

**ALASKA LEGISLATURE**

**2469**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004**

### 3. Return Requirement

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

#### C. Section 115 Exclusion from Gross Income

Section 115(l) excludes from tax income (a) derived by a separate entity<sup>36</sup> from the exercise of any essential governmental function and (b) accruing to a state or political subdivision.

##### 1. Essential Governmental Function

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

##### 2. Accrual

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

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

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

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

### 3. Private Benefit

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

### 4. Return Requirement

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

### III. Analysis

#### A. The Fund

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

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

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

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

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

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

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

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

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

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

d. **The State has Absolute Control Over the Fund**

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

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

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

e. Summary

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

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

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

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

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

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

i. Establishment of the Fund.

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

ii. Governance of the Fund.

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

iii. Reporting Requirements.

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

iv. Disbursement of Funds.

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

v. Termination of the Fund.

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

b. Other Authorities

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

i. State Control

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

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

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

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

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

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

#### ii. State Financial Commitment

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

#### iii. Public Purpose and Private Benefit

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

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

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

c. Summary

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

B. The Corporation

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

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

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

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

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

a. State Control

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

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

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

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

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

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

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

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

**b. State Financial Commitment**

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

c. Summary

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

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

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

a. Essential Governmental Function

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

b. Accrual

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

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

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

**c. Return Requirement**

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

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

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

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

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

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

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

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

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

The Honorable Gregg D. Renkes  
September 22, 2003  
Page 38

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

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

#### IV. Conclusion

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

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

Sincerely,

STEPTOE & JOHNSON LLP

# SENATE COMMITTEE REPORT

DATE: 5/14/03

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: 2/27/04

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 19

19 CONST. AM: PERMANENT FUND INCOME

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

and recommend:

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

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

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

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

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

Ellis  
French  
Therriault  
Ogan  
Sims

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 5/2/03

FURTHER: Judiciary  
 Finance

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

DATE TURNED  
 IN TO OFFICE: 5/14/03

State Affairs Committee considered SENATE JOINT RESOLUTION NO. 19

**SJR 19 CONST. AM: PERMANENT FUND INCOME**

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

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

**Senate Bill:**

same title

new title

**House Bill:**

same title

technical title

new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

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

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

**SIGNATURES AND RECOMMENDATIONS:**

Cowdery  
 Lyson  
 Guss

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

S. Stevens

SJR 32

PERM. FUND

INCOME FOR

DIVIDENDS

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

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/1/04  
Referred: Finance

Sponsor(s): SENATOR ELTON

A RESOLUTION

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

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

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

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

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

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

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

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

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

BY SENATOR ELTON

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

A RESOLUTION

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

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

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

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

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

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

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

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

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction):

Dept. Affected: Revenue

Title Const Am: Perm Fund  
Income For Dividends

RDU AK Permanent Fund Corporation

Component AK Permanent Fund Corporation

Sponsor Sen. Elton

Requester Senate Judiciary Committee

Component No. 109

**Expenditures/Revenues**

(Thousands of Dollars)

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

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

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

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

**FUND SOURCE**

(Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

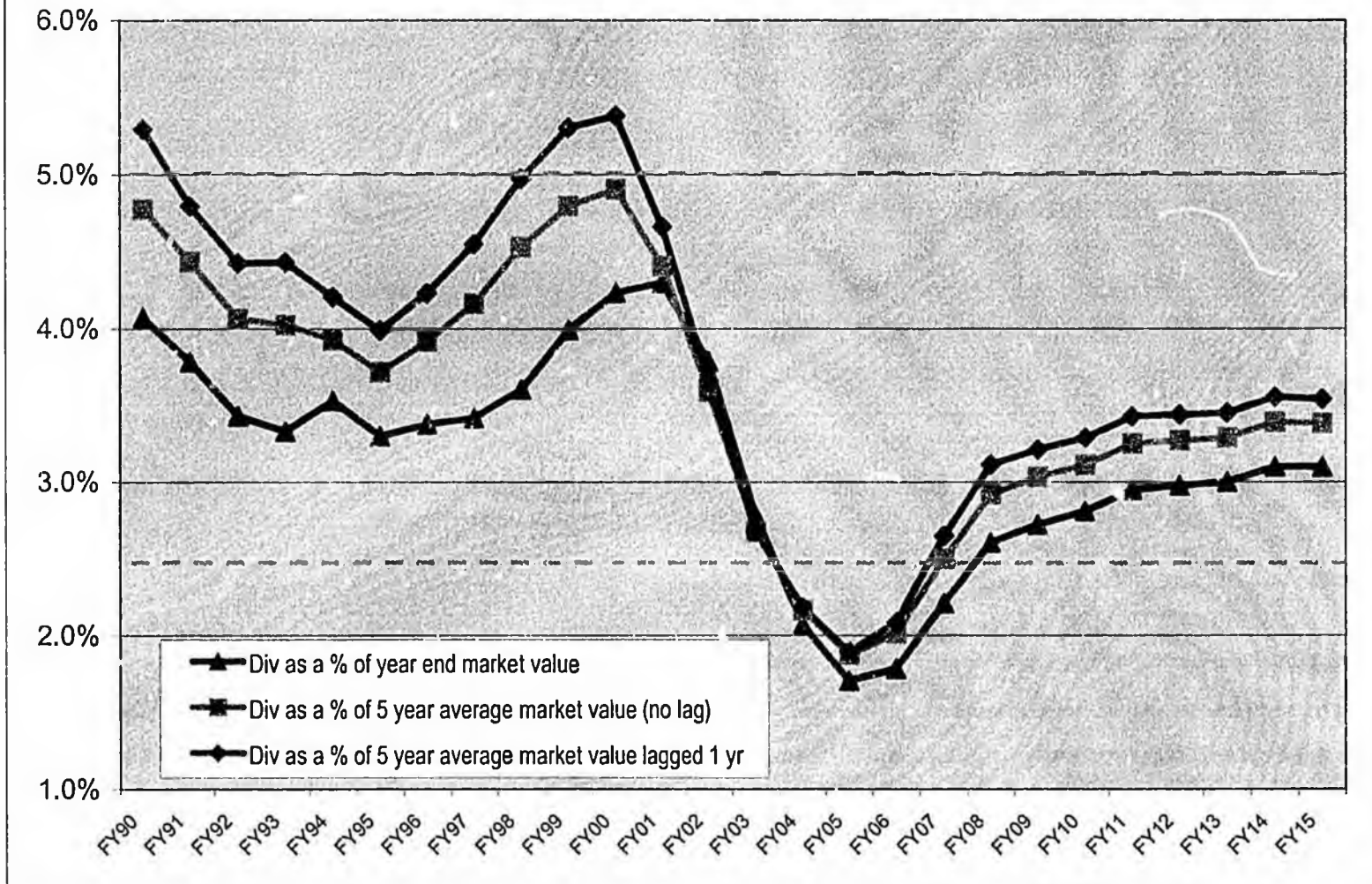
**ANALYSIS:** *(Attach a separate page if necessary)*

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

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

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

### Comparison of dividend payout methods Historical and forecasted data



Note: all year end market values are pre-payout

Perm Fund Corp

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

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



SENATOR KIM ELTON

SJR 32

Guaranteeing 80% of POMV money for dividends

Sponsor Statement

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

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

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

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

I would appreciate your support.

---

ALASKA SENATE

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

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 2/16/04

FURTHER: Finance

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

DATE TURNED  
IN TO OFFICE: 2/27/04

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 32

**SJR 32 CONST AM: PERM FUND INCOME FOR DIVIDENDS**

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

and recommendations:

be replaced with \_\_\_\_\_ CS SJR 32 ( JUD )

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

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

**NEW FISCAL NOTE(S):**

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

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

Ellis  
French  
Theriault  
Ogawa  
Seidens

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

SJR 24  
GUARANTEE  
PERM. FUND  
DIVIDEND

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

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/1/04  
 Referred: Finance

Sponsor(s): SENATORS OGAN, Wagoner, Green

A RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## SENATE JOINT RESOLUTION NO. 24

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY SENATORS OGAN, Wagoner, Green

Introduced: 2/4/04

Referred: Judiciary, Finance

## A RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

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

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

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

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

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

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

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

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

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

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

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

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

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

Sponsor Sen. Ogan  
Requester Senate Judiciary Committee

Component No. 109

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

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

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

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

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

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

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

**POSITIONS**

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

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

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

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



## SENATOR SCOTT OGAN      Alaska State Legislature

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

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

Senator\_Scott\_Ogan@legis.state.ak.us

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

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23-LS1543/I

CS for Senate Joint Resolution No. 24 (JUD)

### *Dividend Protection Plan*

#### Sponsor Statement

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

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

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

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

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

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

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 2/4/04

FURTHER: Finance

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

DATE TURNED  
IN TO OFFICE: 3/1/04

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 24

**SJR 24 CONST AM: GUARANTEE PERM FUND DIVIDEND**

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

and recommends:

be replaced with \_\_\_\_\_ CS SJR 24 ( JUD )

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

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

**NEW FISCAL NOTE(S):**

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

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

Ellis  
French  
Theriot  
Searles

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

CONSTITUTIONAL  
BUDGET  
RESERVE



# Alaska State Senate Senate Finance Committee

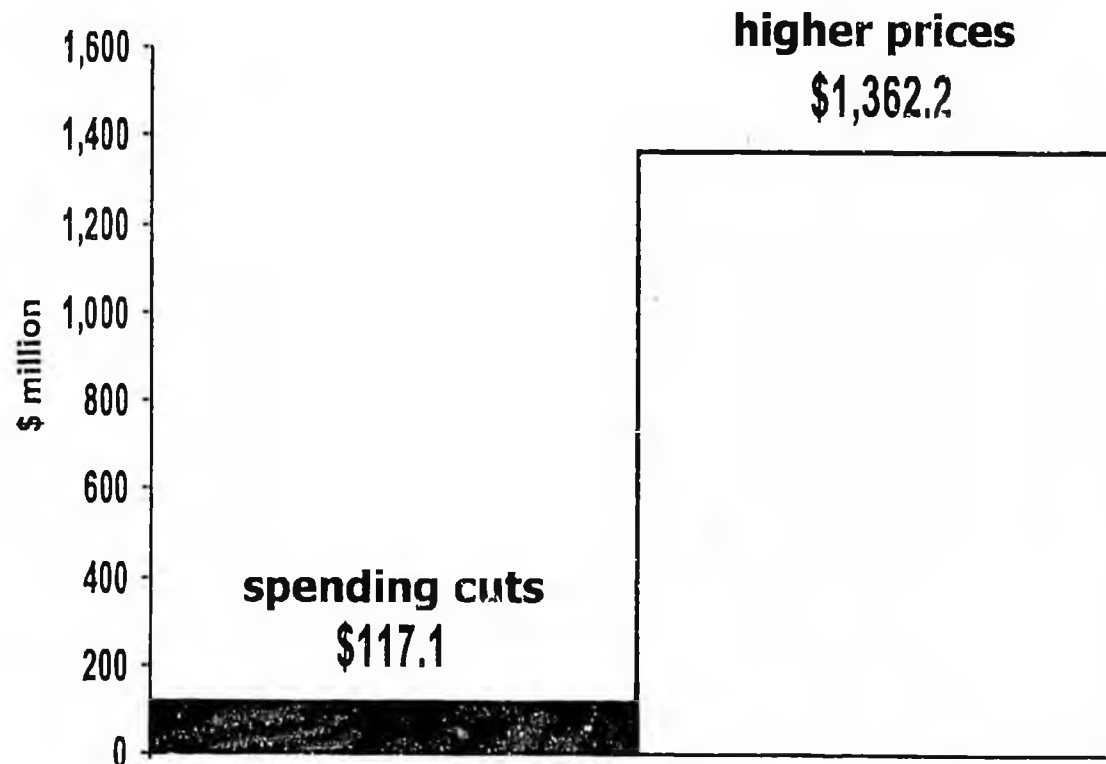
William A. Corbus, Commissioner  
Department of Revenue

March 2004

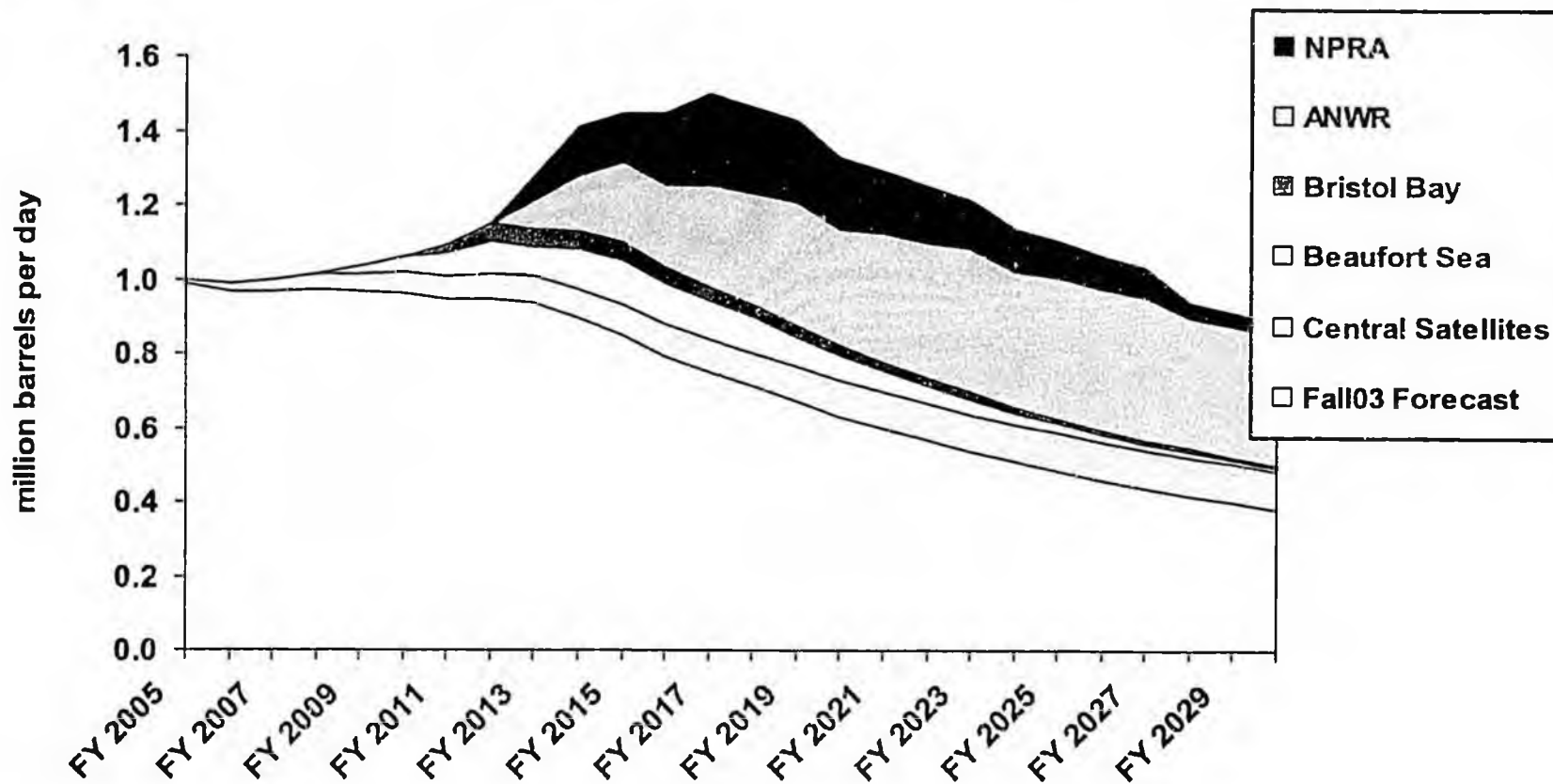
Fall 2000 Forecast Projected  
*December 2005* Depletion of the CBRF

Fall 2003 Forecast Projected  
*May 2007* Depletion of the CBRF

Difference=  
Higher Prices and  
Spending Cuts

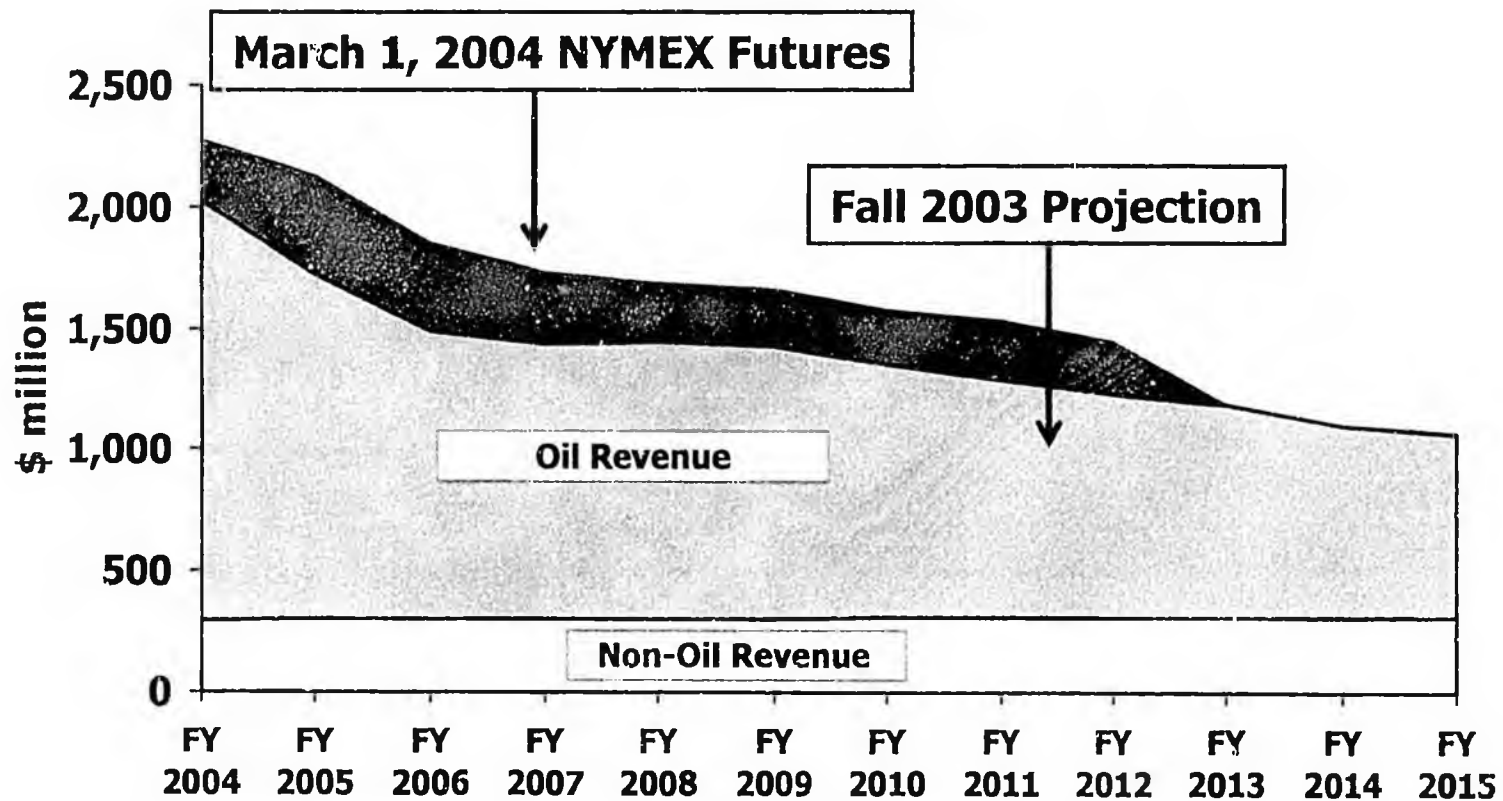


# Possible Increases to ANS Production



Source: Department of Revenue, Tax Division

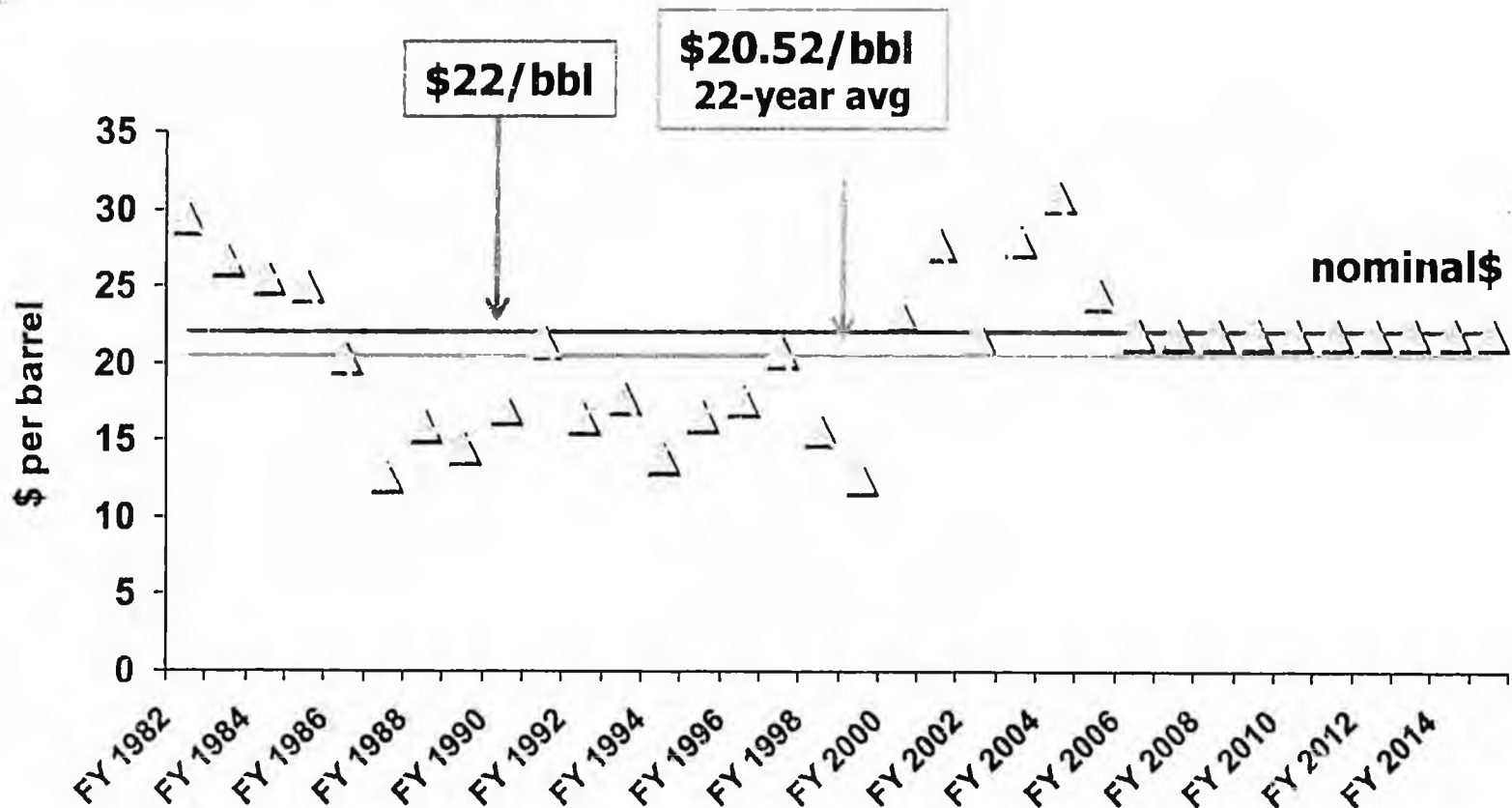
# General Fund Unrestricted Revenue



Source: Department of Revenue, Tax Division

# ANS West Coast Price

## FY 1982-2004



Source: Department of Revenue, Tax Division



# Conclusion

## *Four Year Price Boom*

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

## *Pendulums Swing*

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

## *Time to Prepare for Lower Oil Prices*

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

March 17, 2004

FRANK H. MURKOWSKI, GOVERNOR

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

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

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

Re: March 16, 2004 Senate Finance Committee Hearing

Dear Senator Wilken and Senator Green:

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

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

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

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

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

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

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

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

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

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

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

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

March 17, 2004

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

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

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

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

Very truly yours,



William A. Corbus  
Commissioner

Enclosures

## The Alaskan Economic Crash 1986—1988

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

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

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

<u>Real Estate</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
AHFC Foreclosures	129	508	1671	3701
AHFC 1987 Foreclosures				
Single Family	1325			
Condos	1171			
Mobile Homes	1192			
3 & 4 Plexes	13			

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

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

### Summary 1986—1988 Recession (ISER)

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

## Constitutional Budget Reserve Subaccount

<b>AY10 CBRF Subaccount</b> As of 12/31/03	Actual Allocation	Target Allocation	3 Months	YTD	1 Year	3 Year	5 Year
Broad Market Fxd Income Russell 3000 Index	39.76%	44%					
Short Term Pool	0.00%	0%					
SOA International Equity	17.45%	17%					
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>7.81</b>	<b>19.17</b>	<b>19.17</b>	<b>1.79</b>	
Benchmark			7.77	20.09	20.09	1.73	
Market Value As of 12/31/03	\$409,785,494						

## Constitutional Budget Reserve

<b>AY19 Constitutional Budget Reserve Fund</b> As of 12/31/03	Actual Allocation	Target Allocation	3 Months	YTD	1 Year	3 Year	5 Year
Broad Market Fxd Income	20.00%	20%					
Short Term Pool	20.12%	20%					
Intermediate Term Fxd Income	59.88%	60%					
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>0.30</b>	<b>3.50</b>	<b>3.50</b>	<b>5.93</b>	<b>5.62</b>
Benchmark			0.13	2.57	2.57	6.07	5.67
Market Value As of 12/31/03	\$1,430,965,670						

Conference of Alaskans  
Constitutional Budget Reserve  
Fund

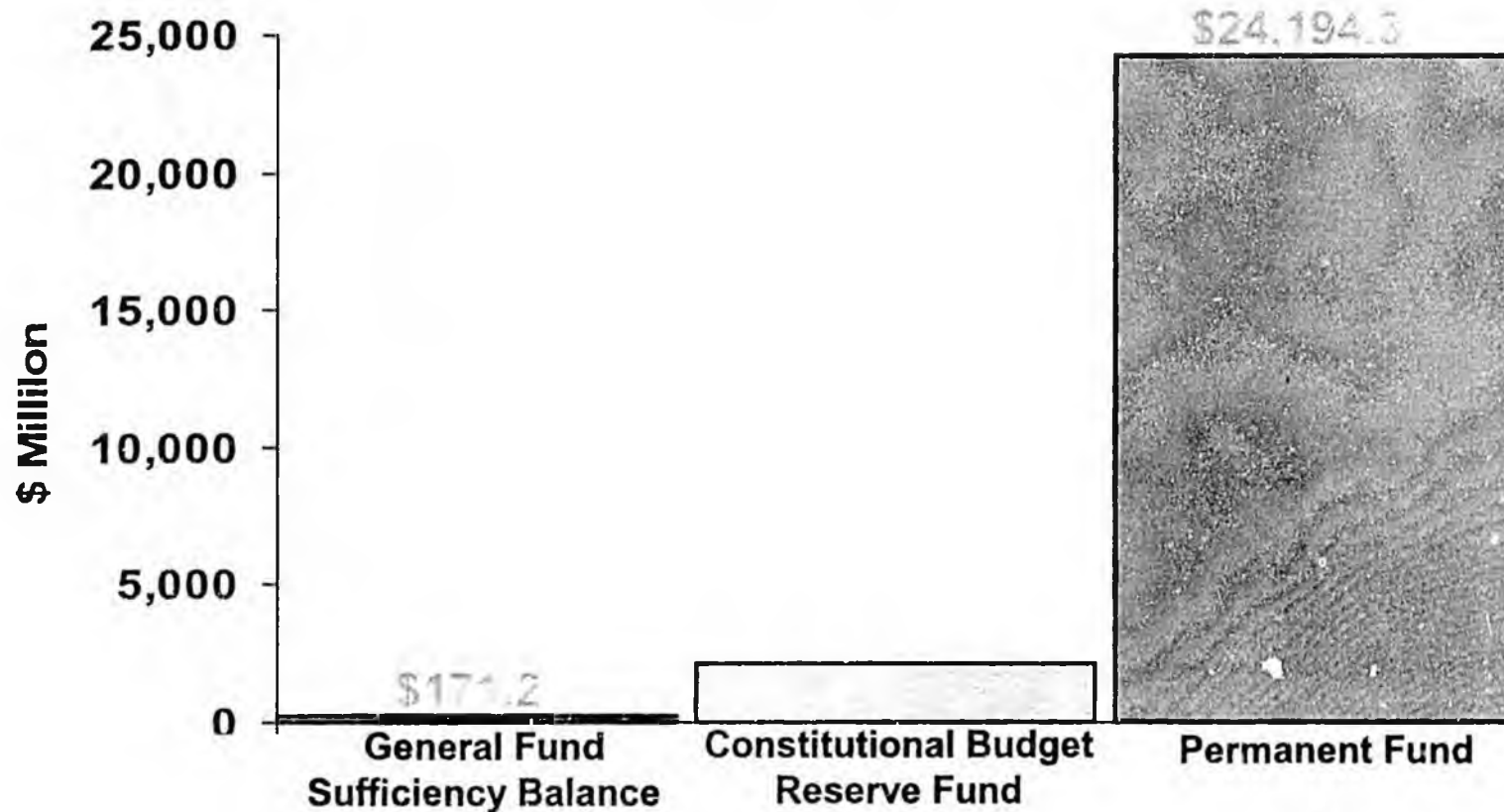
**Alaska Department of Revenue**

**Bill Corbus, Commissioner**

**February 2004**



# Three Government Funds



# CBR History

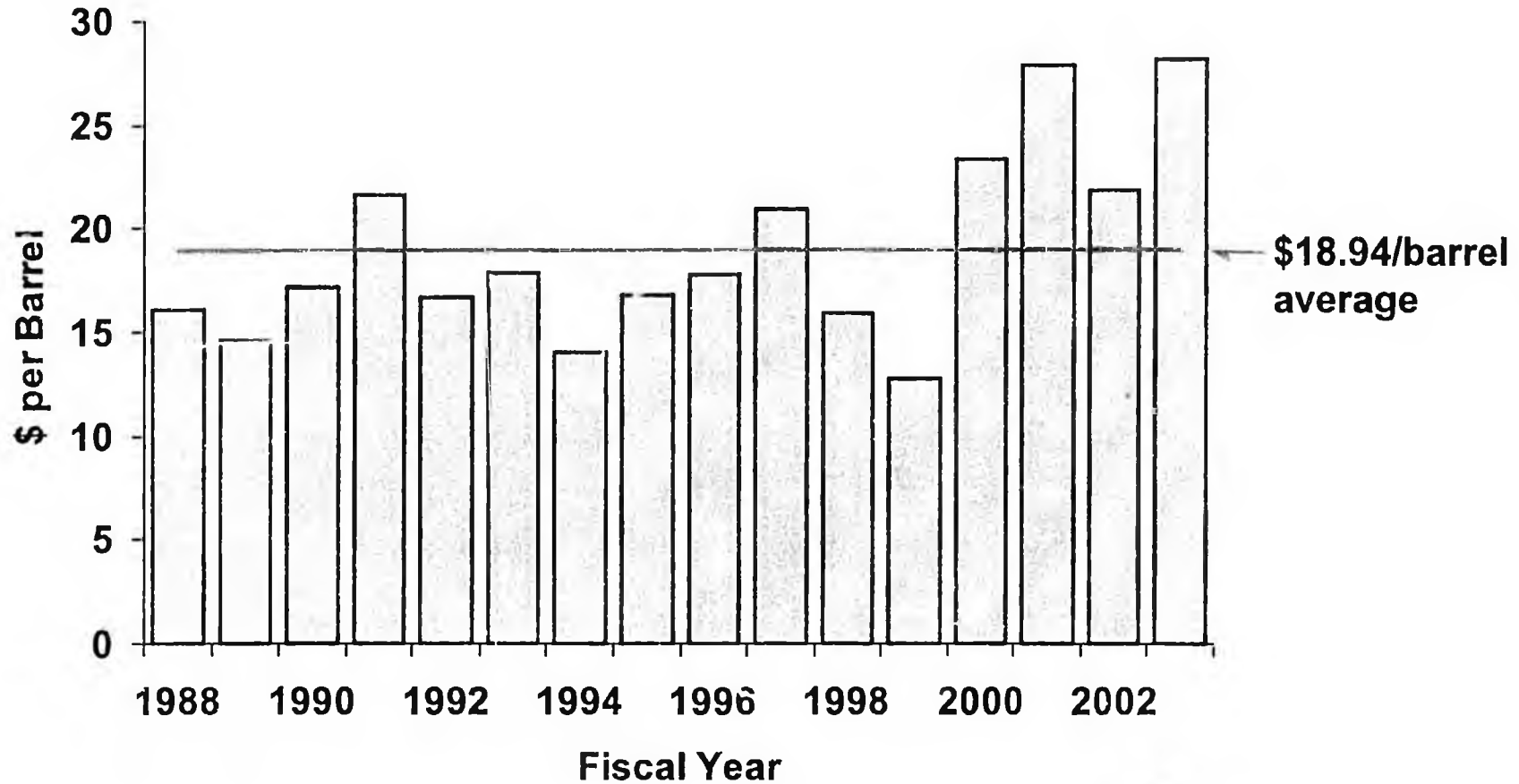
- **established to provide cash to fund government (the General Fund) during periods of temporarily low oil prices ~ when revenue falls short of expenditures**
- **as approved by voters in 1990, the CBR has been funded by oil and gas tax and royalty settlements**
- **State has deposited \$5.6 billion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

## CBR History, cont.

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

# Alaska North Slope Oil Price

FY 1988 – FY 2003



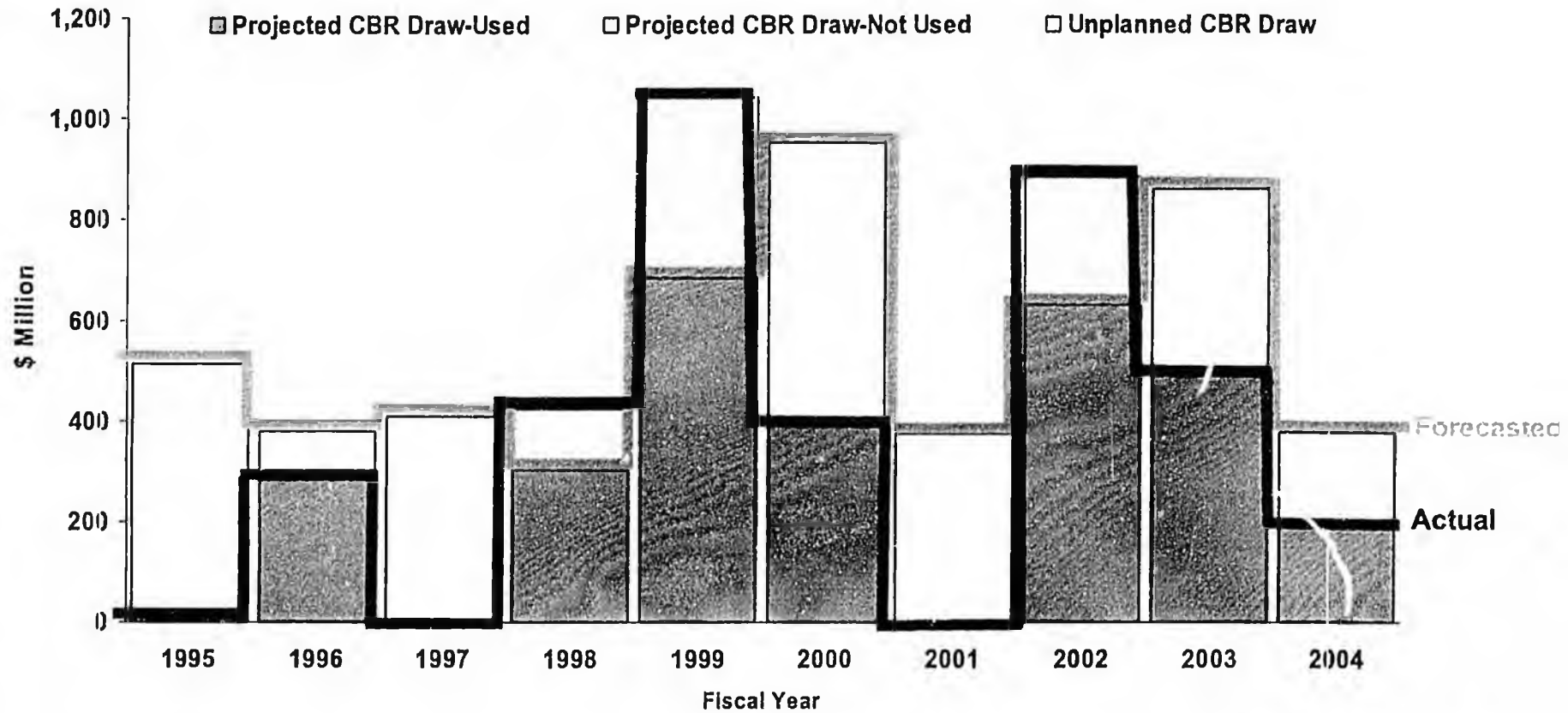
Source: DOR Fall 2003 Revenue Sources Book



## Use of CBR

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

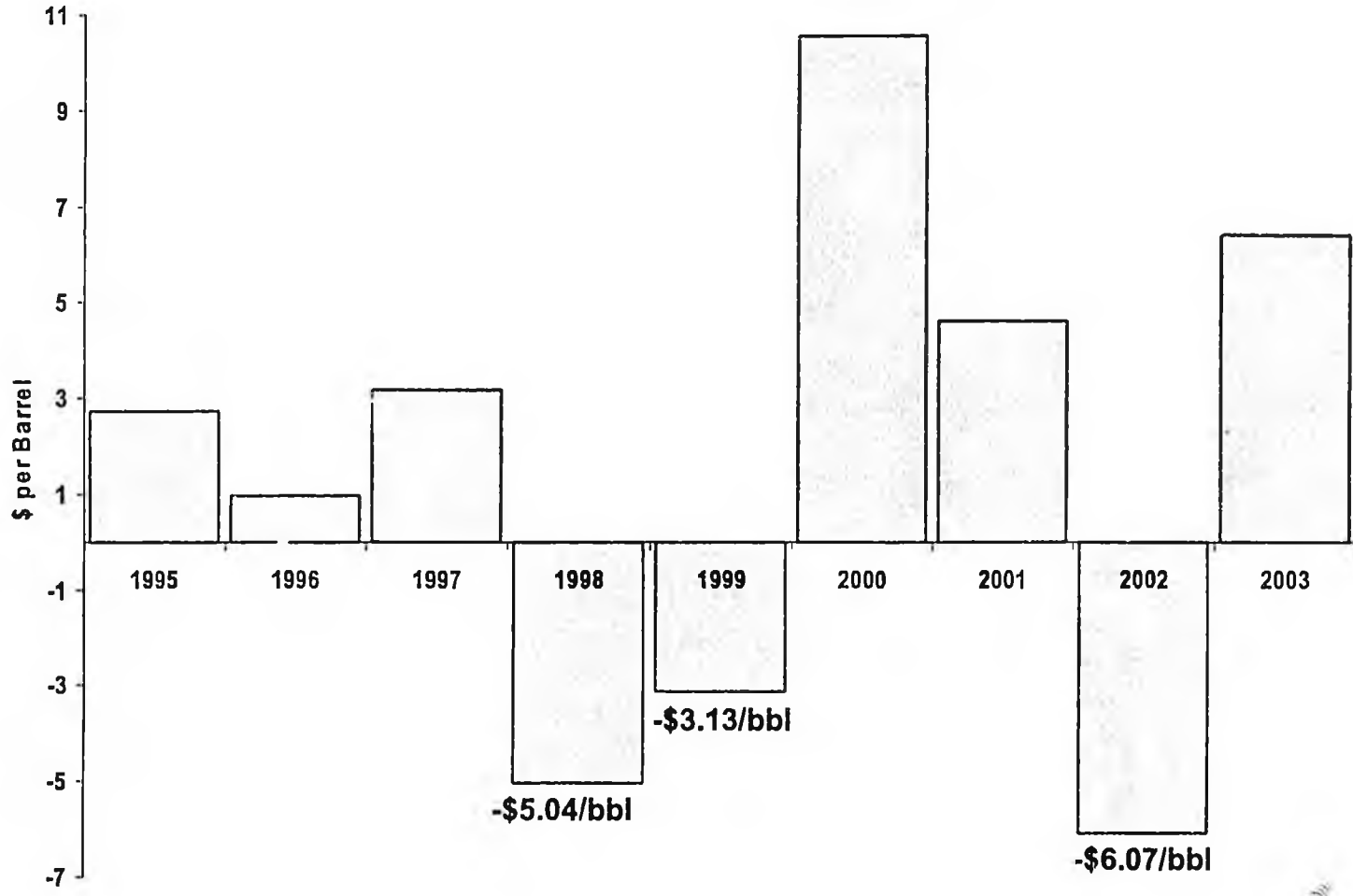
# Projected vs. Actual CBR Draws



Source: Office of the Governor, Management and Budget

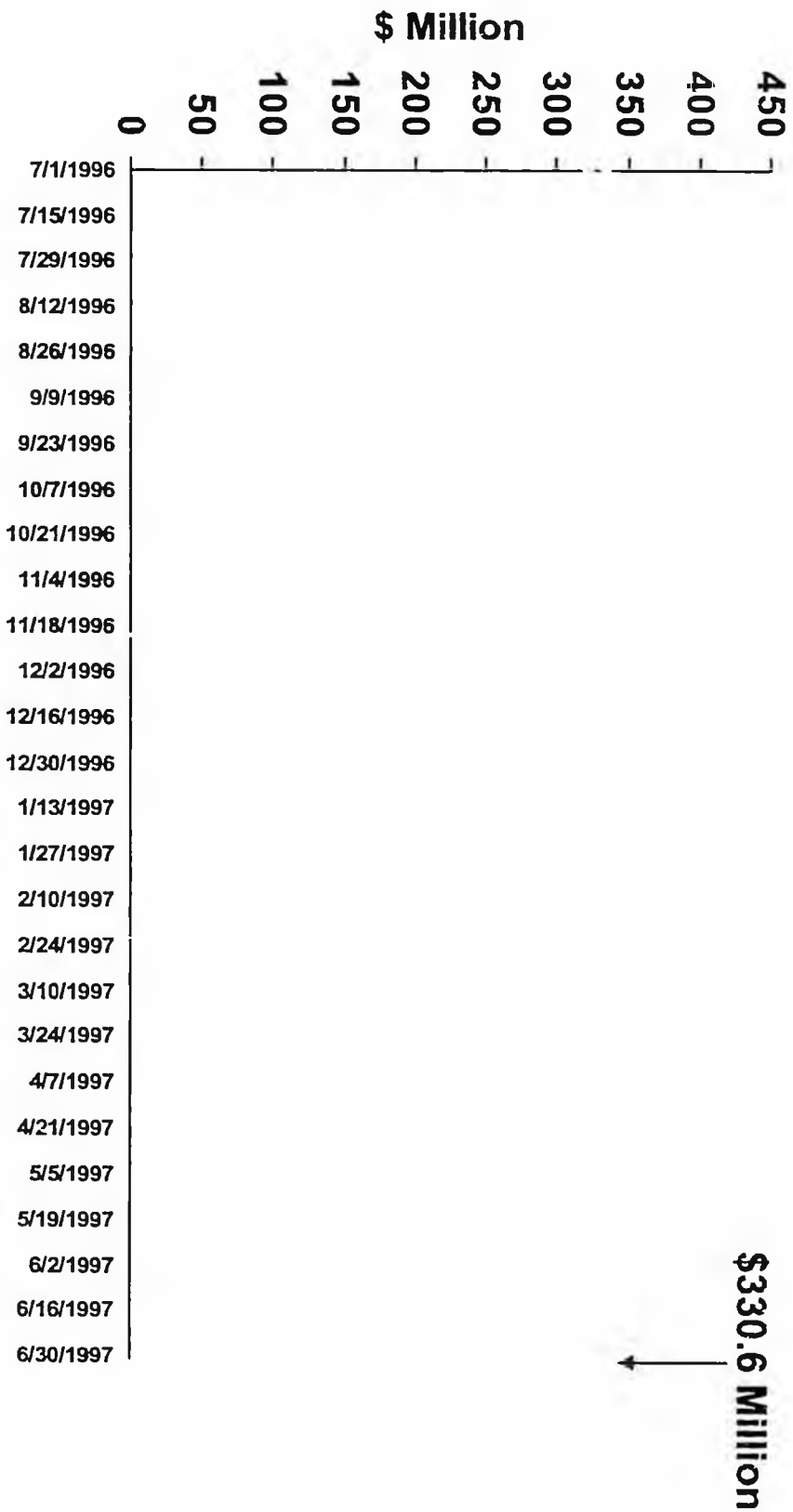
# ANS Oil Price Differential

## Change Year-to-Year, FY 1994-2003



Source: Department of Revenue, Tax Division

# General Fund Cash Sufficiency With CBR Borrowing

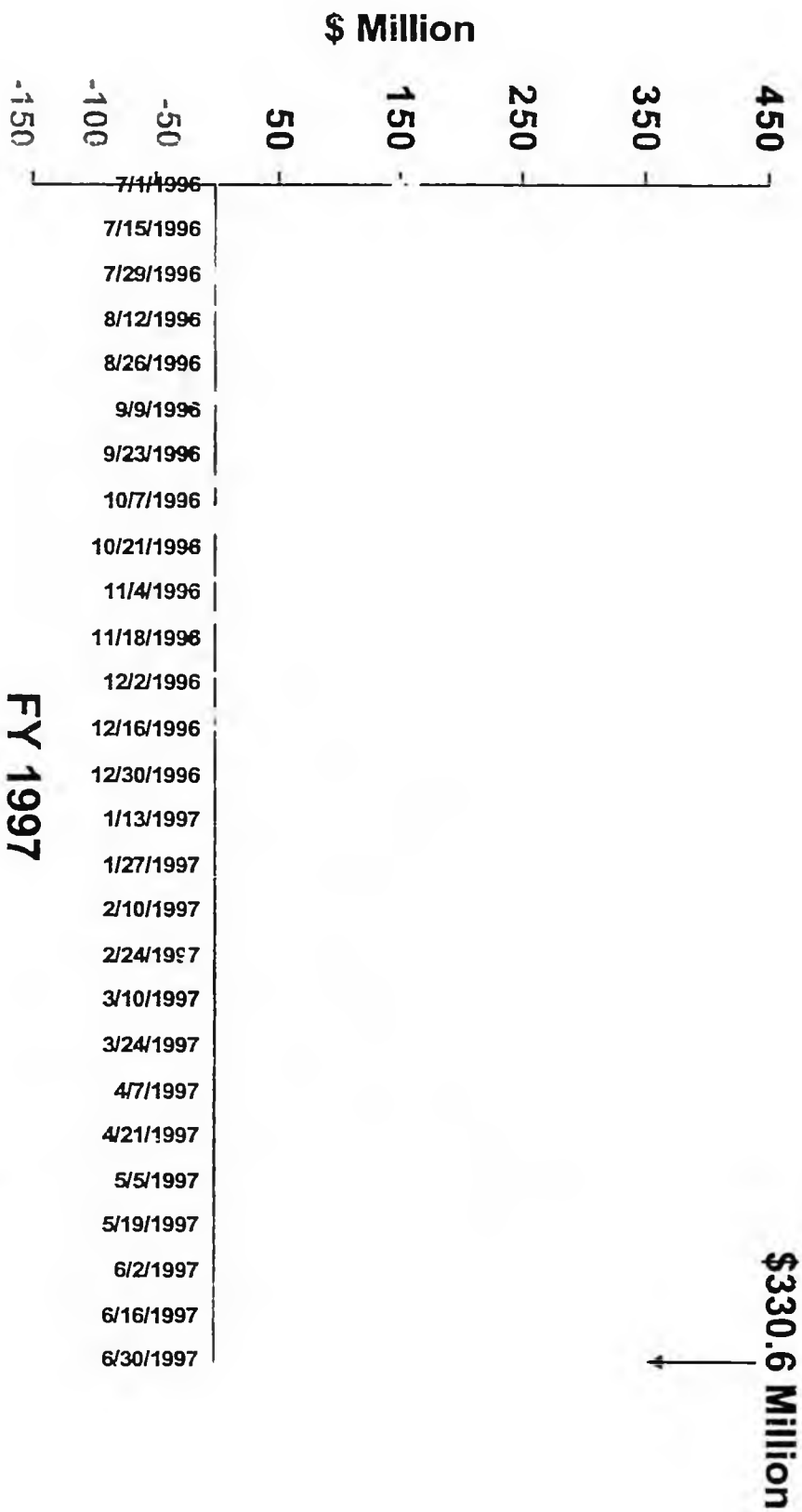


**FY 1997**

Source: Department of Revenue, Treasury Division



# General Fund Cash Sufficiency Without CBR Borrowing



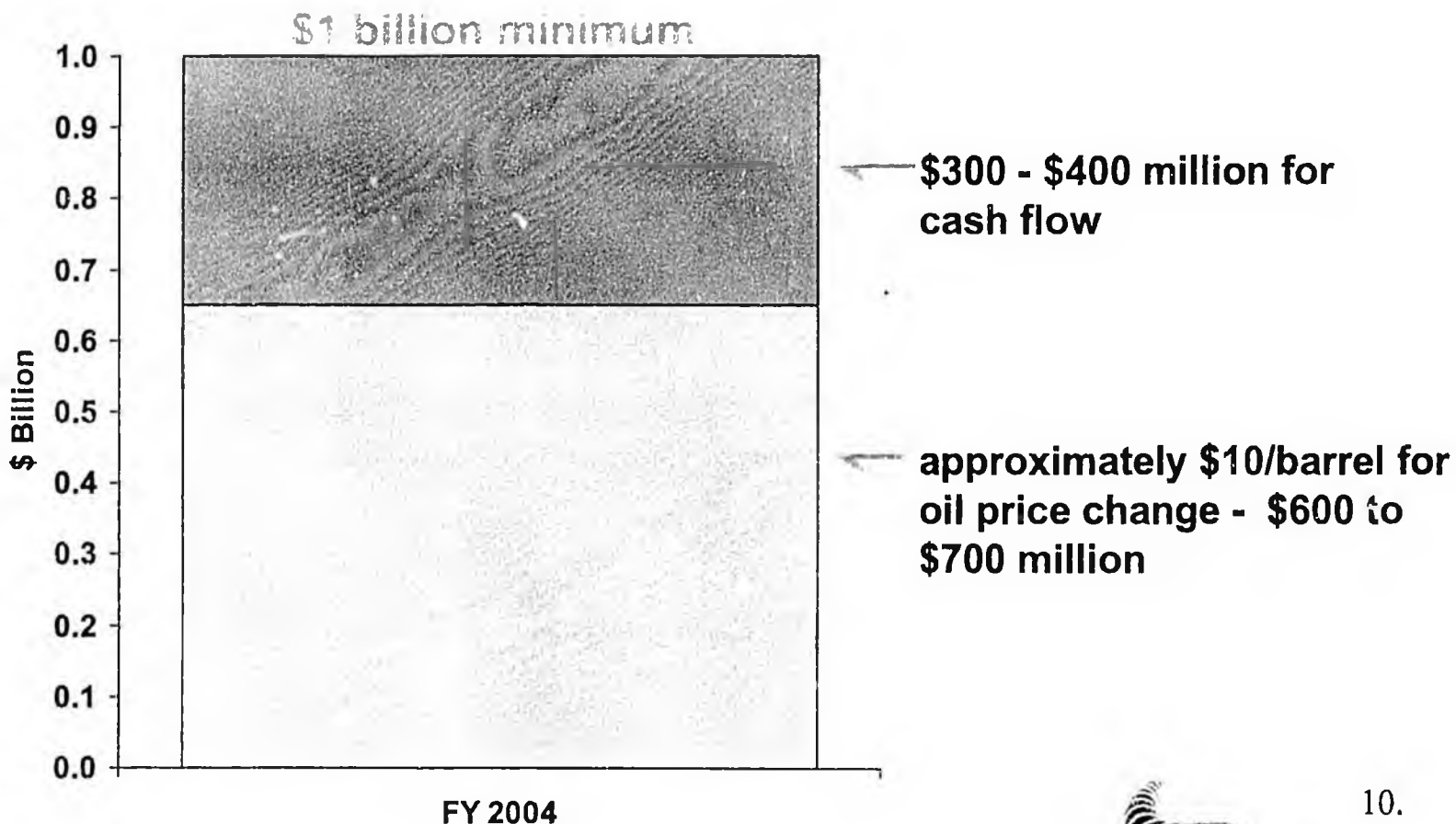
FY 1997

Source: Department of Revenue, Treasury Division



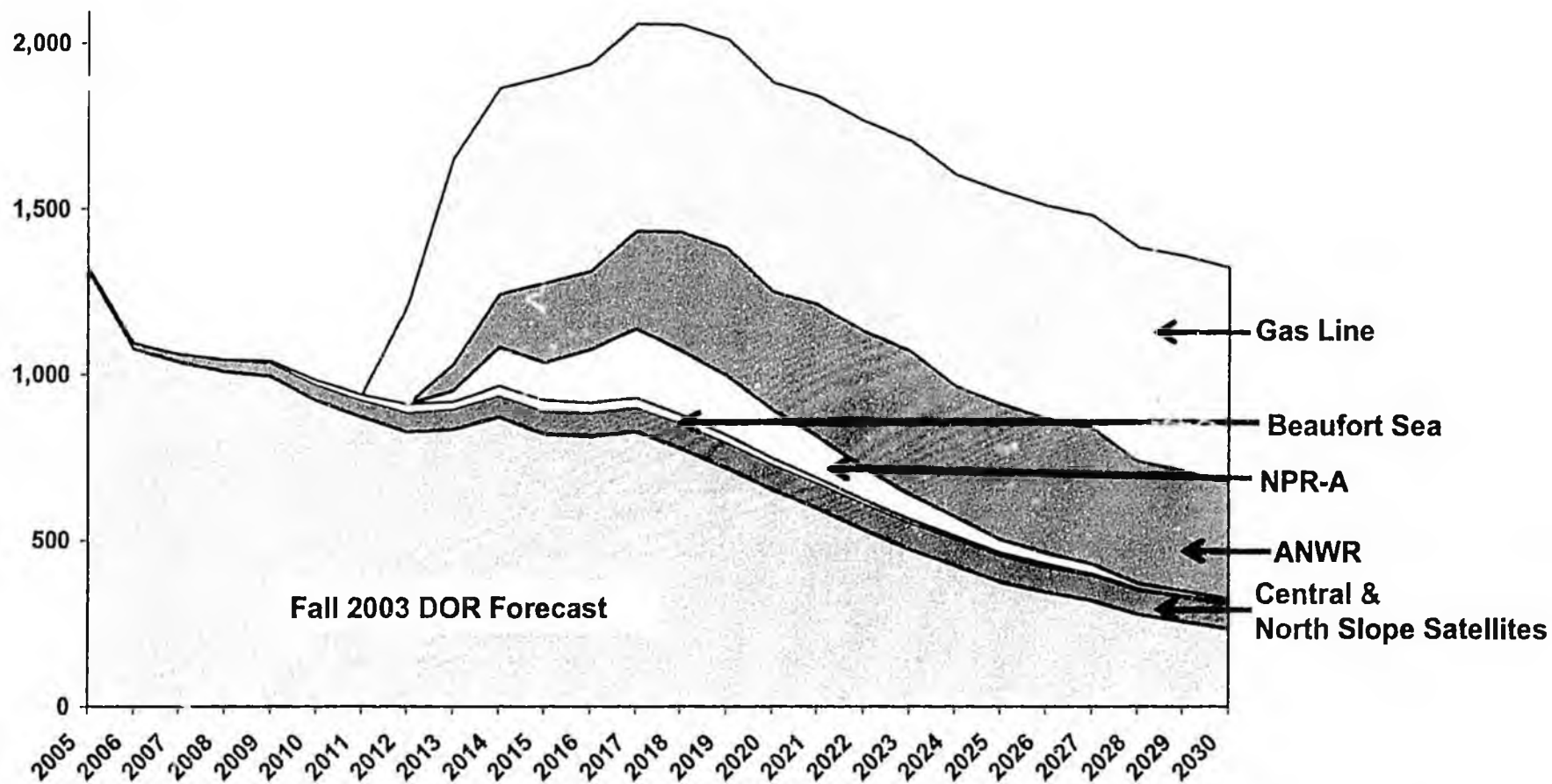
# Should We Set Minimum for CBR

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



# Should We Set Minimum for CBR

~tie to possible increase in resource revenues ?



Source: DOR Fall 2003 Revenue Sources Book

# Conclusion

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

SJR 3

APPROPRIATIONS/  
SPENDING LIMIT

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

BY

Offered:  
Referred:

Sponsor(s): SENATOR DYSON

A RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## SENATOR FRED DYSON

### MEMORANDUM

March 17, 2004

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

*Lyda*  
From: Senator Fred Dyson

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

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Following is an analysis by section of referenced proposed resolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 1  
As Pertains to Limit

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

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

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

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

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

The current provision exempts “appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations require to pay the principal and interest on general obligation bonds and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or public corporation of the State that issues revenue bonds.”

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

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

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

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

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

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

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

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

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

#### Other Issues

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

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

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

BY

Offered:  
Referred:

Sponsor(s): SENATOR DYSON

A RESOLUTION

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

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

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

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

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

15 *AND NOT TO EXCEED*

16 the average percentage of the change in the average personal

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

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

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

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

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

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

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

(4) DEDICATED FUNDS AND TRUST FUNDS:

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

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

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

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

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

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

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

(e) omitted

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

WORK DRAFT

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

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

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

SGC (4)

~~Concept Language for Periodic Reconsideration.~~

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

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

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

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

BY

Offered:  
Referred.

Sponsor(s): SENATOR DYSON

A RESOLUTION

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

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

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

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

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

15 ~~AND NOT TO EXCEED~~  
16 the average percentage of the change in the average personal

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

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

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

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

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

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

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

(4) DEDICATED FUNDS AND TRUST FUNDS:

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

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

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

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

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

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

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

(e) omitted

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

WORK DRAFT

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

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

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

SEC (4)

~~Concept Language for "Periodic Reconsideration."~~

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5

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

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

ADOPTED 3/16/04

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS0296X  
Cook  
3/16/04

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

BY

Offered:  
Referred:

Sponsor(s): SENATOR DYSON

A RESOLUTION

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

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

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

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

10 (1) the lesser of

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

16 (B) the average percentage of the change in the average personal

L

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

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

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

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

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

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

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

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

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

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

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

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

22 (d) An appropriation that exceeds the appropriation limit under this section may be  
23 made for any public purpose identified by the governor in a declaration of emergency upon  
24 affirmative vote of at least two-thirds of the members of each house of the legislature.  
25 Appropriations under this subsection may be made only for a fiscal year identified in the  
26 declaration of emergency.

27 (e) If appropriations for a fiscal year exceed the amount validly appropriated under  
28 this section, the governor shall reduce expenditures by the executive branch for its operation  
29 and administration to the extent necessary to avoid spending more than the amount validly  
30 appropriated.

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

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

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

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

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

23-LS0296V  
Cook  
3/3/04

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

BY

Offered:  
Referred:

Sponsor(s): SENATOR DYSON

A RESOLUTION

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

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

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

6 Section 16. Appropriation and Spending Limit. (a) Appropriations made  
7 for a current fiscal year shall not exceed the amount appropriated for the fiscal year  
8 two years immediately preceding that current fiscal year by more than the sum of the  
9 following:

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

14 (2) seventy-five percent of the average annual percentage rate of  
15 change in the State population for the two calendar years preceding the calendar year  
16 during which the immediately preceding fiscal year began compiled by a State