North Ship Creek Rail Yard Expansion** - The Railroad began excavating about 770,000 cubic yards from the North Ship Creek bluff to make room for new and realigned Anchorage Yard tracks. Much of the material was used to fill about 8.5 acres of Railroad-owned tideland at the Port of Anchorage to permit construction of the Williams fuel facility loop track. Funded by the Railroad, phase one of the yard expansion project will be complete in 2003.

**Anchorage Yard Passenger Car Shop** - Preliminary design began on a new passenger car shop in the Anchorage Yard. The facility will accommodate the Railroad's expanded fleet of passenger trains. Funded 80% by FTA and 20% by the Railroad, the \$2.32 million design and engineering effort will be complete in 2002.

### **Ship Creek Intermodal**

Planning got underway to conceptualize a Ship Creek area intermodal transportation hub that provides bus and rail facilities, pedestrian improvements, new rail platforms, bus/van stops, retail development, airport accommodations and visitor information. In 2002, the Railroad plans to pursue preliminary concept work, organize public and agency scoping meetings, and conduct pre-NEPA studies and documentation. The \$4.5 million budget for the concept stage is funded 80% by FTA and 20% by the Railroad.

**Anchorage Ship Creek Pedestrian Amenities** - Design was complete and construction began on a pedestrian plaza at the corner of Ship Creek Avenue and C Streets. Funded by the Municipality of Anchorage and the Railroad, the \$254,000 plaza project will be complete in spring 2002.

## **Anchorage to the Mat-Su Valley**

**Anchorage to Wasilla Track Realignment** - Efforts to straighten the track from Anchorage to Wasilla got underway in 2001, with the stretch from the Anchorage Yard through Elmendorf completed. When the entire project is done, the project will increase train speed, and improve efficiency and safety along this stretch. Funded by FRA, the \$54 million Anchorage to Eagle River phase started construction in 2001 and should be complete in 2004. Funded 80% by

FTA and 20% by the Railroad, the \$23.8 million Eagle River to Wasilla phase should enter construction in 2002, with completion in 2004.

**Commuter Study** - The Railroad commissioned the *Southcentral Rail Network Commuter Study and Operation Plan* in 2000. Completed in 2001, the study creates a blueprint for potential further actions by local and state officials to establish a viable and operational commuter rail system. The \$200,000 project was 80% funded by the FTA and 20% by ARRC. The plan, along with public comments, has been forwarded to FTA.

## **Interior Alaska**

**Denali National Park Rail Station** - Design and engineering are underway to improve the passenger depot and surrounding facilities at Denali National Park. Construction of the \$4.5 million project begins in spring 2002, with completion expected in 2004. Funding is 80% FTA and 20% Railroad.

**Fairbanks Intermodal Facility and Depot** - Preliminary design and engineering was completed on an intermodal facility and depot in Fairbanks. Proposed plans are to locate the new facility on a 32-acre site adjacent to the Railroad operations yard, near the intersection of Johansen Expressway and Danby Road. Funded 80% by FTA and 20% by the Railroad, the \$11.5 million project will begin construction in 2002, with completion in 2003.

**Fairbanks / North Pole Rail Relocation Study** - The Railroad commissioned a reconnaissance study on relocating the track in Fairbanks and North Pole to eliminate up to 48 rail/road crossings within the two communities. Public meetings to discuss proposed phased options are ongoing in 2002. Funded by FRA, the \$250,000 conceptual study will be complete in 2002. Project construction will depend on the options selected and funding availability.

## **Systemwide Service & Equipment**

**Passenger Locomotives and Car Upgrades** - Major upgrades to passenger locomotives and cars began in 1999 and continue as funding becomes available. Typical upgrade projects include the repainting and interior restoration of coaches, refurbishment of power generation cars, rehabilitation of railcar trucks, and a \$2.325 million effort in 2001 to rebuild three passenger locomotives. About \$800,000 is budgeted in 2002, funded 80% by FTA and 20% by the Railroad.

**Passenger Reservation System** - In 2001, the Alaska Railroad acquired and installed a computer-based passenger reservations management system that provides integrated, flexible, cost-effective, and automated means of supporting and managing passenger travel. Funded 80% by FTA and 20% by the Railroad, the \$820,000 project can accommodate current and projected needs, and capitalizes on consumer demand for Internet information and transactions. System modifications and personnel training will continue in 2002.

**Avalanche Program** - In 2001, the Railroad initiated a three-year program to improve existing avalanche risk management tools and create new control systems. The \$2.5 million project involves integrated capital projects to upgrade: (a) state-of-the-art detection and data acquisition and management systems, (b) explosive delivery systems, (c) equipment, and (d) joint

operations with the Alaska Department of Transportation & Public Facilities. The Avalanche Program is funded in part by a congressional earmark through the U.S. Forest Service.

**Yard and Terminal Plans** - During 2001, the Railroad commissioned TransSystems and California-based Woodside Consulting Group to update the yard and terminal plans. This built on a 1999 Woodside comprehensive plan to improve efficiency, capacity and safety within Anchorage and Fairbanks yards, as well as the main track between the two terminals. Out of this analysis came a prioritized list of capital projects to be undertaken through the year 2005. The plan update is funded by the Railroad and is expected to be complete in 2002.

## **Systemwide Infrastructure**

**Siding Improvements** - In 2001, the Railroad continued a five-year Siding Access Plan to place remote control power switches and heaters at about 40 sidings between Seward and Fairbanks, to extend 13 existing sidings and to build seven new sidings. In 2001, FRA grant funds were used to build two new sidings. One was at Pittman - MP 166, just north of Wasilla. The other was at Bear Creek, MP 274, about 15 miles north of Healy.

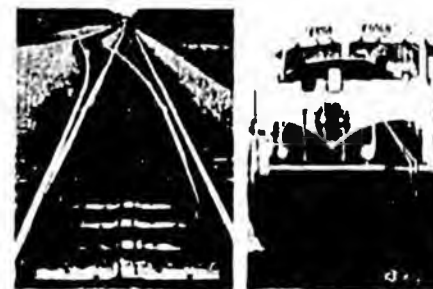
**Bridge Program** - The Alaska Railroad's 500-plus miles of mainline track includes 169 bridges that cross barriers ranging from trickling streams to plunging gulches. Funded by FRA, the Railroad's 2001 Bridge Program included major maintenance, overhaul and replacement projects needed to maintain Railroad integrity, safety and efficiency.



# Alaska Railroad Corporation

## Special Report to the Legislature and Administration State of Alaska

January 2002





## Introduction

January 2002

For the Alaska Railroad, 2001 was marked by solid progress in safety, community relations, revenue growth, environmental response readiness, and modernization.

In 2002, our aim is to continue steady, measurable improvement. To accomplish this goal, our 700-plus employees will continue their focus on safety and excellence on the job. The Railroad is also deeply committed to partnering. Our support to important community and borough initiatives can enhance prosperity along the railbelt, and create conditions for success that enable a more prosperous Alaska.

Essential to our endeavor is the condition of the basic rail infrastructure, and the serviceability of operating and support equipment. To that end, the ARRC Board of Directors approved a five-year capital improvement plan that leverages our modernization priorities. We hope you find the information in this report to be a useful reference throughout the legislative session.

Respectfully,

Patrick K. Gamble

President & CEO





# Table of Contents

	<u>Page</u>
About the Railroad	
Vision and Mission Statement.....	1
Fact Sheet .....	2
Corporate Organization .....	3
Looking Back	
2001 Year in Review.....	4
2001 Safety and Environment Report.....	7
Looking Ahead	
Five-Year Objectives.....	8
2002 Budget Graphs - Revenue and Expenses.....	9
5-Year Forecast - Revenues.....	10
5-Year Forecast - Summary.....	11
5-Year Forecast - Capital Expenditures.....	12
5-Year Forecast - Capital Investment Program.....	13
5-Year Internally Funded Capital Plan.....	14
5-Year Federally Funded Capital Plan.....	19
2002 Program of Projects .....	23
Project Timelines .....	28
2002 Legislative Requests .....	30



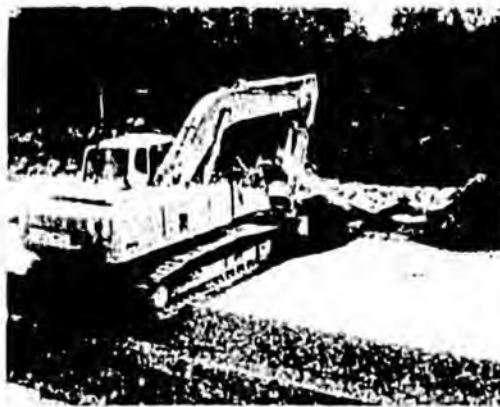
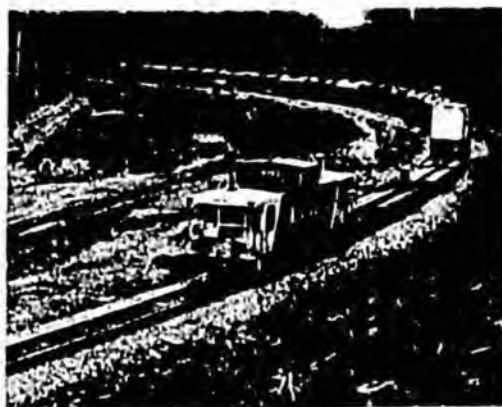
## Guiding Statements

### Vision:

Building a great railroad across the Greatland

### Mission:

To be profitable by focusing on safe, high quality service to our freight, passenger, and real estate customers. To foster the development of Alaska's economy by integrating railroad and railbelt community development plans.





# Alaska Railroad Facts

**PURCHASE PRICE:** (Jan. 5, 1985)

Paid to federal government .....\$22.3 million  
 Start-up costs & contributed capital .....\$11.9 million  
 Total Investment-State of Alaska.....\$34.2 million

**TOTAL ASSETS:** (Dec. 31, 2001) ..... \$304 million

**FINANCIAL STATISTICS (Preliminary):**

(Jan. 1-Dec. 31, 2001)

Total revenues.....\$104.6 million  
 Total expenses .....\$97.9 million  
 Net earnings ..... \$6.7 million

**OPERATING STATISTICS:**

(Jan. 1-Dec. 31, 2001)

Passenger ridership .....472,275  
 Freight tonnage .....7,784,418  
 Revenue car loads .....96,488

**OPERATING DATA:**

Miles of main line .....466  
 Miles of branch line .....59  
 Miles of yards and sidings .....86  
 Total miles of track .....611  
 Freight cars (owned & leased).....1,672  
 Passenger equipment.....43  
 Locomotives .....52

**EMPLOYEES:** (December 31, 2001)

Total number of employees.....688  
 Average years of service..... 10  
 Average age ..... 42  
 Male .....588  
 Female ..... 100

**UNION MEMBERSHIP:** (Dec. 31, 2001)

United Transportation Union ..... 156  
 Transportation Communication Union ..... 44  
 International Association of Machinists ..... 62  
 American Federation of Government Employees... 270  
 American Train Dispatchers Department ..... 11



# Corporate Organization

## BOARD OF DIRECTORS

Chairman John Binkley

Jacob Adams • Ed Bauer • Jack Burton • Carl Marrs • Commissioner Joe Perkins (DOT) • Commissioner Deborah Sedwick (DCEd)

## EXECUTIVE OFFICE

President and Chief Executive Officer, Patrick K. Gamble

External Affairs	Labor Relations	Security	Equal Opportunity
Director Wendy Lindskoog	Director Donald Smith	Chief of Security Dan Frerich	Manager Ouida Morrison

## DEPARTMENTS

Operations	P.E.T.S.	Corporate Affairs	Markets, Sales & Services	Real Estate	Finance	Legal
VP & Chief Operating Officer Matt Glynn <i>Transportation            Maintenance            Mechanical            Safety</i>	VP Eileen Reilly <i>Projects            Engineering            Technology            Signals</i>	VP Jim Blasingame <i>Board            Corporate Analysis            Historical            Corporate Giving</i>	VP Steve Silverstein <i>Passenger            Freight</i>	VP Jim Kubitz <i>Leasing            Permitting</i>	VP and Chief Financial Officer Bill O'Leary <i>Accounting            Human Resources            Procurement</i>	VP & General Counsel Phyllis Johnson <i>Contractual            Legal</i>



## 2001 Year in Review

### **ARRC prepares to answer the call in state's economic development**

*by Patrick Gamble, President & CEO*

Reflecting back on 2001, the Alaska Railroad Corporation (ARRC) focused time and resources toward bolstering its role as a vital artery for Alaska's economic development. We energetically pursued increasing safe, responsive, and financially sound operations in order to position ourselves as the kind of partner the State, communities and businesses can depend on to support growth and development across Alaska.

While ARRC is making an effort to increase revenues, we are working to increase overall capacity as well. We brought new services online. We enhanced environmental protection measures, coordinated community planning, and took many capital projects from the planning stage into construction. We took important steps to assess and redress security weaknesses across the railroad complex.

**Customers & revenue.** Real estate proved to be a star performer. Gross revenues topped \$10 million for the first time — up from \$9.28 million last year. Freight revenue also set a record surpassing \$81 million. Gravel was up and oil field freight exceeded expectations. A record number of fuel cars were hauled from North Pole, exceeding several daily, weekly and even monthly thresholds. Passenger revenue was up. Collectively, these revenue streams provide the cash flow for our work force and our railroad services.

-more-

**New services.** Part of our freight business success is due to a flourishing business relationship established last year with Alaska Railbelt Marine, LLC, a subsidiary of Lynden Transport Inc., to provide barge service between the Lower 48 and our dock in Whittier. On the passenger side, we established the Grandview train to deliver direct Seward-Anchorage service for cruise ship customers. A new web-based passenger reservation system has gone on-line and will soon provide Internet convenience for customers, and global exposure for the Alaska Railroad.

**Environmental measures.** The Railroad significantly enhanced emergency and spill response through the purchase of new equipment, extensive employee training, and an overhaul of our spill response plan. Crafted to meet new state regulations, the plan has been filed with the Department of Environmental Conservation and is available for public review. ARRC also joined Alaska Chadux Corporation, a primary spill response co-op whose considerable experience in Alaska will contribute significantly to our railroad spill response capability.

**Community involvement and planning.** Our people have worked hard this year to better coordinate railroad planning efforts with the communities we serve. We have attended over a dozen municipality meetings. ARRC will soon be named an official member of the Anchorage Metropolitan Area Transportation Study (AMATS) Technical Advisory Committee (TAC), and has also been included in the Fairbanks Metropolitan Area Transportation Study (FMATS) TAC. We are working with several other groups, including the Anchorage and Fairbanks Chambers of Commerce, Anchorage Economic Development Corporation, Seward Centennial Committee, Resource Development Council and the Alaska 20/20 effort, to ensure the Railroad's vision complements and supports the overall plans and strategies developed by our state, municipalities and community groups.

-more-