

ALASKA LEGISLATURE

2468

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

Public Safety Funding FY94-05 Gov. Amended

All Fund Sources

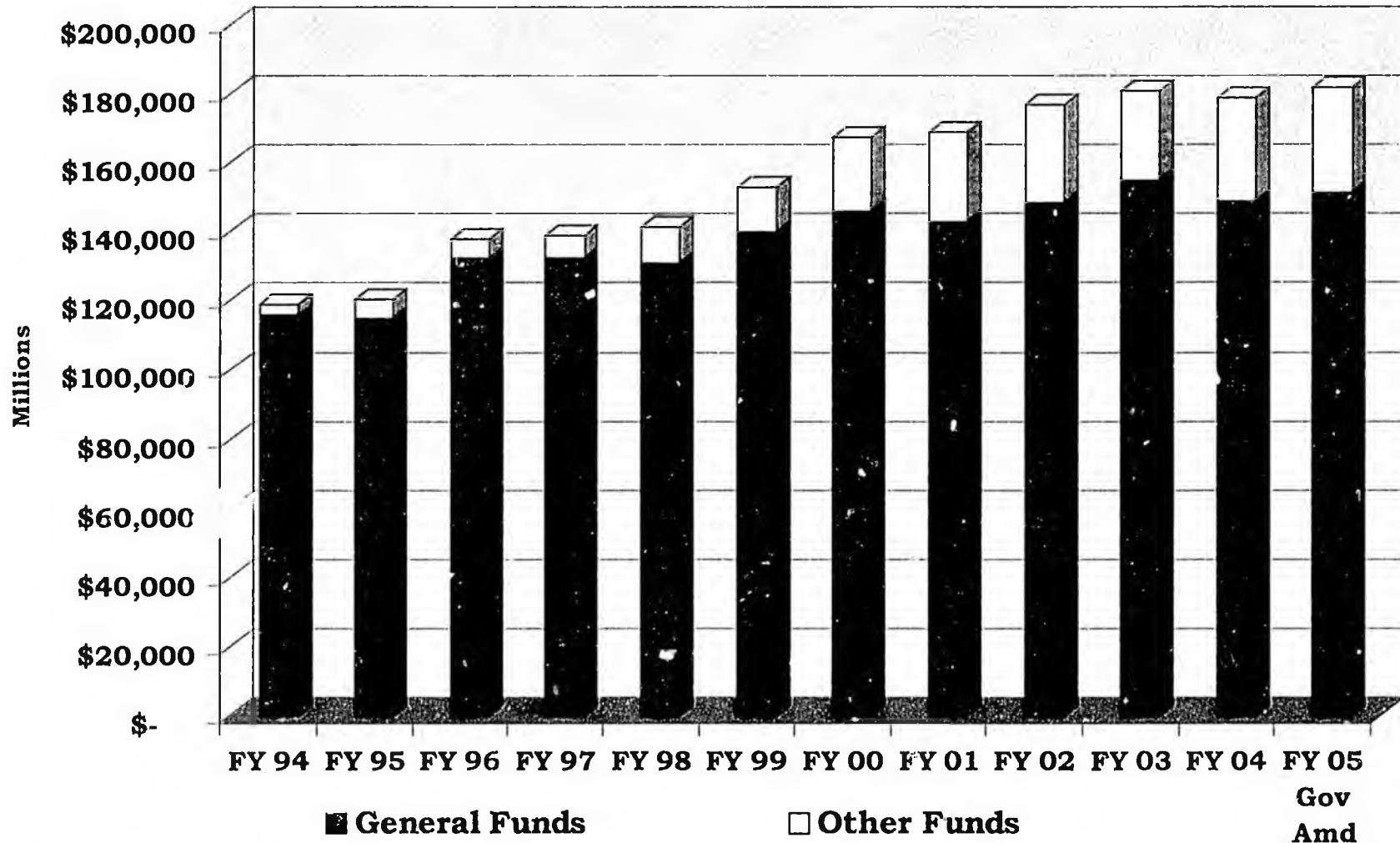


FY 05 v. 94: General funds = -0.04%

All funds = +21%

Corrections Funding FY94-05 Gov. Amended

All Fund Sources

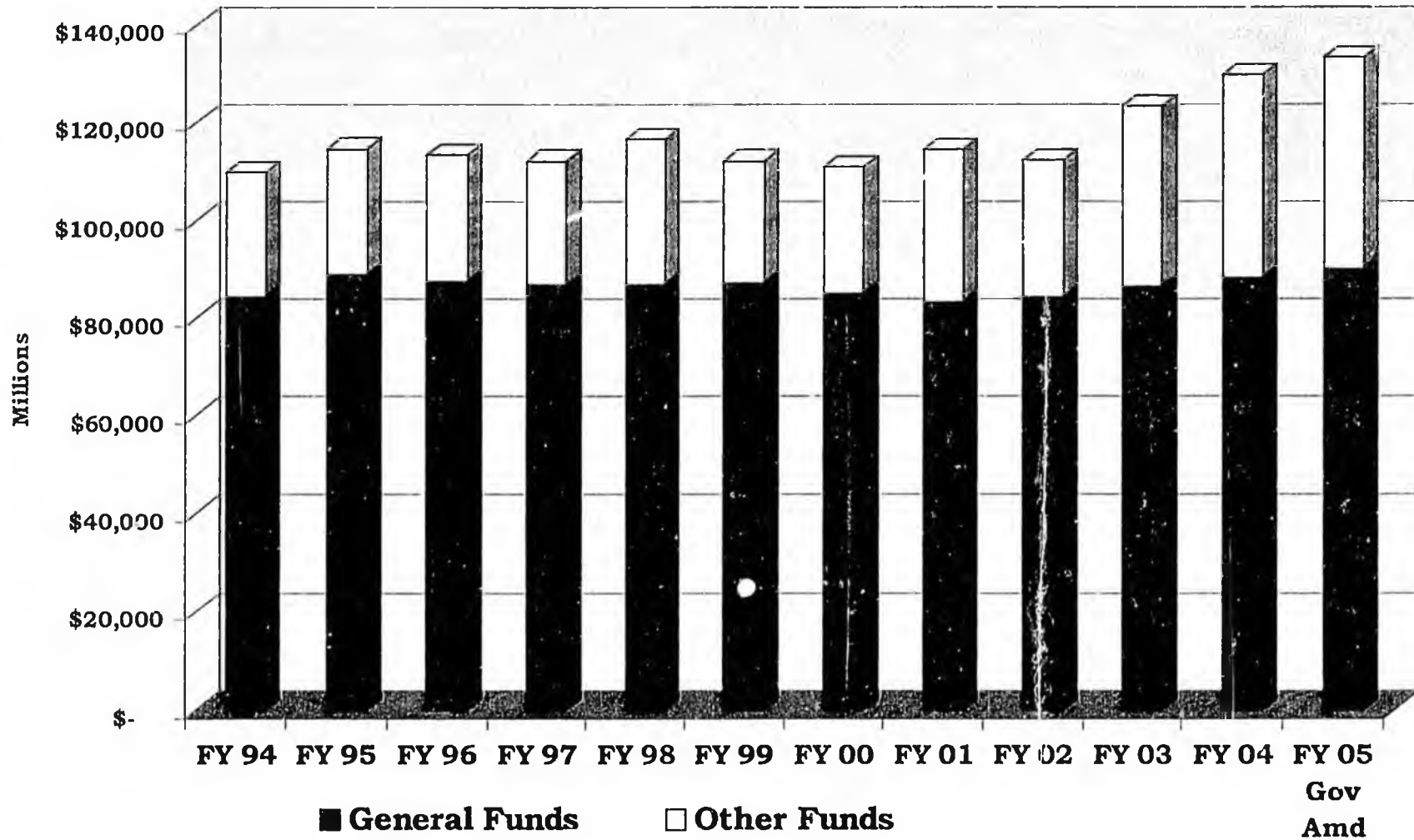


FY 05 v. 94: General funds = +31%

All funds = +53%

DOT M&O Funding FY94-05 Gov. Amended

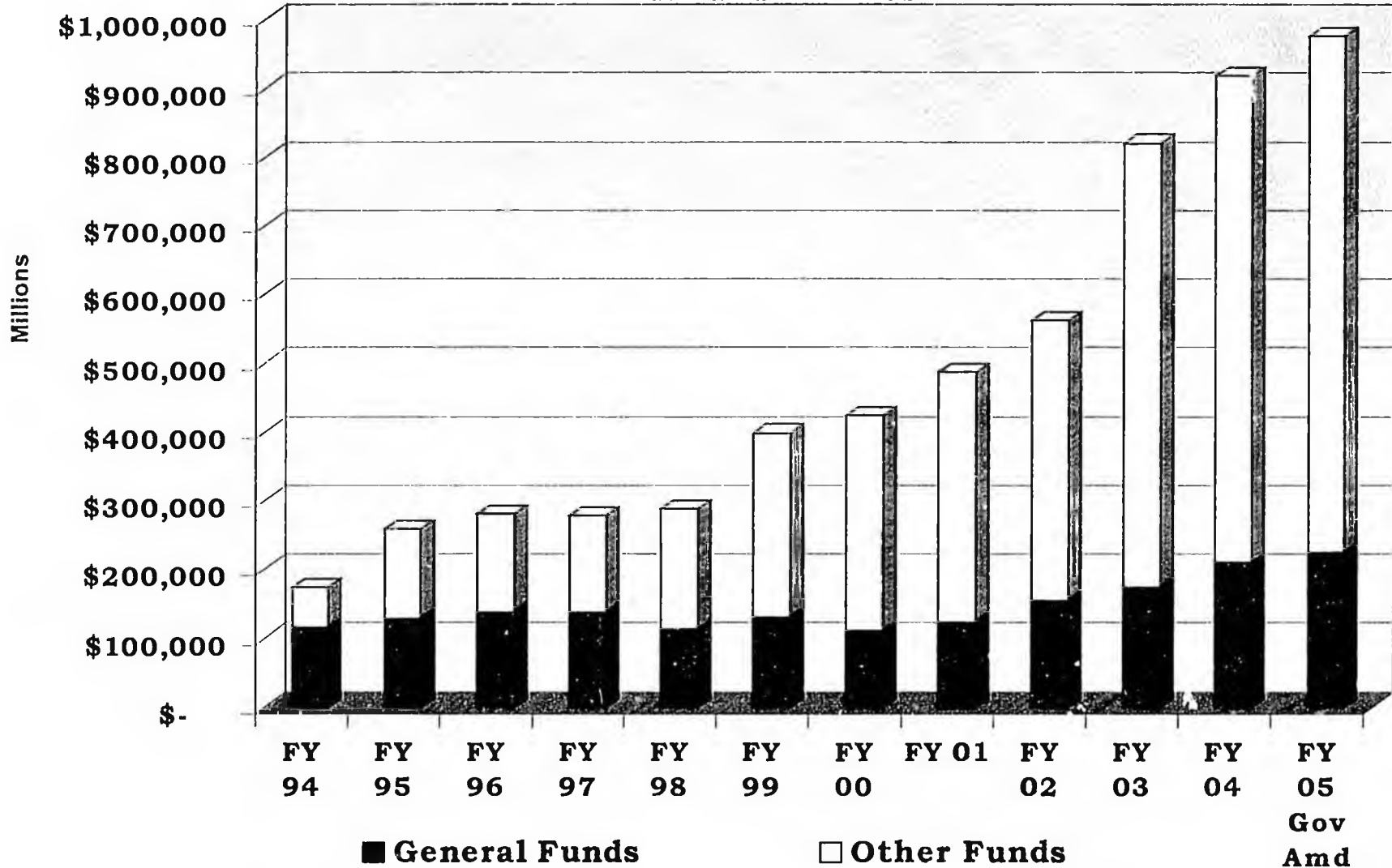
All Fund Sources



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

Medicaid Funding FY94-05 Gov. Amended

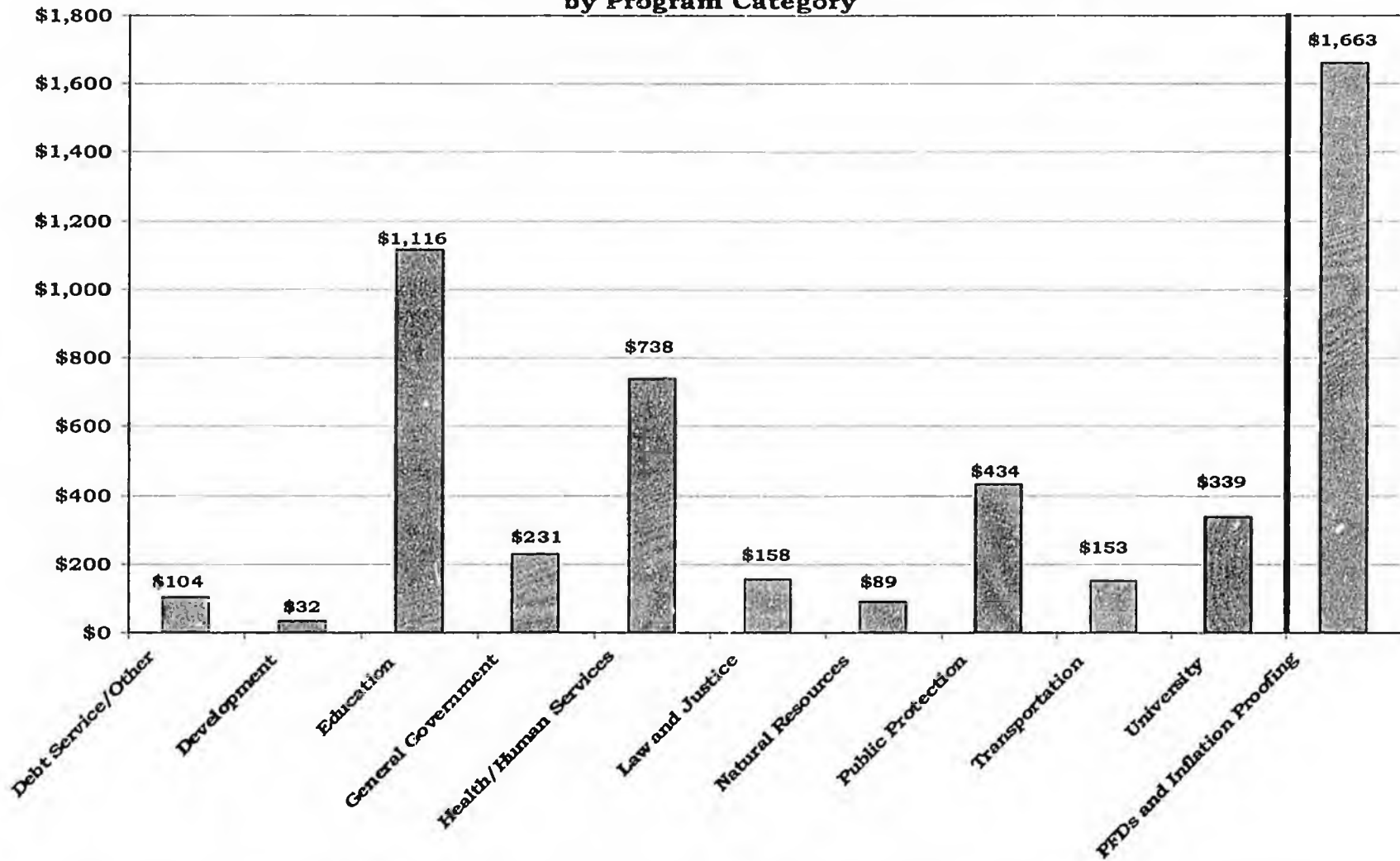
All Fund Sources



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

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

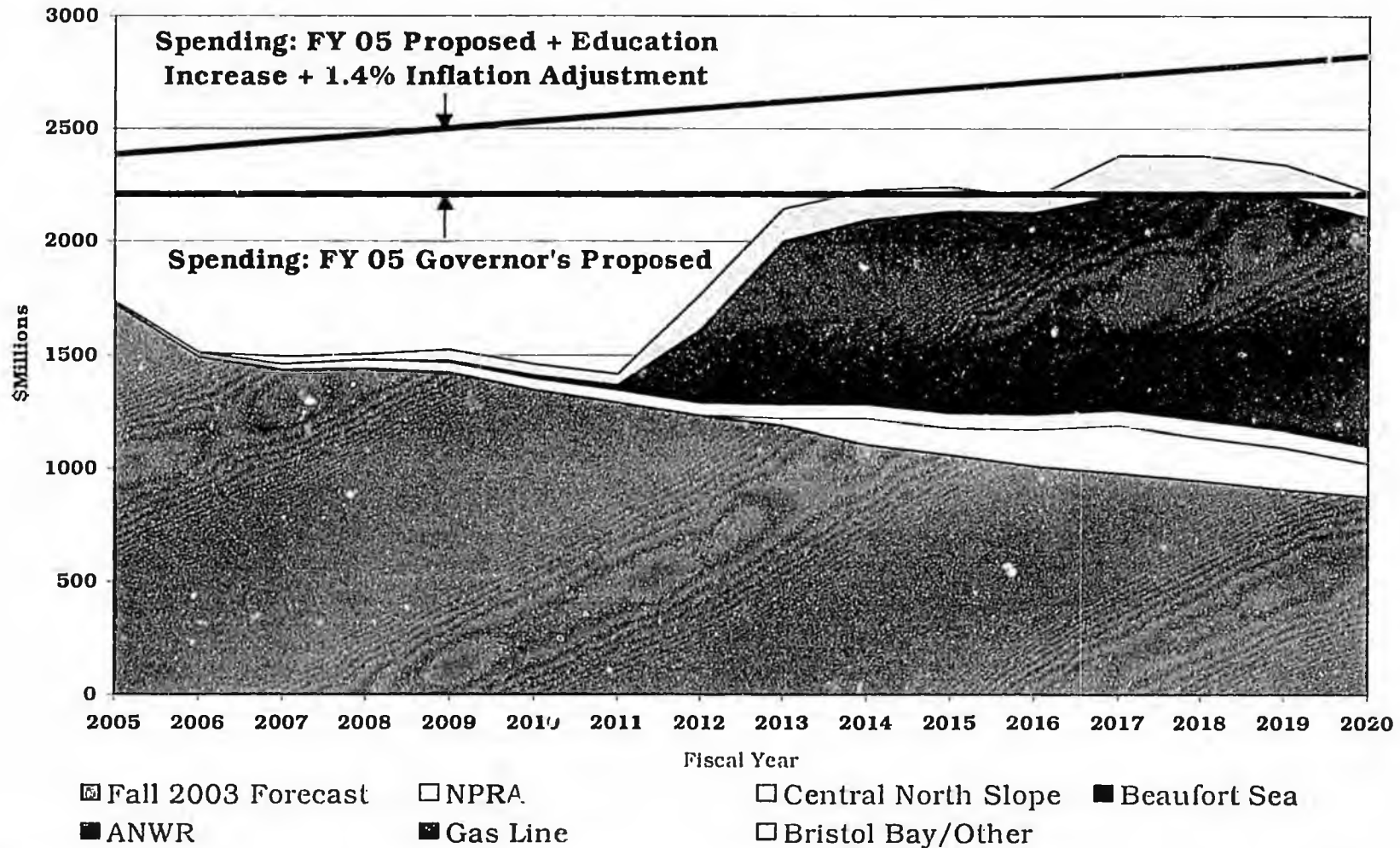
by Program Category



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

Building a Fiscal Bridge to New Resource Revenues

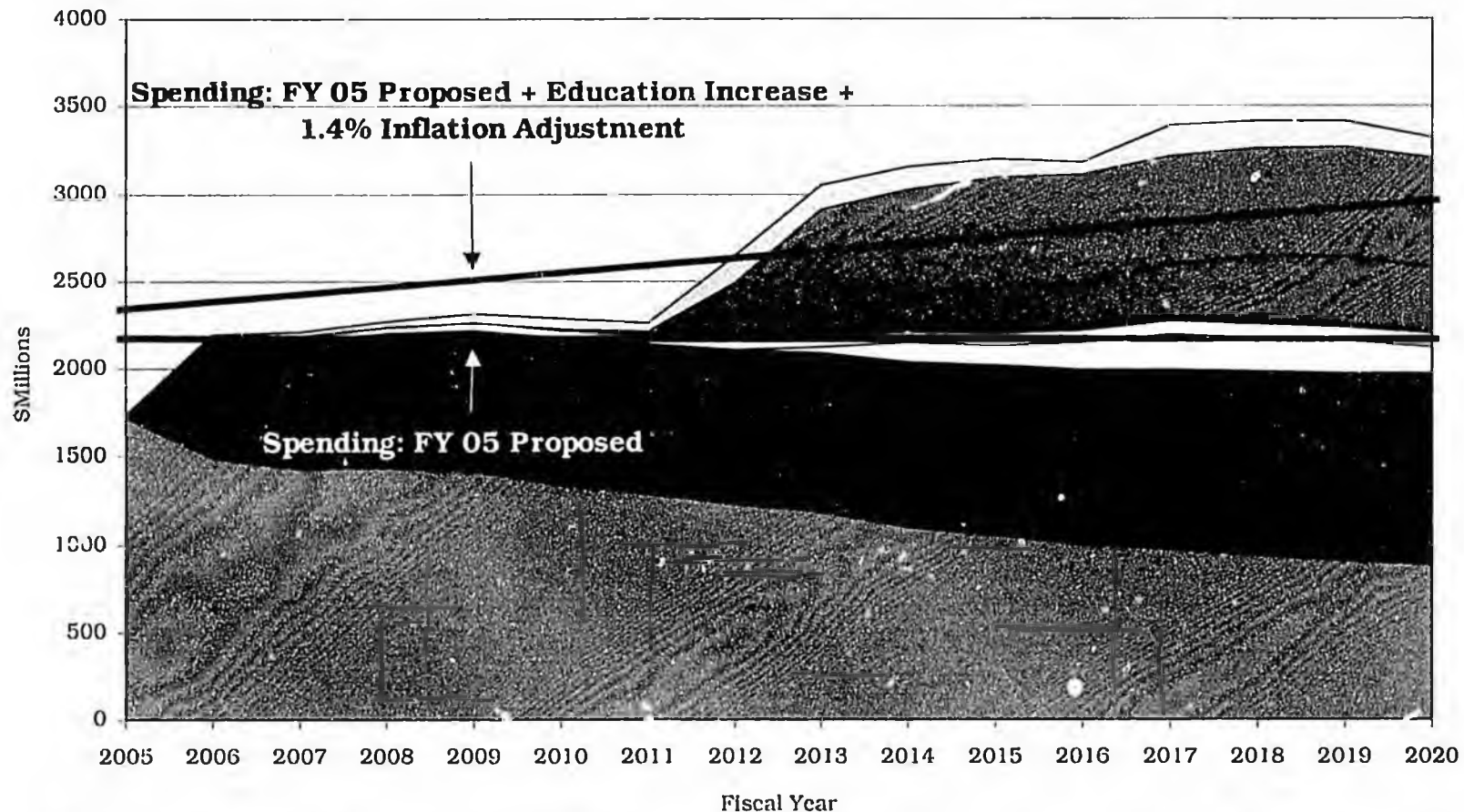
Scenario: No Use of PF Earnings to Support Essential Services



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

Building a Fiscal Bridge to New Resource Revenues

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



- Fall 2003 Forecast
- Beaufort Sea
- ANWR
- Gas Line
- NPRA
- Central North Slope
- Bristol Bay/Other

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

CONFERENCE

OF

ALASKANS



FEB 17 2004

FRANK H. MURKOWSKI
GOVERNOR

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 17, 2004

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

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

Dear President Therriault and Speaker Kott:

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

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

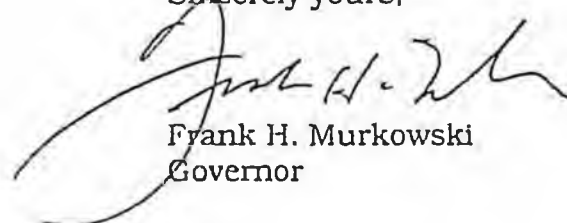
As you know, I asked the conference to provide responses to four questions related to the percent of market value approach to management of the Permanent Fund, use of a portion of Permanent Fund income to pay for essential public services, the dividend, and maintaining a minimum balance in the Constitutional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

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

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

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

Sincerely yours,



Frank H. Murkowski
Governor

MICHAEL JOHN BURNS

February 17, 2004

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

Dear Governor Murkowski,

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

Those questions were:

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

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

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

A RESOLUTION

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

BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

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

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

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

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

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

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

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

A RESOLUTION

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

BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

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

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

WHEREAS Alaska must not impose self-inflicted harm; and

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

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

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

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

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

A RESOLUTION

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

BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

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

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

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

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

A RESOLUTION

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

BE IT RESOLVED BY THE CONFERENCE OF ALASKANS:

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

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

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

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

February 12, 2004

Fellow Alaskans,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Al Adams
Al Adams

Jeri Baker
Jeri Baker

Robert Bell
Robert Bell

Carl Brady
Carl Brady

Kelly Brown
Kelly Brown

Mike Burns, Chair
Mike Burns, Chair

Lupe Chavez
Lupe Chavez

Carol Compeau
Carol Compeau

Craig Compeau
Craig Compeau

Charlie Curtis
Charlie Curtis

Steve Frank, Convenor
Steve Frank, Convenor

Sharon Gagnon
Sharon Gagnon

Richard Glenn
Richard Glenn

CHH Groh Jr.
CHH Groh Jr.

Clark Gruening, Convenor
Clark Gruening, Convenor

Gleam Hackney
Gleam Hackney

Jim Hayes
Jim Hayes

Lindsey Holmes
Lindsey Holmes

Sue Hull
Sue Hull

Theresa Johnson
Theresa Johnson

Wynne Johnson
Wynne Johnson

Jewel Jones
Jewel Jones

Anne Kilkenny
Anne Kilkenny

Mare Langland, Convenor
Mare Langland, Convenor

Kristie Leaf
Kristie Leaf

Martha Malavansky
Martha Malavansky

Byron Mallon
Byron Mallon

Desmond Mave
Desmond Mave

Dennis McMillan
Dennis McMillan

Jason Metrokin
Jason Metrokin

Mike Navarre
Mike Navarre

Mark Neuman
Mark Neuman

Victor Nicholas
Victor Nicholas

Kris Norasz
Kris Norasz

Vicki Otte
Vicki Otte

Tadd Owens
Tadd Owens

Lisa Parker
Lisa Parker

Gene Peltola
Gene Peltola

Tobyen Pharr
Tobyen Pharr

Jay Quakenbush
Jay Quakenbush

Ed Randal
Ed Randal

Steve Rieger
Steve Rieger

Margaret Russell
Margaret Russell

Helvi Sandvik, Convenor
Helvi Sandvik, Convenor

Sarah Sherry
Sarah Sherry

Stan Stephens
Stan Stephens

Artiss Stungilewski, Convenor
Artiss Stungilewski, Convenor

Peg Tileston
Peg Tileston

Clem Tillien
Clem Tillien

Tim Towarak
Tim Towarak

Barbara Huff Tuckness
Barbara Huff Tuckness

Kathleen Wasserman
Kathleen Wasserman

Bob Weinstein
Bob Weinstein

Tom Williams
Tom Williams

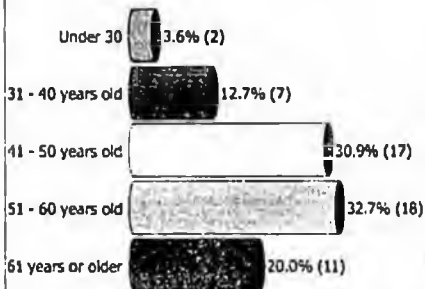
Eric Wohlforth, Convenor
Eric Wohlforth, Convenor

Brian Rogers
Attested by Brian Rogers, Facilitator

straw votes
 provided by
 Gary Wilken

How old are you?

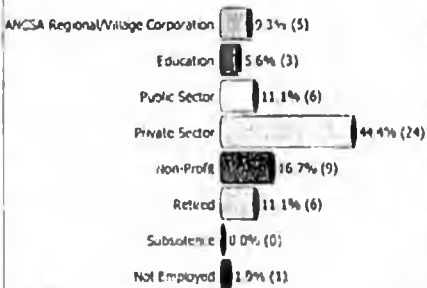
1. Under 30
2. 31 - 40 years old
3. 41 - 50 years old
4. 51 - 60 years old
5. 61 years or older



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

What is your primary economic activity?

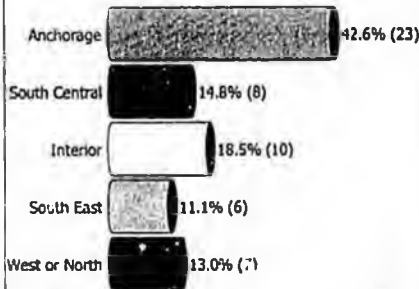
1. ANCSA Regional/Village Corporation
2. Education
3. Public Sector
4. Private Sector
5. Non-Profit
6. Retired
7. Subsistence
8. Not Employed



D: Prim Econ Activity Total: 54 Slide: 7

In what region of Alaska do you reside?

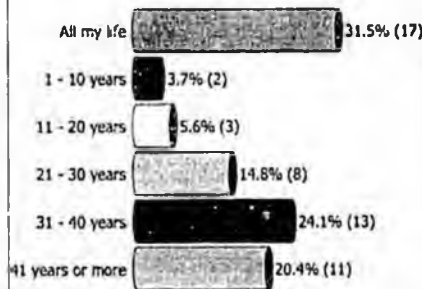
1. Anchorage
2. South Central (excl. Anchorage)
3. Interior
4. South East
5. West or North



D: Region of Alaska Total: 54 Slide: 2

How long have you lived in Alaska?

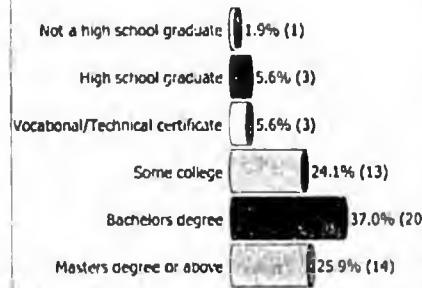
1. All my life
2. 1 - 10 years
3. 11 - 20 years
4. 21 - 30 years
5. 31 - 40 years
6. 41 years or more



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

What is your highest level of education completed?

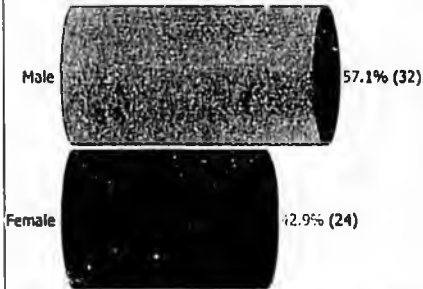
1. Not a high school graduate
2. High school graduate
3. Vocational/Technical certificate
4. Some college
5. Bachelors degree
6. Masters degree or above



D: Education Total: 54 Slide: 8

What is your gender?

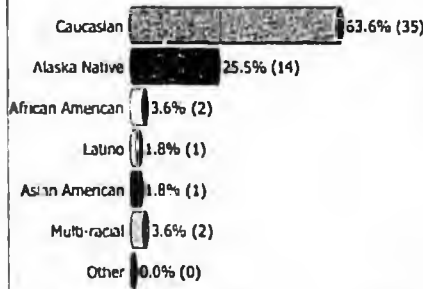
1. Male
2. Female



D: Gender Total: 56 Slide: 3

What is your ethnicity?

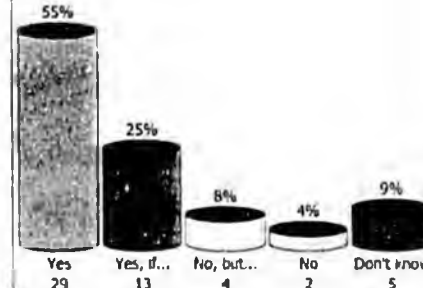
1. Caucasian
2. Alaska Native
3. African American
4. Latino
5. Asian American
6. Multi-racial
7. Other



D: Ethnicity Total: 55 Slide: 6

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

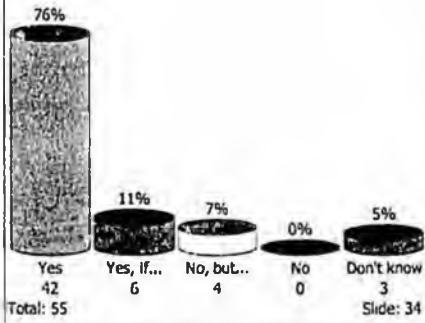
1. Yes
2. Yes, if... [tied to other issues]
3. No, but... [would consider under certain circumstance]
4. No
5. I don't know



Total: 53 Slide: 12

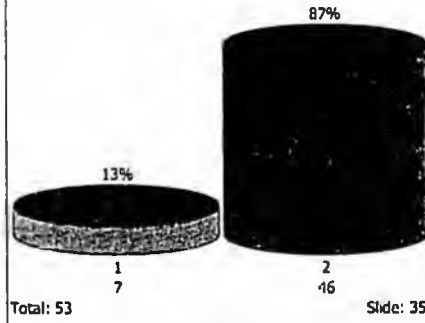
Should the use of income from the permanent fund be limited by the constitution to five percent (5%) of the fund's value, as the permanent fund trustees have proposed?

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



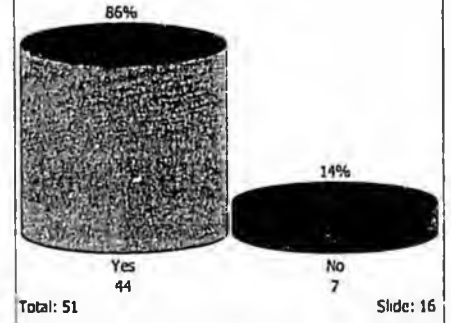
What do the Conference delegates want to do next?

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



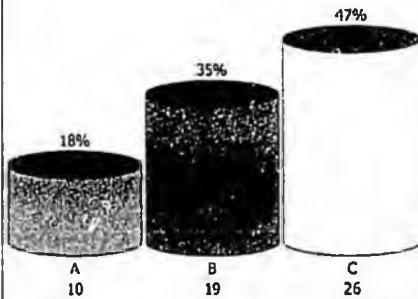
Should the state maintain a minimum balance in the Constitutional Budget Reserve to stabilize state finances against fluctuation in oil production or prices?

1. Yes
2. No



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

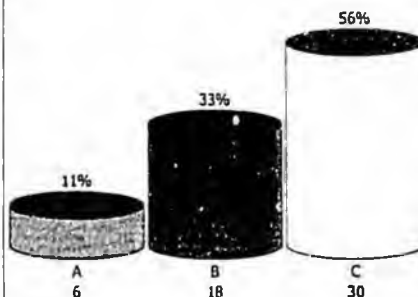
- A. Too much
- B. About right
- C. Not enough



Total: 55 Slide: 39

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

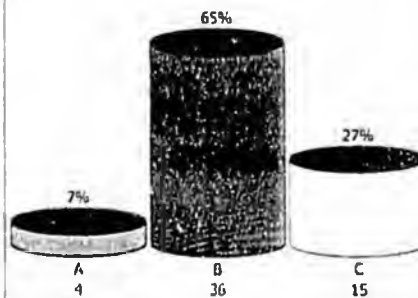
- A. Too much
- B. About right
- C. Not enough



Total: 54 Slide: 42

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

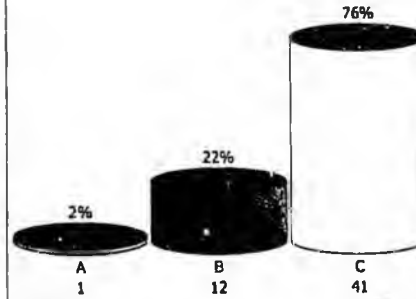
- A. Too much
- B. About right
- C. Not enough



Total: 55 Slide: 45

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

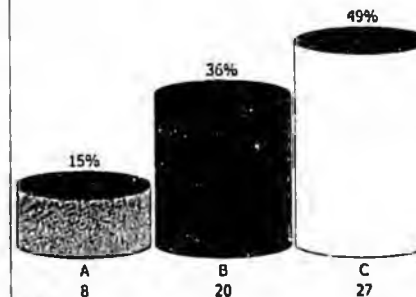
- A. Too much
- B. About right
- C. Not enough



Total: 54 Slide: 40

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

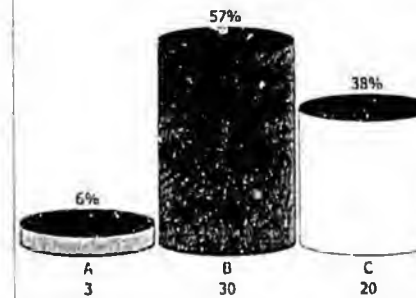
- A. Too much
- B. About right
- C. Not enough



Total: 55 Slide: 43

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

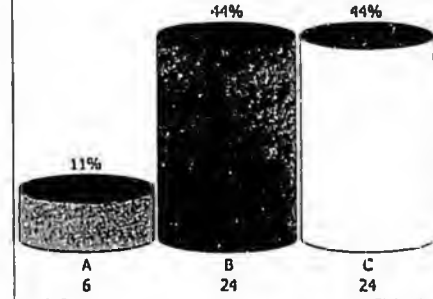
- A. Too much
- B. About right
- C. Not enough



Total: 53 Slide: 46

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

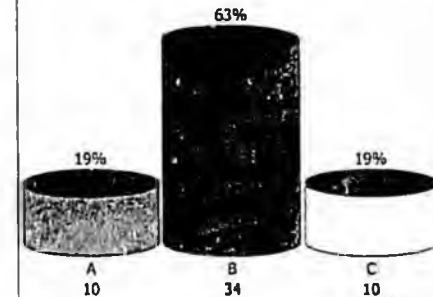
- A. Too much
- B. About right
- C. Not enough



Total: 54 Slide: 41

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

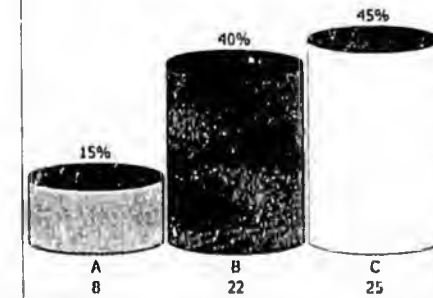
- A. Too much
- B. About right
- C. Not enough



Total: 54 Slide: 44

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

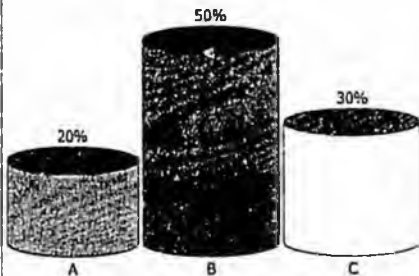
- A. Too much
- B. About right
- C. Not enough



Total: 55 Slide: 47

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

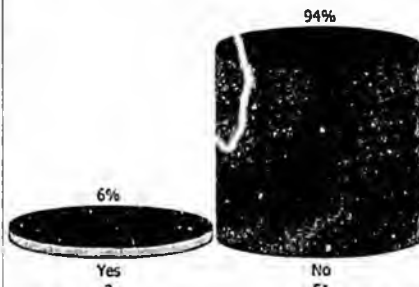
- A. Too much
- B. About right
- C. Not enough



Total: 54 Slide: 48

Should the Permanent Fund Dividend program be terminated?

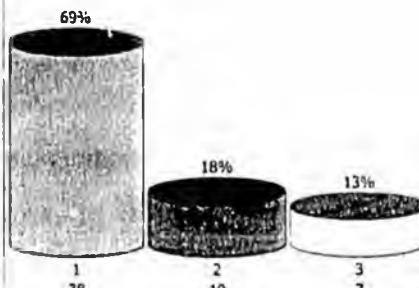
- 1. Yes
- 2. No



Total: 54 Slide: 51

Do you support an income tax?

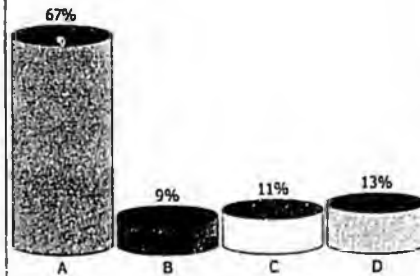
- 1. Yes
- 2. No
- 3. Maybe



Total: 55 Slide: 56

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

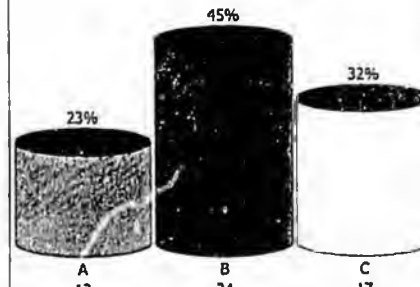
- A. Income tax
- B. Sales tax
- C. Both
- D. I oppose broad-based taxes



Total: 54 Slide: 49

Should the dividend be enshrined in the Constitution?

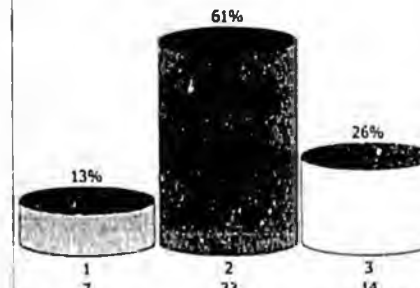
- A. Yes
- B. Yes, if a portion of permanent fund earnings is available to support state services
- C. No



Total: 53 Slide: 52

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

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



Total: 54 Slide: 57

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

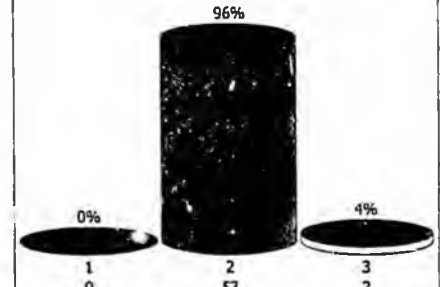
- 1. Spending reductions
- 2. Use of permanent fund earnings
- 3. Income tax
- 4. Sales tax
- 5. Taxes on oil industry
- 6. User fees and other tax increases



Fiscal gap priority Slide: 50

Should the permanent fund dividend program be terminated?

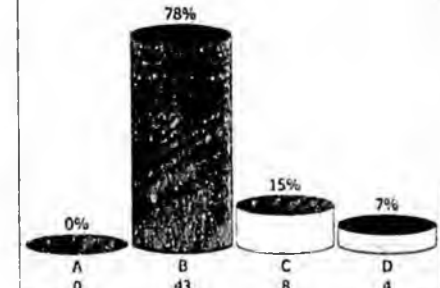
- 1. Yes
- 2. No
- 3. Maybe



Total: 55 Slide: 55

Which payout limit on POMV do you prefer?

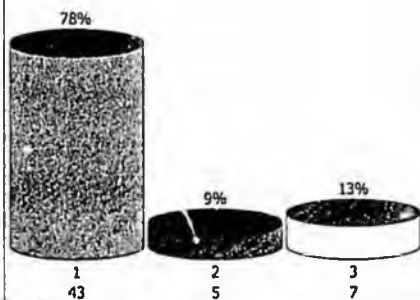
- A. 6%
- B. 5%
- C. 4.5%
- D. 4%



Total: 55 Slide: 58

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

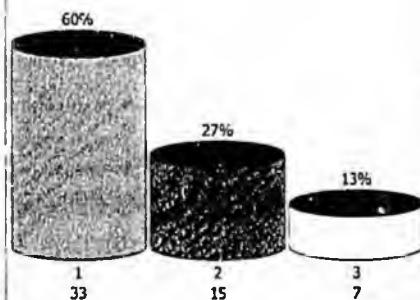
1. Yes
2. No
3. Maybe



Slide: 61

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

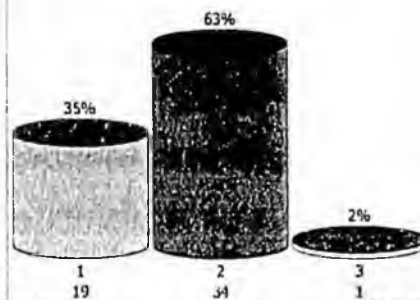
- A. Be determined annually by the Legislature, as is currently the case?
- B. Be dedicated in the Constitution?
- C. I don't know



Slide: 64

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

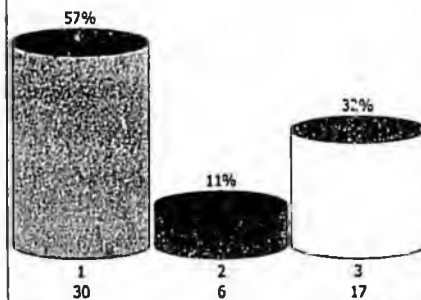
- A. Be determined by the statute, as is currently the case?
- B. Be dedicated in the Constitution?
- C. I don't know



Slide: 74

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

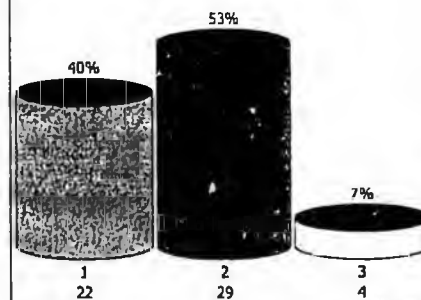
1. Yes
2. No
3. Maybe



Slide: 62

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

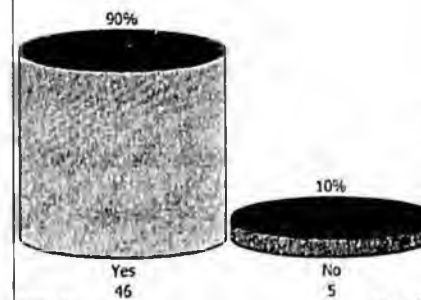
- A. Be determined by the statute, as is currently the case?
- B. Be dedicated in the Constitution?
- C. I don't know



Slide: 69

Adjourn?

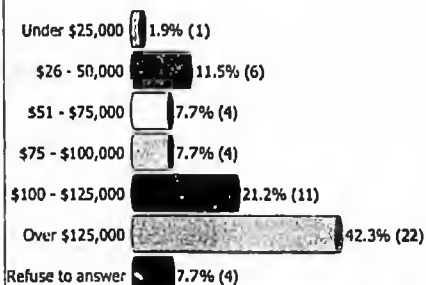
- Yes
- No



Slide: 75

What is your annual household income?

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

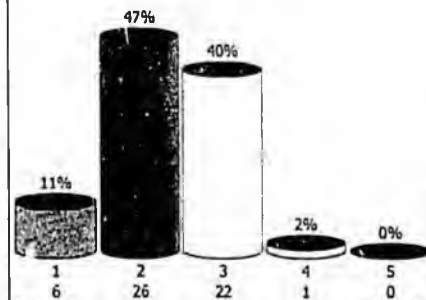


D: Annual household income

Slide: 63

Should we give our report

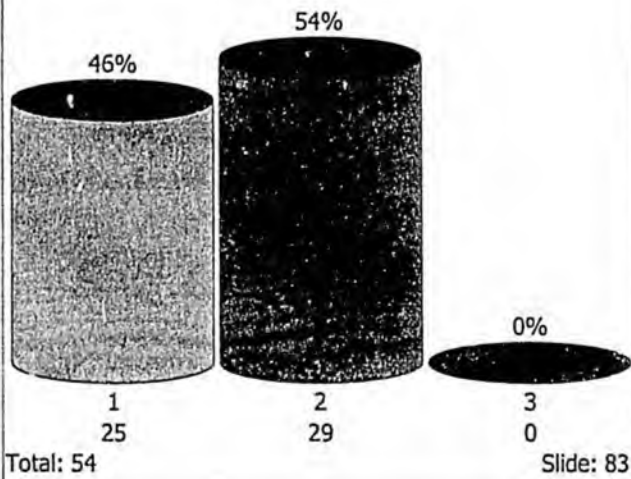
1. Resolution(s)
2. Letter
3. Both
4. Neither
5. Maybe



Slide: 73

Shall the group specify a minimum percentage for dividends?

- 1. Yes
- 2. No



SJR 18

PF APPROP/

INFLATION

PROOFING

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

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 5/7/03

Referred: Judiciary, Finance

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

A RESOLUTION

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

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

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

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

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

1 new subsection to read:

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

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

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

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

SENATE JOINT RESOLUTION NO. 18

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

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

Introduced: 4/17/03

Referred: State Affairs, Judiciary, Finance

A RESOLUTION

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

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

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

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

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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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



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

Status Quo	-----projected-----											
	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15
Total Return	15.25%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%
Contributions & appropriations (after payouts)	23,300	24,179	25,042	25,922	26,824	27,748	28,688	29,652	30,628	31,623	32,668	33,725
Unrealized appreciation/depreciation on invested assets	3,451	3,898	4,284	4,634	4,958	5,262	5,546	5,824	6,100	6,371	6,638	6,901
Realized earnings account (after payouts)	850	1,341	1,943	2,516	3,041	3,591	4,180	4,809	5,480	6,200	6,969	7,787
Total market value end of year (after payouts)	<u>27,601</u>	<u>29,417</u>	<u>31,268</u>	<u>33,072</u>	<u>34,823</u>	<u>36,600</u>	<u>38,414</u>	<u>40,245</u>	<u>42,133</u>	<u>44,084</u>	<u>46,087</u>	<u>48,165</u>
Annual realized income	1,311	1,602	1,796	1,969	2,129	2,280	2,430	2,586	2,743	2,909	3,089	3,284
Dividend (lump sum) - status quo	561	499	560	739	925	1,027	1,113	1,226	1,297	1,367	1,477	1,542
Transfer status quo Inflation-proofing (ER to principal)	0	613	635	657	680	703	727	751	776	801	828	855

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

Assumptions:

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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



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

Status Quo	-----projected-----											
	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15
Total Return	15.25%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%
Contributions & appropriations (after payouts)	23,300	24,179	25,042	25,922	26,824	27,748	28,688	29,652	30,628	31,623	32,668	33,725
Unrealized appreciation/depreciation on invested assets	3,451	3,898	4,284	4,634	4,958	5,262	5,546	5,824	6,065	6,270	6,445	6,598
Realized earnings account (after payouts)	850	1,341	1,943	2,516	3,041	3,591	4,180	4,809	5,480	6,200	6,960	7,760
Total market value end of year (after payouts)	<u>27,601</u>	<u>29,417</u>	<u>31,268</u>	<u>33,072</u>	<u>34,823</u>	<u>36,600</u>	<u>38,414</u>	<u>40,245</u>	<u>42,133</u>	<u>44,084</u>	<u>46,087</u>	<u>48,165</u>
Annual realized income	1,311	1,602	1,796	1,969	2,129	2,280	2,430	2,586	2,743	2,909	3,079	3,254
Dividend (lump sum) - status quo	561	499	560	739	925	1,027	1,113	1,226	1,297	1,367	1,477	1,542
Transfer status quo inflation-proofing (ER to principal)	0	613	635	657	680	703	727	751	776	801	828	855

POMV - 5% (beginning in FY05)	-----projected 5% POMV beginning in FY05-----											
	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15
Total Return		7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%	7.60%
Total Market Value End of Year (after payouts)	<u>27,601</u>	<u>28,605</u>	<u>29,621</u>	<u>30,654</u>	<u>31,686</u>	<u>32,710</u>	<u>33,739</u>	<u>34,782</u>	<u>35,840</u>	<u>36,912</u>	<u>38,005</u>	<u>39,133</u>
5 year average market value lagged one year		26,224	26,669	27,674	29,191	30,843	32,061	33,146	34,243	35,346	36,453	37,572
POMV Payout available for appropriation in lump sum		1,311	1,333	1,384	1,460	1,542	1,603	1,657	1,712	1,767	1,823	1,879

Assumptions:

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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



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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

POSITIONS	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Full-time						
Part-time						
Temporary						

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

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



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

OVERVIEW

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

SUMMARY OF CHANGES

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



Alaska Permanent Fund

Senate Finance Committee

A Fund overview and discussion of POMV

ACCOUNTABILITY

TO ALASKANS FOR ALASKANS



"To benefit all generations..."

AS 37.13.020 (1)

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

ACCOUNTABILITY

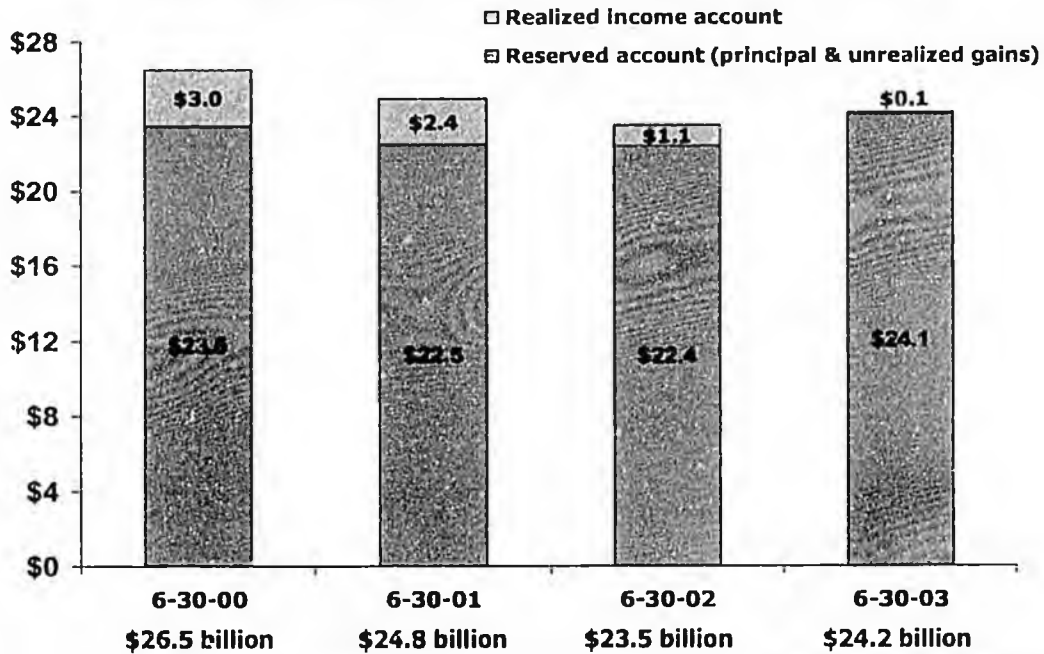
2

TO ALASKANS FOR ALASKANS



Permanent Fund market value

Four-year change in realized and reserved accounts

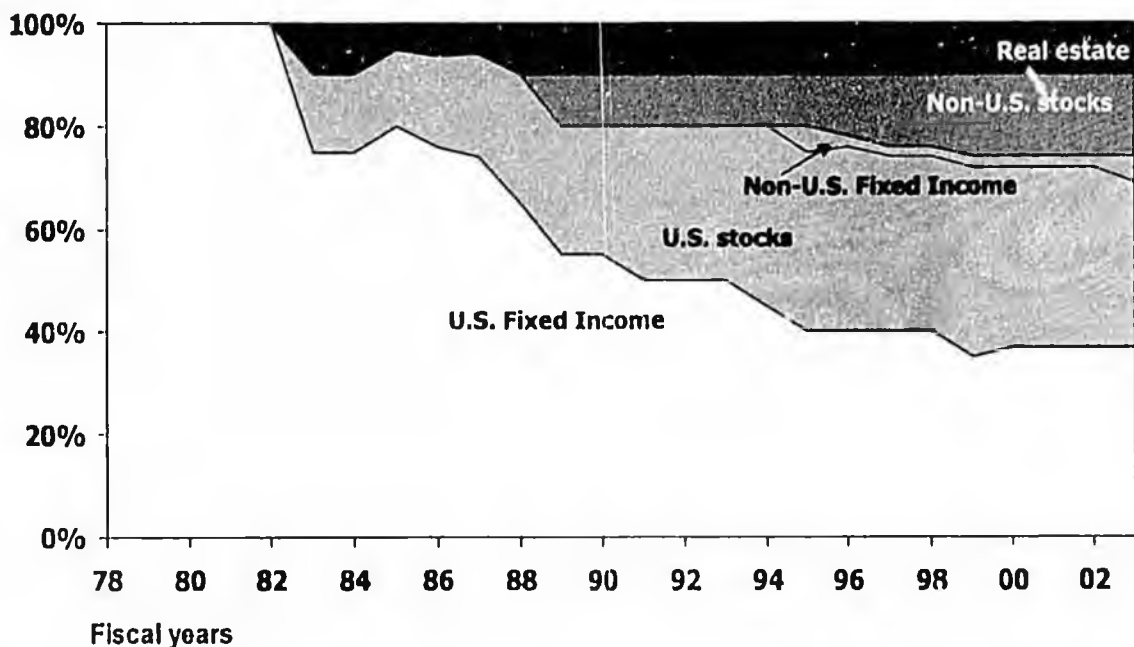


ACCOUNTABILITY

TO ALASKANS, FOR ALASKANS



Fund's historical asset allocation



ACCOUNTABILITY

TO ALASKANS, FOR ALASKANS



Trustees' proposal

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

POMV

ACCOUNTABILITY

TO ALASKANS. FOR ALASKANS.



What is POMV?

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

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

8% projected average annual return

-3% projected average annual inflation

5% maximum annual sustainable payout

retained in the Fund for inflation proofing

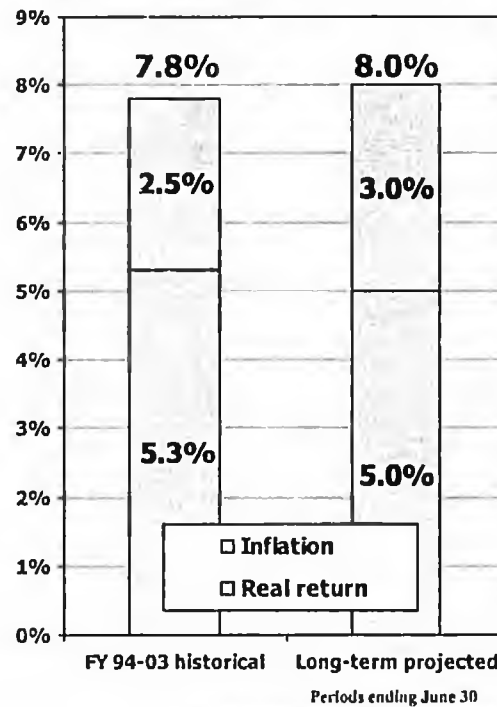
ACCOUNTABILITY

TO ALASKANS. FOR ALASKANS.



Fund performance

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



ACCOUNTABILITY

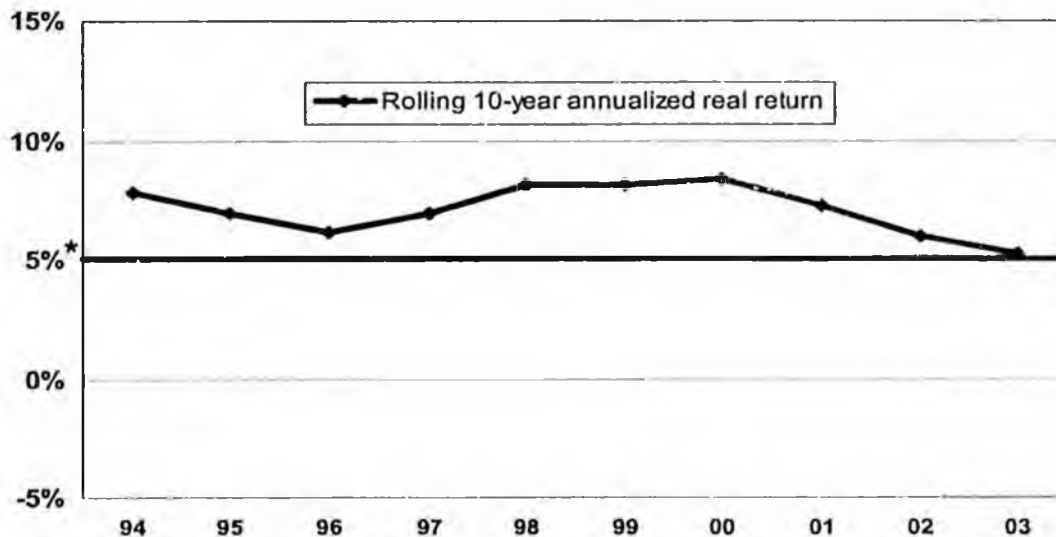
8

TO ALASKANS, FOR ALASKANS



Rolling 10-year real return

For periods ending June 30



ACCOUNTABILITY

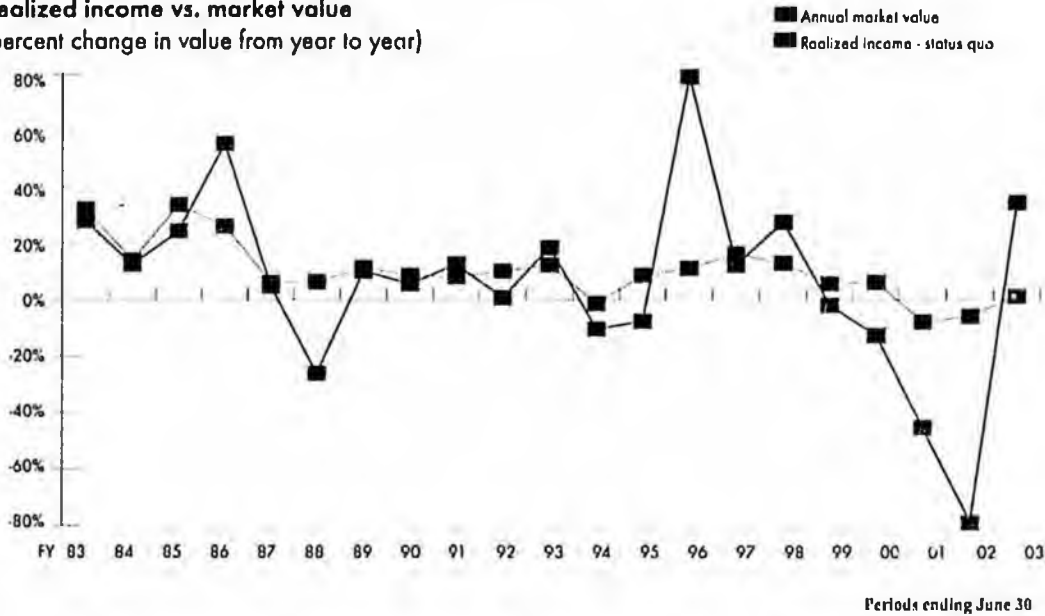
TO ALASKANS, FOR ALASKANS



Realized income v. market value

Volatility

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



ACCOUNTABILITY

TO ALASKANS, FOR ALASKANS



Why do we need POMV?

For the present

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

For the future

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

ACCOUNTABILITY

TO ALASKANS, FOR ALASKANS



What are Alaskans asking?

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

ACCOUNTABILITY

TO ALASKANS, FOR ALASKANS

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 4/17/03

FURTHER: Judiciary
Finance

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

DATE TURNED
IN TO OFFICE: 5/7/03

State Affairs Committee considered SENATE JOINT RESOLUTION NO. 18

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

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

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

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

NEW FISCAL NOTE(S):

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

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

Dyson
Guess
Cowdery

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

J. Stevens

SENATE COMMITTEE REPORT

DATE: 5/7/03

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 2/27/04

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 18

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

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

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

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

NEW FISCAL NOTE(S):

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

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

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

Ellis
French
Therriault
Ogan
Seelins

SJR 19

PERMANENT

FUND

INCOME

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

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/1/04
Referred: Finance

Sponsor(s): SENATORS LINCOLN, Ellis

A RESOLUTION

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

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

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

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

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

16 (b) Notwithstanding other provisions of this constitution,

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

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

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

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

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

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

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

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

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

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

BY SENATORS LINCOLN, Ellis

Introduced: 5/1/03

Referred: State Affairs, Judiciary, Finance

A RESOLUTION

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

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

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

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

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

16 (b) Notwithstanding other provisions of this constitution.

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

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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

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

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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



Senator Georgianna Lincoln

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

SPONSOR STATEMENT SJR 19

Permanent Fund Dividend Protection Act

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

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

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

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

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

LEGAL SERVICES

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MEMORANDUM

March 2, 2004

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

TO: Representative Eric Croft
Attn: Mark Gnadt

FROM: Tamara Brandt Cook
Director *TBC*

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

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

TBC:mdr
04-081.mdr



GREGG D. RENKES
ATTORNEY GENERAL OF ALASKA

October 6, 2003

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

Gentlemen:

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

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

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

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


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

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

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

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

Sincerely,


Gregg D. Renkes
Attorney General

STEPTOE & JOHNSON LLP

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September 22, 2003

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

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

Dear Mr. Renkes:

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

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

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

WASHINGTON

PHOENIX
BRUSSELS

LOS ANGELES

LONDON

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

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

I. Statement of Facts

A. Alaska Permanent Fund ("APF")

1. Establishment and Purpose of APF

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

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

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

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

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

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

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

2. Funding

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Disposition of Income

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Alaska Permanent Fund Corporation ("APFC")

1. Establishment of APFC

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

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

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

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

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

2. Board of Trustees

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

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

3. Employees

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

¹⁹ Alaska Stat. § 37.13.040.

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

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

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

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

4. Operating Budget

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

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

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

²⁴ See Alaska Stat. § 37.13.150

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

²⁶ Alaska Stat. § 37.13.150.

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

5. Investment Authority

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

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

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

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

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

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

6. Accounting and Oversight

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

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

C. Constitutional Amendments

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

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

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

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

II. Law

A. Legal Framework

1. Doctrine of Implied Statutory Immunity for States

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

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

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

2. Integral Parts of States

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

3. Code Section 115(1)

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

4. Legal Authorities

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

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

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

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

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

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

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

B. Doctrine of Implied Statutory Immunity

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

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

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

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

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

2. Integral Part of a State

a. Rev. Rul. 87-2

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

i. Supreme Court Control over Governance of Trust

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

ii. Reports to Supreme Court

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

iii. Disbursement of Funds for Public Purpose

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

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

b. Other Authorities

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

i. Critical Factors

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

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

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

ii. State Control

State control over an enterprise has been shown where:

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

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

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

iii. Separate Organizational Structures: Importance of Law of Formation

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

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

iv. State's Financial Commitment

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

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

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

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

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

v. Public Purpose and Private Benefit

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

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

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

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

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

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

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

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