

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2882

Chart 4: 10,000 people @ 3%	FY 07	FY 08	FY 09	FY 10	FY 11
Estimated Amount of Dividend (APFC)	1,080.00	1,380.00	1,680.00	1,800.00	1,780.00
Estimated Quarterly Payment Participants	10,000.00	10,000.00	10,000.00	10,000.00	10,000.00
Total	10,800,000.00	13,800,000.00	16,800,000.00	18,000,000.00	17,800,000.00
Multiplier	0.625	0.625	0.625	0.625	0.625
Total times multiplier	6,750,000.00	8,625,000.00	10,500,000.00	11,250,000.00	11,125,000.00
Rate of Return	0.03	0.03	0.03	0.03	0.03
Earnings from funds held	202,500.00	258,750.00	315,000.00	337,500.00	333,750.00
DIFFERENCE BETWEEN CHARTS 4 AND 1	135,000.00	172,500.00	210,000.00	225,000.00	222,500.00
Multiplier Calculation = .25 of a year x .75 of the total = .1875, .5 x .5 = .25 and .75 x .25 = .1875 which totals .625					

Representative Jay Ramras
Co-Chair, House Resources
V-Chair, Economic Develop.
Tourism & Trade
House State Affairs
119 N. Cushman St. Suite 207
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature



While in Session
State Capitol, Room 104
Juneau, Alaska 99801-1182
(907) 465-3004
Fax: 465-2070
Toll Free: (877) 465-3004

House District 10

House of Representatives

February 3, 2005

Sharon Barton, Director
Permanent Fund Division
P.O. Box 110460
Juneau, AK 99811-0460

Dear Ms. Barton:

Thank you for the information you provided concerning the Permanent Fund Dividend, proposed Quarterly Payment Program, it was extremely informative. However, I do have a few questions concerning the proposal, which follow:

- After the initial set-up costs, what would be the annual cost of administering this program?
- Would monies that remain in the system through the Quarterly Payment Program earn interest until they are paid to the applicant?
- What rate of interest should be applied, to the monies left in the program, due to the Quarterly Payment Program?
 - October payment 0 days accrued interest
 - January payment 90 days accrued interest
 - April payment 180 days accrued interest
 - July payment 270 days accrued interest
- Would the monies that remain in the system produce a negative fiscal note, or pay for the program?
- If participation in the Quarterly Payment Program were to rise 2-3%, would the fiscal note go down substantially?
- Since the PFD payment system is in the process of being re-written, could we by statute incorporate the Quarterly Payment Program into the scheduled re-write, to save money?

Sharon Barton letter
February 3, 2005

I look forward to hearing your responses to these questions. Should you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Representative Jay Ramras

JR:jwp

Sharon,

Great to have met you.
Thanks for your constructive
approach. We're excited
about working with you. JR

STATE OF ALASKA

DEPARTMENT OF REVENUE PERMANENT FUND DIVIDEND DIVISION

FRANK MURKOWSKI, GOVERNOR

State Office Building
PO Box 110460
Juneau, AK 99811-0460
Telephone : 907-465-2323
Fax : 907-465-2096

FEB 11 2005

February 9, 2005

The Honorable Jay Ramras
Alaska State Legislature
State Capitol, Room 104
Juneau, AK 99801-1182

Dear Representative Ramros:

Regarding your follow-up questions about PFD quarterly payments:

- On-going operational costs (and I think this is conservative) based on current costs and rates would be approximately \$55.0 (based on 1% participation or about 5000):
 - Print and mail \$15.0
 - Administrative costs 22.0
 - Computer processing 18.0
- The second through fourth payments would remain in the Permanent Fund Dividend Fund and would earn interest. Interest earned is deposited in the General Fund not the Dividend Fund.
- As you know interest rates are very difficult to project. The Treasury Division cautiously advises that we might expect about 2.5% interest on short term investments this year. Your analysis of days of accrued interest for the four payments is generally correct. The exact number of days may vary but the concept is correct.
- At 2.5% interest, 5,000 participants who remain in the program all year, and a dividend of \$850, interest (approximately \$66.4) would cover the annual operating costs as projected above. Whether this would be true each year with its actual criteria is not knowable. As projected, interest for FY 2006 would not cover both operating costs and the re-write of the payment system.
- No, costs would not go down with additional participation. The cost would rise approximately \$15.6 for every 5,000 additional participants because print, mail and direct deposit costs are based on a per unit charge regardless of volume. The impact on our public information offices is difficult to project and no additional

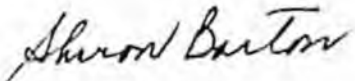
Representative Jay Ramras
February 9, 2005
Page 2

cost is included in the \$15.6. Other costs remain about the same regardless of volume.

- The re-write of the payment system is actually not "in process". In our long range plans, we have tentatively planned to re-write the system in FY 07 or 08. This plan assumed re-writing the current system with a single payment, a relatively simple project. Quarterly payments would add considerable complexity to the project and would require additional resources to accomplish, including expert advice on design. So, in answer to your question, the incremental cost of adding quarterly payments at that time would be still be high...perhaps as much as \$150.0.

I regret that this idea is not cheaper or easier to implement...the devil is always in the details. I realize that some of this information begs further explanation, and I am happy to provide all the details you may want.

Sincerely,



Sharon Barton
Director

cc: Jerry Burnett
DOR Legislative Liaison

HB

187

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 187
(H) Publish Date: 2/28/05

Revision Date/Time (Note if correction):
Title Alaska Capital Income Account

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

Sponsor Governor
Requester _____

Component No. 109

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would create a new account, the Alaska Capital Income Account, in the Permanent Fund's earnings reserve account. In addition, the bill would change existing statutes to place the realized earnings from the settlement of State v. Amerada Hess into this new account where they would be available for Legislative appropriation.

The additional staff time required to administer this account will fall under the APFC Finance Department's normal scope of duties. Therefore we do not expect additional costs as a result of this bill.

Prepared by: Michael Burns, Executive Director/CEO
Division Alaska Permanent Fund Corporation

Phone 465-2047
Date/Time 2/24/2005

Approved by: _____
Agency _____

Date 2/24/2005

N/D
adopted 4/25/05

24-GH1070N
Cook
4/23/05

CS FOR HOUSE BILL NO. 187(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to money deposited into the Alaska permanent fund as a result of the
2 settlement of State v. Amerada Hess; relating to the Alaska capital income fund and to
3 deposits of income from State v. Amerada Hess settlement money into the Alaska capital
4 income fund; and providing for an effective date."

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

6 * Section 1. AS 37.05 is amended by adding a new section to read:

7 Sec. 37.05.565. Alaska capital income fund. (a) There is established in the
8 general fund the Alaska capital income fund consisting of money deposited to the fund
9 under AS 37.13.145(d) and of appropriations to the fund. The fund shall be invested
10 by the Department of Revenue to yield competitive market rates as provided in
11 AS 37.10.071. Income earned on money in the fund may be appropriated to the fund.

12 (b) Money may be appropriated from the Alaska capital income fund for any
13 public purpose, including to cover annual debt service and reserves for debt service on
14 bonds authorized by state law. Nothing in this subsection creates a dedicated fund.

1 * Sec. 2. AS 37.13.145(c) is amended to read:

2 (c) After the transfer under (b) of this section, the corporation shall transfer
3 from the earnings reserve account to the principal of the fund an amount sufficient to
4 offset the effect of inflation on principal of the fund during that fiscal year. However,
5 none of the amount transferred shall be applied to increase the value of that
6 portion of the principal attributed to the settlement of State v. Amerada Hess, et
7 al., 1JU-77-847 Civ. (Superior Court, First Judicial District) on July 1, 2004. The
8 corporation shall calculate the amount to transfer to the principal under this subsection
9 by

10 (1) computing the average of the monthly United States Consumer
11 Price Index for all urban consumers for each of the two previous calendar years;

12 (2) computing the percentage change between the first and second
13 calendar year average; and

14 (3) applying that rate to the value of the principal of the fund on the
15 last day of the fiscal year just ended, including that portion of the principal
16 attributed to the settlement of State v. Amerada Hess, et al., 1JU-77-847 Civ.
17 (Superior Court, First Judicial District).

18 * Sec. 3. AS 37.13.145(d) is amended to read:

19 (d) Notwithstanding (b) of this section, income earned on money awarded in
20 or received as a result of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior
21 Court, First Judicial District), including settlement, summary judgment, or adjustment
22 to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned
23 on the money, or on the earnings of the money shall be treated in the same manner as
24 other income of the Alaska permanent fund, except that it is not available for
25 distribution to the dividend fund or for transfers to the principal under (c) of this
26 section, and shall be annually deposited into the Alaska capital income fund
27 (AS 37.05.565) [PRINCIPAL OF THE ALASKA PERMANENT FUND].

28 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 RETROACTIVITY. Sections 1 - 3 of this Act are retroactive to July 1, 2004.

31 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

adopted 4-21-05

24-GH1070\F
Cook
4/12/05

CS FOR HOUSE BILL NO. 187(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to money deposited into the Alaska permanent fund as a result of the
2 settlement of State v. Amerada Hess for purposes of determining the amount to offset
3 the effects of inflation on the fund; relating to the Alaska capital income fund and to
4 deposits of income from State v. Amerada Hess settlement money into the Alaska capital
5 income fund; and providing for an effective date."

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

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9 general fund the Alaska capital income fund consisting of money deposited to the fund
10 under AS 37.13.145(d) and of appropriations to the fund. The fund shall be invested
11 by the Department of Revenue to yield competitive market rates as provided in
12 AS 37.10.071. Income earned on money in the fund may be appropriated to the fund.

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1 public purpose, including to cover annual debt service and reserves for debt service on
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5 from the earnings reserve account to the principal of the fund an amount sufficient to
6 offset the effect of inflation on principal of the fund during that fiscal year. The
7 corporation shall calculate the amount to transfer to the principal under this subsection
8 by

9 (1) computing the average of the monthly United States Consumer
10 Price Index for all urban consumers for each of the two previous calendar years;

11 (2) computing the percentage change between the first and second
12 calendar year average; and

13 (3) applying that rate to the value of the principal of the fund on the
14 last day of the fiscal year just ended as adjusted by subtracting from that value
15 \$424,399,000, which represents the total value of the principal attributed to the
16 settlement of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court,
17 First Judicial District) on June 30, 2004.

18 * Sec. 3. AS 37.13.145(d) is amended to read:

19 (d) Notwithstanding (b) of this section, income earned on money awarded in
20 or received as a result of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior
21 Court, First Judicial District), including settlement, summary judgment, or adjustment
22 to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned
23 on the money, or on the earnings of the money shall be treated in the same manner as
24 other income of the Alaska permanent fund, except that it is not available for
25 distribution to the dividend fund, and shall be annually deposited into the Alaska
26 capital income fund (AS 37.05.565) [PRINCIPAL OF THE ALASKA
27 PERMANENT FUND].

28 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 RETROACTIVITY. Sections 1 and 3 of this Act are retroactive to July 1, 2004.

31 * Sec. 5. Sections 1, 3, and 4 of this Act take effect immediately under AS 01.10.070(c).

1

* Sec. 6. Section 2 of this Act takes effect June 30, 2005.

24-GH1070\Y
Cook
4/22/05

CS FOR HOUSE BILL NO. 187(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to money deposited into the Alaska permanent fund as a result of the
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3 from the earnings reserve account to the principal of the fund an amount sufficient to
4 offset the effect of inflation on the entire principal of the fund during that fiscal year.
5 However, none of the amount transferred shall be applied to increase the value of
6 that portion of the principal attributed to the settlement of State v. Amerada
7 Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District) on June 30,
8 2004. The corporation shall calculate the amount to transfer to the principal under this
9 subsection by

10 (1) computing the average of the monthly United States Consumer
11 Price Index for all urban consumers for each of the two previous calendar years;

12 (2) computing the percentage change between the first and second
13 calendar year average; and

14 (3) applying that rate to the value of the principal of the fund on the
15 last day of the fiscal year just ended.

16 * Sec. 3. AS 37.13.145(d) is amended to read:

17 (d) Notwithstanding (b) of this section, income earned on money awarded in
18 or received as a result of State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior
19 Court, First Judicial District), including settlement, summary judgment, or adjustment
20 to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned
21 on the money, or on the earnings of the money shall be treated in the same manner as
22 other income of the Alaska permanent fund, except that it is not available for
23 distribution to the dividend fund or for transfers to the principal under (c) of this
24 section, and shall be annually deposited into the Alaska capital income fund
25 (AS 37.05.565) [PRINCIPAL OF THE ALASKA PERMANENT FUND].

26 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 RETROACTIVITY. Sections 1 - 3 of this Act are retroactive to July 1, 2004.

29 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

*Conceptual drafted to incorporate the
to A version*

AMENDMENT 1

OFFERED IN THE HOUSE
TO: HB 187

BY REPRESENTATIVE HAWKER

*with drawn -
4-21-05*

- 1 Page 1, line 1, following "establishing the"
- 2 Delete "Alaska capital income"
- 3 Insert "Amerada Hess earnings reserve"
- 4
- 5 Page 2, line 14, following "deposited into the"
- 6 Delete "Alaska capital income"
- 7 Insert "Amerada Hess earnings reserve"
- 8
- 9 Page 2, line 18, following "(e) The"
- 10 Delete "Alaska capital income"
- 11 Insert "Amerada Hess earnings reserve"
- 12
- 13 Page 2, line 19, following "Money in the"
- 14 Delete "Alaska capital income"
- 15 Insert "Amerada Hess earnings reserve"
- 16
- 17 Page 2, line following line 23
- 18 Insert
- 19 "(f) Appropriations from the Amerada Hess earnings reserve account for a fiscal year
- 20 may not exceed:
- 21 a. five percent of the average of the combined market value of the Amerada Hess
- 22 earnings reserve account and the value of the principal of the fund attributed to the settlement
- 23 of State v. Amerada Hess, et al., 1 JU-77-847 Civ. (Superior Court, First Judicial District) on
- 24 June 30 for the first five of the six fiscal years immediately preceding that fiscal year.
- 25 b. the balance in the Amerada Hess earnings reserve account."

Alaska Capital Income Account

	Realized Earnings Rate	Beginning Principal Balance	Amerada Hess Earnings	Transfer to SOA CC	Inflation Rate	Inflation Proofing	Ending Principal Balance	
Am Hess Principal		424,399,000						
Am Hess Transfer Rate								
Blerded Rate								
2005	7.04%	424,399,000	29,877,690	18,843,316	2.60%	11,034,374	435,433,374	
2006	7.04%	435,433,374	30,654,510	19,333,242	2.60%	11,321,268	446,754,642	
2007	7.04%	446,754,642	31,451,527	19,835,906	2.60%	11,615,621	458,370,262	
2008	7.04%	458,370,262	32,269,266	20,351,640	2.60%	11,917,627	470,287,889	
2009	7.04%	470,287,889	33,103,267	20,880,782	2.60%	12,227,485	482,515,374	
2010	7.04%	482,515,374	33,969,082	21,423,683	2.60%	12,545,400	495,060,774	
2011	7.04%	495,060,774	34,852,278	21,980,698	2.60%	12,871,580	507,932,354	
2012	7.04%	507,932,354	35,758,438	22,552,197	2.60%	13,206,241	521,138,595	
2013	7.04%	521,138,595	36,688,157	23,138,554	2.60%	13,549,603	534,688,199	
2014	7.04%	534,688,199	37,642,049	23,740,156	2.60%	13,901,893	548,590,092	
2015	7.04%	548,590,092	38,620,742	24,357,400	2.60%	14,263,342	562,853,434	
2016	7.04%	562,853,434	39,624,882	24,990,692	2.60%	14,634,189	577,487,624	
2017	7.04%	577,487,624	40,655,129	25,640,450	2.60%	15,014,678	592,502,302	
2018	7.04%	592,502,302	41,712,162	26,307,102	2.60%	15,405,060	607,907,362	
2019	7.04%	607,907,362	42,796,678	26,991,087	2.60%	15,805,591	623,712,953	
2020	7.04%	623,712,953	43,909,392	27,692,855	2.60%	16,216,537	639,929,490	
2021	7.04%	639,929,490	45,051,036	28,412,869	2.60%	16,638,167	656,567,657	Average annualized r
2022	7.04%	656,567,657	46,222,363	29,151,604	2.60%	17,070,759	673,638,416	7.04%
2023	7.04%	673,638,416	47,424,144	29,909,546	2.60%	17,514,599	691,153,015	* Total return is foreca
2024	7.04%	691,153,015	48,657,172	30,687,194	2.60%	17,969,978	709,122,993	result in AM Hess prin
2025	7.04%	709,122,993	49,922,259	31,485,061	2.60%	18,437,198	727,560,191	annually that is not ref
2026	7.04%	727,560,191	51,220,237	32,303,672	2.60%	18,916,565	746,476,756	
2027	7.04%	746,476,756	52,551,964	33,143,568	2.60%	19,408,396	765,885,151	
2028	7.04%	765,885,151	53,918,315	34,005,301	2.60%	19,913,014	785,798,165	
2029	7.04%	785,798,165	55,320,191	34,889,439	2.60%	20,430,752	806,228,918	
2030	7.04%	806,228,918	56,758,516	35,796,564	2.60%	20,961,952	827,190,870	
2031	7.04%	827,190,870	58,234,237	36,727,275	2.60%	21,506,963	848,697,832	
2032	7.04%	848,697,832	59,748,327	37,682,184	2.60%	22,066,144	870,763,976	
2033	7.04%	870,763,976	61,301,784	38,661,921	2.60%	22,639,863	893,403,839	
2034	7.04%	893,403,839	62,895,630	39,667,130	2.60%	23,228,500	916,632,339	

State of Alaska Capital Corporation

Revenue Fund

	Borrowing Rate	Earnings Rate	Beginning Balance	Lease Appropriation Received	Outstanding Bonds	Nominal Interest Payments	Flexible Principal Payments	Earnings on Fund Balance	Transfers In	DSRF or CF Transfers out / Operations Expense	Ending Balance
2005	6.00%	2.00%	-	18,843,316	-	-	-	-	-	-	18,843,316
2006	6.00%	2.00%	18,843,316	19,333,242	210,202,377	6,306,071	-	723,576	-	21,120,238	11,473,825
2007	6.00%	2.00%	11,473,825	19,835,906	210,202,377	12,612,143	-	1,153,054	-	100,000	19,750,642
2008	6.00%	2.00%	19,750,642	20,351,640	210,202,377	12,612,143	14,877,997	1,175,189	-	100,000	13,687,332
2009	6.00%	2.00%	13,687,332	20,880,782	195,324,380	11,719,463	11,129,189	1,104,927	-	100,000	12,724,390
2010	6.00%	2.00%	12,724,390	21,423,683	184,195,192	11,051,712	12,044,649	1,088,455	-	100,000	12,040,167
2011	6.00%	2.00%	12,040,167	21,980,698	172,150,543	10,329,033	13,362,800	1,074,244	-	100,000	11,303,276
2012	6.00%	2.00%	11,303,276	22,552,197	158,787,743	9,527,265	14,800,944	1,058,702	-	100,000	10,485,967
2013	6.00%	2.00%	10,485,967	23,138,554	143,386,799	8,639,208	16,346,104	1,041,476	-	100,000	9,580,684
2014	6.00%	2.00%	9,580,684	23,740,156	127,640,695	7,658,442	18,003,957	1,022,425	-	100,000	8,580,867
2015	6.00%	2.00%	8,580,867	24,357,400	109,636,738	6,578,204	19,781,858	1,001,414	-	100,000	7,479,619
2016	6.00%	2.00%	7,479,619	24,990,692	89,854,880	5,391,293	21,687,726	978,302	-	100,000	6,269,594
2017	6.00%	2.00%	6,269,594	25,640,450	68,167,154	4,090,029	23,729,986	952,935	-	100,000	4,942,964
2018	6.00%	2.00%	4,942,964	26,307,102	44,437,168	2,666,230	25,917,606	1,137,479	21,020,238	100,000	24,723,946
2019	6.00%	2.00%	24,723,946	26,991,087	18,519,561	1,111,174	18,519,561	997,462	-	100,000	32,981,760
2020	6.00%	2.00%	32,981,760	27,692,855	-	-	-	945,014	-	100,000	61,519,629
2021	6.00%	2.00%	61,519,629	28,412,869	-	-	-	1,528,809	-	100,000	91,361,308
2022	6.00%	2.00%	91,361,308	29,151,604	-	-	-	2,139,134	-	100,000	122,552,045
2023	6.00%	2.00%	122,552,045	29,909,546	-	-	-	2,776,905	-	100,000	155,138,496
2024	6.00%	2.00%	155,138,496	30,687,194	-	-	-	3,443,073	-	100,000	189,168,763
2025	6.00%	2.00%	189,168,763	31,485,061	-	-	-	4,138,612	-	100,000	224,692,436
2026	6.00%	2.00%	224,692,436	32,303,672	-	-	-	4,864,531	-	100,000	261,760,639
2027	6.00%	2.00%	261,760,639	33,143,568	-	-	-	5,521,867	-	100,000	300,426,074
2028	6.00%	2.00%	300,426,074	34,005,301	-	-	-	6,411,691	-	100,000	340,743,066
2029	6.00%	2.00%	340,743,066	34,889,439	-	-	-	7,235,107	-	100,000	382,767,611
2030	6.00%	2.00%	382,767,611	35,796,564	-	-	-	8,093,250	-	100,000	426,557,426
2031	6.00%	2.00%	426,557,426	36,727,275	-	-	-	8,987,294	-	100,000	472,171,994
2032	6.00%	2.00%	472,171,994	37,682,184	-	-	-	9,918,446	-	100,000	519,672,624
2033	6.00%	2.00%	519,672,624	38,661,921	-	-	-	10,887,951	-	100,000	569,122,496
2034	6.00%	2.00%	569,122,496	39,667,130	-	-	-	11,897,092	-	100,000	620,586,719
2035	6.00%	2.00%	620,586,719	40,698,476	-	-	-	12,947,191	-	100,000	674,132,386
2036	6.00%	2.00%	674,132,386	41,756,636	-	-	-	14,039,610	-	100,000	729,828,632
2037	6.00%	2.00%	729,828,632	42,842,309	-	-	-	15,175,753	-	100,000	787,746,694
2038	6.00%	2.00%	787,746,694	43,956,209	-	-	-	16,357,067	-	100,000	847,959,969

State of Alaska Capital Corporation

Reserve Fund

	Earnings Rate	Beginning Balance	Additional Contributions	Earnings on Fund Balance	Earnings Transfer Out	Termination of Reserve	Ending Balance
2005	4.00%	-				-	-
2006	4.00%	-	21,020,238	420,405	420,405	-	21,020,238
2007	4.00%	21,020,238		840,810	840,810	-	21,020,238
2008	4.00%	21,020,238		840,810	840,810	-	21,020,238
2009	4.00%	21,020,238		840,810	840,810	-	21,020,238
2010	4.00%	21,020,238		840,810	840,810	-	21,020,238
2011	4.00%	21,020,238		840,810	840,810	-	21,020,238
2012	4.00%	21,020,238		840,810	840,810	-	21,020,238
2013	4.00%	21,020,238		840,810	840,810	-	21,020,238
2014	4.00%	21,020,238		840,810	840,810	-	21,020,238
2015	4.00%	21,020,238		840,810	840,810	-	21,020,238
2016	4.00%	21,020,238		840,810	840,810	-	21,020,238
2017	4.00%	21,020,238		840,810	840,810	-	21,020,238
2018	4.00%	21,020,238		840,810	840,810	-	21,020,238
2019	4.00%	21,020,238		420,405	420,405	21,020,238	-
2020	4.00%	-		-	-	-	-
2021	4.00%	-		-	-	-	-
2022	4.00%	-		-	-	-	-
2023	4.00%	-		-	-	-	-
2024	4.00%	-		-	-	-	-
2025	4.00%	-		-	-	-	-
2026	4.00%	-		-	-	-	-
2027	4.00%	-		-	-	-	-
2028	4.00%	-		-	-	-	-
2029	4.00%	-		-	-	-	-
2030	4.00%	-		-	-	-	-
2031	4.00%	-		-	-	-	-
2032	4.00%	-		-	-	-	-
2033	4.00%	-		-	-	-	-
2034	4.00%	-		-	-	-	-
2035	4.00%	-		-	-	-	-
2036	4.00%	-		-	-	-	-
2037	4.00%	-		-	-	-	-
2038	4.00%	-		-	-	-	-

State of Alaska Capital Corporation

Construction Fund

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	Earnings Rate	Beginning Balance	Bond Proceeds /Transfers	Earnings on Fund Balance	Project Cash Flow	Ending Balance			
2005	3.00%	-		-		-			
2006	3.00%	-	210,202,377	6,095,250	20,150,000	196,147,627			
2007	3.00%	196,147,627		1,639,796	88,467,690	109,319,733			
2008	3.00%	109,319,733		375,000	84,694,733	25,000,000			
2009	3.00%	25,000,000		(0)	25,000,000	(0)			
2010	3.00%	(0)		(0)		(0)			
2011	3.00%	(0)		(0)		(0)			
2012	3.00%	(0)		(0)		(0)			
2013	3.00%	(0)		(0)		(0)			
2014	3.00%	(0)		(0)		(0)			
2015	3.00%	(0)		(0)		(0)			
2016	3.00%	(0)		(0)		(0)			
2017	3.00%	(0)		(0)		(0)			
2018	3.00%	(0)		(0)		(0)			
2019	3.00%	(0)		(0)		(0)			
2020	3.00%	(0)		(0)		(0)			
2021	3.00%	(0)		(0)		(0)			
2022	3.00%	(0)		(0)		(0)			
2023	3.00%	(0)		(0)		(0)			
2024	3.00%	(0)		(0)		(0)			
2025	3.00%	(0)		(0)		(0)			
2026	3.00%	(0)		(0)		(0)			
2027	3.00%	(0)		(0)		(0)			
2028	3.00%	(0)		(0)		(0)			
2029	3.00%	(0)		(0)		(0)			
2030	3.00%	(0)		(0)		(0)			
2031	3.00%	(0)		(0)		(0)			
2032	3.00%	(0)		(0)		(0)			
2033	3.00%	(0)		(0)		(0)			
2034	3.00%	(0)		(0)		(0)			
				total projects	218,312,423.00				

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EXXON CORPORATION, Plaintiff-Appellant-Cross-Appellee, v. HAROLD C. HEINZE; CHARLES E. COLE, Attorney General for the State of Alaska; RONALD SWANSON, Director of the Division of Lands; JAMES E. EASON, Director of the Division of Oil and Gas, Defendants-Appellees-Cross-Appellants.

Nos. 92-35266, 92-35323

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

32 F.3d 1399; 1994 U.S. App. LEXIS 21908; 94 Cal. Daily Op. Service 6273; 94 Daily Journal DAR 11467

November 2, 1993, Argued, Submitted, Seattle, Washington
August 17, 1994, Filed

PRIOR HISTORY: [*1] Appeal from the United States District Court for the District of Alaska. D.C. No. CV-91-543-JKS. James K. Singleton, District Judge, Presiding.

DISPOSITION: VACATED and REMANDED

LexisNexis(R) Headnotes

COUNSEL: Thomas Gibbs Gee and David D. Sterling, Baker & Botts, Houston, Texas; and Joseph R. D. Loescher, Hughes, Thorsness, Gantz, Powell & Brundin, Anchorage, Alaska, for the plaintiff-appellant-cross-appellee.

Bruce M. Botelho, Deputy Attorney General, Juneau, Alaska; and Deborah L. Williams, Hellen, Partnow & Condon, Anchorage, Alaska for the defendants-appellees-cross-appellants.

JUDGES: Before: Eugene A. Wright, Alfred T. Goodwin, and Procter Hug, Jr., Circuit Judges. Opinion by Judge Goodwin.

OPINIONBY: ALFRED T. GOODWIN

OPINION: [*1400] OPINION

GOODWIN, Circuit Judge:

Exxon Corporation ("Exxon") n1 appeals an order dismissing its 42 U.S.C. § 1983 lawsuit and denying its prayer to enjoin certain Alaska state court litigation over state oil and gas royalties. Exxon contends that the state court litigation violates its due process right to an unbiased forum. Because a partial settlement has substantially changed the posture of the case, and because the fac-

tual record is now insufficient to review Exxon's claims on their [*2] merits, we dismiss for lack of ripeness, vacating the district court's order.

n1 Chevron U.S.A., Inc. ("Chevron") was originally a coparty to Exxon's appeal; however, Chevron and Alaska settled, agreeing to dismiss Chevron's appeal, No. 92-35389, and to dismiss Chevron as a party to the State's cross-appeal, No. 92-35323. For convenience, we refer to Exxon as the sole appellant and cross-appellee throughout.

I.

In 1977, the State of Alaska filed a state court action against Exxon and eighteen other companies producing gas and oil on Alaska's North Slope ("the producers"). See *Alaska v. Amerada Hess Corp. et al*, Civil No. 11U-77-847 (hereinafter "the *ANS Royalty Litigation*"). The State sought a declaration of its rights under certain mineral leases which require the producers to pay [*1401] royalties on the gas and oil they extract from state lands.

In 1983, the State amended its complaint to add a claim for underpayment of past royalties, alleging that the producers had systematically underestimated the value of certain [*3] gas and oil. The producers counterclaimed for overpayment of royalties. The parties agreed to sever the gas royalty and other gas claims from the oil royalty claims and to litigate the oil royalty claims first.

In 1987, after extensive discovery on the oil royalty claims, several producers, including Exxon, filed suit in federal court, contending that the pending *ANS Royalty Litigation* violated their due process rights and requesting injunctive and declaratory relief under 42 U.S.C. § 1983. *Standard Alaska Production Co. v. Schaible*, No.

87-621 (D. Alaska, Nov. 2, 1987). The complaint alleged that the outcome of the *ANS Royalty Litigation* would substantially affect the Alaska Permanent Fund, and, consequently, the annual Permanent Fund dividends Alaska residents receive each year. n2 Because Alaska state judges and potential jurors are eligible to receive Permanent Fund dividends, the producers argued, they had a financial interest in the case, rendering them unconstitutionally biased.

n2 The Alaska State Constitution requires state administrators to place 25% of all state oil and gas royalties in the Alaska Permanent Fund which is used only for income-producing investments. Alaska Const. Art. IX § 15. Under the Permanent Fund Dividend Program, enacted in 1982, the State pays Alaska residents approximately 50% of the income received each year from these investments. *Alaska Stat. §§ 43.23.045(b)*, 37.13.140. Each person who has resided in Alaska for a year or more - and thus all Alaska state judges, potential jurors, and their family members - are eligible to receive these payments or Permanent Fund dividends. In fact, since Alaska judges must have resided in Alaska for five years and Alaska jurors are selected from a list of Permanent Fund recipients, see *Alaska Stat. § 09.20.050(b)*, jurors and judges are, by definition, eligible to receive Permanent Fund dividends. Between 1988 and 1992, the annual Permanent Fund dividend paid to each resident ranged from \$826.90 to \$952.63, or approximately \$3,600 for a family of four.

[**4]

Then-District Judge Kleinfeld, an Alaska state resident, recused himself from the federal case, agreeing that one might question the impartiality of a judge who receives Alaska Permanent Fund dividends, but expressly declining to reach the due process issue or rule on the fairness of the state court forum. R.T. March 8, 1988. The Chief Judge of the Ninth Circuit then appointed Judge Belloni, a non-Alaskan, to hear the case.

Judge Belloni ultimately dismissed the producers' § 1983 complaint without prejudice, rejecting the State's Eleventh Amendment defense, but holding that the controversy was not ripe for federal review because the producers had not raised the bias issue in a state court motion to disqualify. Judge Belloni challenged the State to provide a fair forum, and invited the producers "to re-open this federal case" if "the State Officials fail to provide an unbiased forum within a reasonable time." *Standard Alaska Prod. Co. v. Schraible*, No. 87-521, Unpublished Opinion at 7 (D. Alaska June 20, 1988). We affirmed,

agreeing that "until a proper motion for disqualification is made in the state court, the disputed factual questions concerning the alleged bias of all Alaska [**5] judges and jurors cannot be reviewed by any federal court." *Standard Alaska Prod. Co. v. Schraible*, 874 F.2d 624, 630 (9th Cir. 1989), cert. denied, 495 U.S. 904 (1990).

After we decided *Schraible*, the Alaska legislature amended the Permanent Fund dividend legislation to provide that "income earned on money awarded after trial" in the *ANS Royalty Litigation* would "not [be] available for distribution to the dividend fund." *Alaska Stat. § 43.23.045(b)* (1989) (repealed 1991). In addition, the Alaska Supreme Court amended Alaska Rule of Civil Procedure 47(c) to provide that an Alaska juror's eligibility to receive Permanent Fund dividends did not constitute grounds for challenging the juror for cause. n3

n3 The amended rule allows challenges for cause when the juror "has a financial interest, other than that of a taxpayer or a permanent fund dividend recipient in the outcome of the case." Alaska R. Civ. P. 47(c)(12) (1989).

After the Supreme Court denied [**6] certiorari, *Schraible*, 495 U.S. 904 (1990), and the state court imposed [*1402] a deadline for filing a motion to disqualify, Exxon moved to disqualify Alaska Superior Court Judge Carpeneti, who was presiding over the state court litigation. n4 Exxon argued that the 1989 amendment had not cured the bias problem because it did not address: (1) payments received pursuant to a declaratory judgment; (2) payments received as a result of a settlement or summary judgment; or (3) payments received as a result of royalty-in-kind adjustment clauses. Judge Carpeneti issued a "Notice of Intention to Grant Motion for Disqualification," concluding that judges who receive Permanent Fund dividends have a "direct financial interest or another interest which strongly resembles a direct interest in the outcome of this case," and ruling that the 1989 amendments had not eliminated that interest. *In re ANS Royalty*, No. IJU-77-847, Order No. 91-9 at 9 (Sup. Ct. Alaska March 14, 1991). Judge Carpeneti also found that the "Rule of Necessity" did not apply. *Id.* He gave the state seventy days to remedy the bias problem.

n4 Exxon contends that this motion was based exclusively on state law and argues that it expressly reserved its "right" to have federal courts decide federal constitutional issues. Appellants' Br. at 14 n.6 (citing *England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 411, 11 L. Ed. 2d 440, 84 S. Ct. 461 (1964)).

[**7]

In response, in May 1991, the Alaska legislature again amended *Alaska Stat. § 43.23.045*, replacing the 1989 amendment with an amendment requiring any award received as a result of the *ANS Royalty Litigation* (including royalty-in-kind adjustments from third parties and interest earned on such funds) to be deposited into the Permanent Fund principal and not made available for distribution as dividends. *Alaska Stat. § 43.23.045(e)* (1991) (current version at *Alaska Stat. § 37.13.145(d)* (1992)). n5 The legislature also enacted a section providing that the amendment would be automatically repealed if the Alaska Supreme Court held that eligibility to receive Permanent Fund dividends under the unamended statute would not disqualify a judge or juror from hearing the *ANS Royalty Litigation*. *Alaska Stat. § 43.23.045(e)* (1991) (current version at *Alaska Stat. § 37.13.145(d)* (1992)).

n5 The amended statute provides that

... income earned on money awarded in or received as a result of [the *ANS Royalty Litigation*], including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund.

[**8]

Judge Carpeneti ruled that these amendments cured the bias problem and denied Exxon's motion to disqualify. Exxon filed a motion to reconsider, arguing that the newest amendments did not eliminate the bias problem because they did not address the producers' counterclaims and because the repeal provision "reinforced" each Alaskan's interest. Judge Carpeneti denied the motion to reconsider, ruling that the producers had waived any challenge based on the counterclaims and rejecting Exxon's reliance on the repeal provision on its merits. A second superior court judge affirmed, and the Alaska Supreme Court summarily denied Exxon's petition for review and motion for an expedited appeal. *BP Exploration v. Alaska*, No. S-4654, S-4662, S-4689 (Alaska filed Aug. 23, 1991).

Exxon and Chevron then filed the instant § 1983 action in federal court, again seeking to enjoin the *ANS Royalty Litigation*. Exxon moved to disqualify Judge Singleton, the Alaska District Judge assigned to the federal case. Judge Singleton denied Exxon's motion to disqualify, rul-

ing that a citizen's eligibility to receive Permanent Fund dividends is a "bare expectancy," not a financial interest, and noting that even [**9] if justification for recusal existed, the Rule of Necessity might require him to hear the case. *Exxon Corp. v. Heinze*, 792 F. Supp. 72, 76 (D. Alaska 1992) (citing *United States v. Will*, 449 U.S. 200, 212-16, 66 L. Ed. 2d 392, 101 S. Ct. 471 (1980)). Chief Judge Holland, reviewing Judge Singleton's ruling pursuant to 28 U.S.C. § 144, affirmed. *Exxon Corp. v. Heinze*, 792 F. Supp. 77, 79 (D. Alaska 1992).

Judge Singleton then denied the producers' motion for a preliminary injunction and [**1403] dismissed the complaint with prejudice, relying on the Rule of Necessity. R.T. March 12, 1992 at 17. Exxon and Chevron appealed. Thereafter, in April 1992, Chevron and Exxon settled the oil royalty claims and counterclaims. The severed gas claims and counterclaims remain.

II.

Both parties agree that the posture of this case has changed significantly since Judge Singleton dismissed it. Both parties, however, urge us to reexamine Judge Singleton's orders in light of the facts as they then existed. We decline to do so. Because of the settlement, the [**10] correctness of Judge Singleton's rulings, on the facts as they then existed, is moot. *Northern Alaska Envtl. Ctr. v. Hodel*, 803 F.2d 466, 469 (9th Cir. 1986). We will not issue an advisory opinion on the merits of Judge Singleton's various orders regarding the settled oil claims.

However, Exxon urges that its appeal is not entirely moot, as the severed gas claims and counterclaims remain. It asks us to decide if the same bias problems apply to the remaining claims and notes that Judge Singleton's dismissal with prejudice may preclude it from returning to federal court. Exxon also emphasizes that litigation before financially interested judges and jurors raises fundamental issues of due process, even when the judges' financial interest is relatively small. See *Connally v. Georgia*, 429 U.S. 245, 251, 50 L. Ed. 2d 444, 97 S. Ct. 546 (1977) (paying magistrates a \$5 fee for granting a search warrant application, but nothing for denying warrant applications, violates due process); *Turney v. Ohio*, 273 U.S. 510, 523, 532, 71 L. Ed. 749, 47 S. Ct. 437 (1927) [**11] (paying adjudicator \$12 per conviction, but nothing for acquittals, violates due process).

We agree that "the Due Process Clause entitles a person to an impartial and disinterested tribunal," *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980), and that "[a] fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136, 99 L. Ed. 942, 75 S. Ct. 623 (1955).

n6 Moreover, like the more stringent federal judges' disqualification statute, 28 U.S.C. § 455, the Constitution is concerned not only with actual bias but also with "the appearance of justice." *Id.* Thus, the question is not whether the Alaska judges and jurors are actually biased or even whether they "would do their very best to weigh the scales of justice equally between contending parties," *Id.*, but whether the alleged pecuniary interest is sufficiently "direct, personal, [and] substantial" that it "would offer a possible temptation to the average man." *Tumey*, 273 U.S. at 523, 532. [*12] n7 Regardless of his personal integrity, "no man can be the judge in his own case [or] try cases where he has an interest in the outcome." *In re Murchison*, 349 U.S. at 136.

n6 See also *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 822, 89 L. Ed. 2d 823, 106 S. Ct. 1580 (1986); *Withrow v. Larkin*, 421 U.S. 35, 47, 43 L. Ed. 2d 712, 95 S. Ct. 1456 (1975) (The "probability of actual bias on the part of a judge or decision-maker is too high to be constitutionally tolerable" when "the adjudicator has a pecuniary interest in the outcome."); *Gibson v. Berryhill*, 411 U.S. 564, 36 L. Ed. 2d 488, 93 S. Ct. 1689 (1973); *Ward v. Village of Monroeville*, 409 U.S. 57, 34 L. Ed. 2d 267, 93 S. Ct. 80 (1972).

But see *In re New Mexico Natural Gas Antitrust Litigation*, 620 F.2d 794 (10th Cir. 1980) (reversing judge's decision to recuse himself from which might reduce state residents' utility); *Virginia Elec. & Power Co.*, 539 F.2d 1001, 1002 (4th Cir. 1976) (same).

[**13]

However, as Alaska emphasizes, this case also implicates other serious issues, such as a state's sovereign interest in its courts, the need to prevent the federal system from being used as a strategic forum for delay, and litigants' interest in the speedy resolution of cases. Federal courts have long hesitated to interfere with on-going state litigation, and have repeatedly recognized the dangers of doing so. See, e.g., *Younger v. Harris*, 401 U.S. 37, 43, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971). Given the disruptive effect of allowing parties to transform every challenge to a state tribunal into a federal due process claim, we will not lightly interfere with pending state litigation. *Schaible*, 874 F.2d at 629.

[*1404] Balancing these interests, and examining the case as it currently exists, we conclude that Exxon's due process claim is not ripe for federal review. See *Abbott Lab. v. Gardner*, 387 U.S. 136, 148-49, 18 L. Ed. 2d 681, 87 S. Ct. 1507 (1967). Whether a dispute is ripe de-

pends on "the fitness of the issues for judicial decision and [*14] the hardship to the parties of withholding court consideration." *Id.* at 149; *Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation v. Bd. of Oil & Gas*, 792 F.2d 782, 789 (9th Cir. 1986). A claim is "fit for decision if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." *Schaible*, 874 F.2d at 627.

Here, Exxon's bias claims require further factual development. The parties have filed no pleadings and conducted only limited discovery on the remaining gas claims and counterclaims. Without any information on these claims' value or their potential impact, if any, on Permanent Fund dividends, we cannot weigh intelligently the potential bias of Alaska judges and jurors or determine whether their alleged interest has "sufficient substance to disqualify them, given the context in which this case arose." *Gibson*, 411 U.S. at 579.

Moreover, Exxon concedes that the settlement and Alaska's curative legislation have eliminated much of the bias [*15] problem. It argues that bias remains (1) because the gas counterclaims might reduce the funds available for dividend distribution and (2) because the repeal provision implies that State litigation proceeds might ultimately be distributed as dividends and has a subjective impact on jurors.

However, on the counterclaims, Exxon has shown only that the curative legislation does not mention the counterclaims by name. It has not shown that state courts will interpret the law in such a way that the counterclaims will actually affect the Permanent Fund dividends. State courts might, for example, rule that, any recovery on the counterclaims will simply reduce the State's recovery on other claims, such as the settled oil claims. We cannot tell, based on the record, whether state courts will interpret state law so as to eliminate the counterclaims' potential impact on Permanent Fund dividends. Nor can we determine whether any of Exxon's counterclaims have merit: The State argues that, on some claims, Exxon has paid no royalties, and thus cannot counterclaim for overpayment of royalties. Such issues require further factual development.

Exxon's arguments about jurors' subjective perceptions of [*16] the Fund or lack of understanding of the curative legislation do not apply to ongoing discovery and will have no impact unless and until the case goes before a jury. Exxon concedes that Alaska judges will understand the curative legislation, and will not be confused about the litigation's capacity to increase their dividends. Moreover, as the State emphasizes, any "subjective" juror bias might be addressed by a properly conducted voir dire. *Los Angeles Memorial Coliseum Comm'n v. NFL*,

726 F.2d 1381, 1400 (9th Cir.), cert. denied, 469 U.S. 990 (1984).

Exxon has not shown that withholding review will cause it substantial hardship. *Abbott Lab.*, 387 U.S. at 148. Extensive discovery must occur before the case is ready for trial. Exxon does not allege that any remaining bias problems affect Alaska judges' fitness to rule on discovery issues and does not object to Alaska judges ruling on discovery issues. In fact, Exxon emphasizes that, if necessary, the case can be removed to another forum after discovery is complete.

Because the parties have not yet developed a factual [**17] record on the value of the remaining claims or their potential impact (if any) on Alaska Permanent Fund dividends, we cannot evaluate Exxon's bias claims on

their merits. Exxon does not object to state judges presiding over discovery, and many of its arguments pertain to *jurors*, not judges. This case may never go to a jury, and, if it does, the State may be able to remedy any problems of subjective juror bias with a properly conducted voir dire. Thus, the case is not ripe for review.

We express no opinion on the merits of the parties' arguments regarding abstention and [*1405] the Rule of Necessity. The district court order dismissing Exxon's complaint with prejudice is VACATED, and the case is REMANDED to the district court to dismiss without prejudice.

VACATED and REMANDED, neither party to recover costs on appeal.

Amerada Hess Chronology re: bias issue

1. September 2, 1977. State of Alaska files lawsuit against 19 oil producers related to underpayment of royalties. *State of Alaska v. Amerada Hess Corp., et al.*, No.1JU-77-847 Civ. (Super. Ct. Alaska).
2. November 2, 1987. Producers file suit in federal district court, *Standard Alaska Prod. Co. v. Schaible*, No. 87-621 (D. Alaska), claiming PFDs create impermissible bias for judges and jurors in *Am Hess* case.
3. 1988. Judge Kleinfeld issues unpublished decision recusing himself from the federal case because of receipt of PFDs. Case assigned to Judge Belloni in Oregon.
4. June 20, 1988. Judge Belloni issues unpublished decision finding bias issue unripe and challenges Alaska to provide a fair forum for case.
5. April 29, 1989. Ninth Circuit dismisses federal bias case as unripe. *Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624 (9th Cir. 1989), *cert. denied*, 495 U.S. 904 (1990).
6. May 13, 1989. First Am Hess segregation enacted. CSHB 276(Fin) am, ch. 38, SLA 1989 (amending AS 43.23.045(b) to segregate income from "money awarded after trial" from PFD fund).
7. October 12, 1989. Alaska Supreme Court amends civil and criminal rules to provide that receipt of PFD does not provide basis for challenging a juror for cause. Alaska S.Ct. Order 1013 (amending Civil Rule 47(c) and Criminal Rule 24(c)).
8. March 14, 1991. Judge Carpeneti issues "Notice of Intention to Grant Motion for Disqualification," and indicating that 1989 segregation legislation did not go far enough to remove bias issues. *State of Alaska v. Amerada Hess Corp., et al.*, No.1JU-77-847 Civ. , Order 91-9 (Super. Ct. Alaska).
9. June 6, 1991. Second Am Hess segregation enacted. HCS CSSB 213(JUD), ch. 18, SLA 1991 (adding new subsection to AS 43.23.045 to segregate income from "money awarded in or received as a result" of the Am Hess case from PFD fund).
10. August 23, 1991. Judge Carpeneti rules that the new legislation cured the bias problem and the Alaska Supreme Court denies petition for review. *BP Exploration v. State of Alaska*, No. S-4654, S-4662, S-4689 (Alaska 1991).
11. 1991. Oil producers re-file federal bias suit. *Exxon Corp. v. Heinze*, Civ. A 1-0543.
12. February 24, 1992. Judge Singleton issues order declining to recuse himself from case on account of receipt of PFD. *Exxon Corp. v. Heinze*, 792 F.Supp. 72 (D. Alaska 1992).
13. March 3, 1992. Judge Holland affirms Judge Singleton's decision and declines to remove reuse himself as well. *Exxon Corp. v. Heinze*, 792 F.Supp. 77 (D. Alaska 1992).
14. July 1, 1992. Current Am Hess segregation enacted. HCS CSSB 39 (FIN), sec. 19, ch. 134, SLA 1992 (same language as in second Am Hess segregation, but enacted at AS 37.13.145(d)).
15. April 1992. Oil phase of Am Hess litigation settles.
16. April 17, 1994. Ninth Circuit determines that appeal of refusal to recuse by Judges Singleton and Holland are not ripe. *Exxon Corp. v. Heinze*, 32 F.3d 1399 (9th Cir. 1994).
17. March 1995. Gas phase of Am Hess litigation settles.

Cheryl Frasca
Re: Repeal of *Amerada Hess* earning sequestration
requirement in AS 37.13.145(d)

January 28, 2005

MEMORANDUM

State of Alaska
Department of Law

To: Cheryl Frasca
Office of the Governor

Date: January 28, 2005

From: Wilson L. Condon
Assistant Attorney General
Oil, Gas & Mining-Anchorage

Tel. No.: 269-5255

File No.: N/A

Re: Repeal of *Amerada Hess*
earning sequestration
requirement in AS 37.13.145(d)

I. INTRODUCTION

In 1991 the legislature enacted the current version of AS 37.13.145(d) as part of provisions governing management of the Alaska Permanent Fund Corporation ("APFC"). The statute imposes a financial sequestration requirement on earnings from settlement proceeds received by the State in ANS Royalty Litigation, commonly known as the *Amerada Hess* ("*AmHess*") litigation. In relevant part, AS 37.13.145(d) requires that:

[I]ncome earned on money awarded in or received as a result of State v. *Amerada Hess*, et al., IJU-77-847 Civ. (Superior Court, First Judicial District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money . . . is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund.

The legislature adopted the statute in order to negate an argument advanced by producers during the *AmHess* litigation that no Alaska judge or juror could be impartial in the adjudication of the matter because they had a financial stake in the outcome. According to the producers, any judgment returned would ultimately be deposited into the Alaska Permanent Fund, affecting the size of the annual Permanent Fund Dividend ("PFD").

Cheryl Frasca
Re: Repeal of *Amerada Hess* earning sequestration
requirement in AS 37.13.145(d)

January 28, 2005

All issues in the *AmHess* litigation were concluded and the case dismissed in 1995. Since the statute was adopted, the APFC has always used a separate sub-account to isolate any *AmHess* proceeds and the income earned on those proceeds. This sub-account is part of the principal account of the permanent fund. The purpose of the sub-account is: (1) to ensure that *AmHess* earnings are not included in the amount from which the PFD is annually paid; and (2) to track the amount to be transferred annually from the Fund's realized earnings account to Fund principal, and thereafter be allocated to the *AmHess* sub-account. Presently, no additional *AmHess* litigation proceeds are due from the producers, but annual earnings allocations and adjustments continue to be handled in conformity with AS 37.13.145(d).

II. QUESTIONS PRESENTED

1. Can the legislature repeal AS 37.13.145 at this time?

III. SHORT ANSWER

1. Yes, the legislature has authority to repeal the provisions of AS 37.13.145. However, the bias challenge raised by the producers in *AmHess* is one that is capable of repetition in future litigation. Most likely, it would be raised again.¹ Therefore, repeal of AS 37.13.145 may undermine the State's position in future litigation that Alaska judges and jurors are not financially impacted by litigation proceeds. The producers will argue that an agreement by the State to segregate future litigation proceeds is illusory. They will contend that any segregation requirement will eventually be repealed, and the money thereafter commingled with PFD funds. Thus, under their argument, judges and jurors will retain an expectation of recovery from the proceeds in the matter before them, thereby requiring their disqualification.

IV. DISCUSSION

As long as there are no contractual promises enforceable under the federal Contract Clause,² a valid general act may effectively repeal or supersede the provisions of a prior

¹ This is so because the disqualification issue was never fully litigated on the merits through appeal in either the state or federal litigation arising out of *Hess*.

² U.S. Const. art. 1, § 10, cl. 2 ("[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts.").

Cheryl Frasca
Re: Repeal of *Amerada Hess* earning sequestration
requirement in AS 37.13.145(d)

January 28, 2005

act.³ Here, there is no contractual promise with the *AmHess* parties to maintain a sequestration requirement for any fixed period of time, or indefinitely. No judicial order mandates the treatment. The reasons prompting enactment of the provision became moot when all issues in the case were settled in 1995. Thus, as a legal matter, the legislature is presently free to repeal the sequestration requirements of AS 37.13.145(d).

In practical terms, repeal of AS 37.13.145(d) would mean that the annual realized income of the Fund would be increased by the amount earned from approximately \$400 million of assets. Under the current distribution formula, this means that the amount of the annual PFD would be increased as a result of inclusion of *AmHess* proceeds in "the amount available for distribution to the dividend fund."⁴ The *AmHess* judges and potential jurors will now belatedly realize larger PFDs from repeal of the provision.

Although no legal obstacle impedes repeal of AS 37.13.145(d), the legislature may care to balance the benefits of such repeal versus the potential negative consequences. In the benefit column, there will be fairly insubstantial savings of APFD accounting time and bookkeeping entries isolating the funds and the earnings on those funds. Also in the benefit column, there will be an increased annual PFD available for all Alaskans. In the negative column, the legislature may have furnished the producers an evidentiary basis to argue in future litigation that "we all know that proceeds of this lawsuit will eventually find their way into the PFD, and therefore, no Alaskan judge or juror can be impartial."

I cannot say that a future state or federal court would entertain such an argument based on a one-time incidence of repeal. It is even more tenuous to suggest, as the producers would, that Alaskan judges and jurors follow the requirements of PFD accounting so closely to know of the repeal of AS 37.13.145(d). However, it may unnecessarily complicate future litigation. Therefore, in the absence of a more compelling justification for repeal than I currently see, I would counsel leaving the statute on the books.

WLC:AMP:cb

³ *State v. Lewis*, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901.

⁴ AS 37.13.145(d).

Legislative Research Services

Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

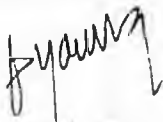
State Capitol, Juneau, AK 99801
Phone: 907-465-3991
Fax: 907-465-3908

March 8, 2005

Memorandum

TO: Representative Lesil McGuire

FROM: Patricia Young
Manager



RE: Use of Funds from Settlement of *Amerada Hess* (ANS Royalty Litigation)
LRS 05.211, Supplemental Material

As I understand it, the core question behind your request for background on *Amerada Hess*, has to do with the language in AS 37.13.145(d) which specifies as follows about proceeds from the case:

. . . income earned on money awarded in or received as a result of *State v. Amerada Hess, et al.*, 1JU-77-847 Civ. (Superior Court, First Judicial District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund.

This provision was a very narrow piece of legislation, designed specifically to address the defendants' claim that any judge and jurors in Alaska would face an insurmountable conflict of interest because they would all be permanent fund dividend recipients. The attached copy of *Exxon Corporation v. Heinze*, 32 F. 3d 1399 (1994 U.S. App.) details the history of the conflict of interest issue and its resolution in the *ANS Royalty Litigation* (aka *Amerada Hess*). As you will see, the court ruled that the final version (the current version) of the law cured the bias problem. When all avenues of appeal on the conflict of interest issue ran dry, the producers settled the oil royalty claims and counterclaims. The underlying issues never came before a judge and jury.

Tamara Cook, legislative counsel, notes that a settlement agreement that prescribes how the recipient party can use the money would be a very unusual document. Ms. Cook believes that in this situation, there can be no conflict because there is no judge or jury making a decision. She suggests that the Department of Law review their copies of the settlement documents for any language that limits the use of the funds.

I hope this is helpful. Please let me know if you have questions or if I can provide you with any other information.

Amerada Hess Settlement

	Principal			Realized Earnings (over inflation)			Inflation-proofing			Total Settlement Principal
	Beginning	Contributions	Ending	Beginning	Additions	Ending	Beginning	Additions	Ending	
FY 1992	Inception	82,099,000	82,099,000	0	0	0	0	2,005,000	2,005,000	84,104,000
FY 1993	82,099,000	16,411,000	98,510,000	0	4,641,000	4,641,000	2,005,000	4,541,000	6,546,000	109,697,000
FY 1994	98,510,000	13,213,000	111,723,000	4,641,000	5,620,000	10,261,000	6,546,000	3,615,000	10,161,000	132,145,000
FY 1995	111,723,000	61,717,000	173,440,000	10,261,000	6,145,000	16,406,000	10,161,000	5,060,000	15,221,000	205,067,000
FY 1996	173,440,000	2,860,000	176,300,000	16,406,000	18,441,000	34,847,000	15,221,000	5,864,000	21,085,000	232,232,000
FY 1997	176,300,000	7,847,000	184,147,000	34,847,000	21,377,000	56,224,000	21,085,000	7,058,000	28,143,000	268,514,000
FY 1998	184,147,000	24,622,000	208,769,000	56,224,000	31,254,000	87,478,000	28,143,000	6,853,000	34,996,000	331,243,000
FY 1999	208,769,000	0	208,769,000	87,478,000	36,086,000	123,564,000	34,996,000	5,102,000	40,098,000	377,431,000
FY 2000	208,769,000	6,880,000	215,655,000	123,564,000	30,331,000	153,895,000	40,098,000	8,307,000	48,405,000	417,955,000
FY 2001	215,655,000	13,597,000	229,242,000	153,895,000	7,687,000	161,582,000	48,405,000	14,543,000	62,948,000	453,772,000
FY 2002	229,242,000	(35,159,000)	194,083,000	161,582,000	(23,384,000)	138,198,000	62,948,000	(5,154,000)	62,112,000	394,393,000
FY 2002	194,083,000	0	194,083,000	138,198,000	0	138,198,000	62,112,000	4,318,000	62,112,000	394,393,000
FY 2003	194,083,000	0	194,083,000	138,198,000	0	138,198,000	62,112,000	6,160,000	68,272,000	400,553,000
FY 2004	194,083,000	0	194,083,000	138,198,000	14,713,000	152,911,000	68,272,000	9,133,000	77,405,000	424,399,000
	Total	194,083,000		Total	152,911,000		Total	77,405,000		

Note: FY2002 reductions are the result of an audit correction of an over deposit of settlement principal and related earnings.



April 4, 2005

Governor Frank Murkowski
State of Alaska
Box 110001
Juneau, AK 99811

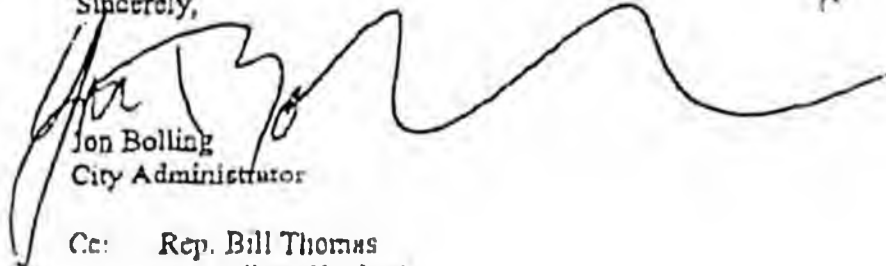
Dear Governor Murkowski.

At its March 31, 2005 meeting the Craig City Council reviewed the Amerada Hess proposal now before the legislature. The council supports the proposal.

The unique nature of the Amerada Hess fund provides an opportunity to meet pressing State and local capital needs around Alaska. Because Amerada Hess earnings cannot count toward annual Permanent Fund Dividend payments, appropriating the earnings toward many capital projects statewide provides tangible benefits to Alaska residents. Included in these benefits are the many economic development projects in the proposal, including lease lot development at statewide airports, the Transportation Access to Resources Initiative, and others.

The proposed use of earnings from the Amerada Hess fund will benefit all regions of Alaska. The City of Craig supports this effort and will encourage the Alaska Legislature to support the proposal as well.

Sincerely,



Jon Bolling
City Administrator

Cc: Rep. Bill Thomas
Sen. Albert Kookesh

PRINCE OF WALES COMMUNITY ADVISORY COUNCIL

Chairman: Jon Belling, Craig
Vice Chairman: Art King, Nauyasiti
Secretary:
Treasurer: Elaine Urie, Cookman Cove

PO Box 725
Craig, AK 99921
(907) 826-1275
FAX: (907) 826-3278

January 28, 2005

Governor Frank Murkowski
State of Alaska
Box 110001
Juneau, AK 99811

Dear Governor Murkowski:

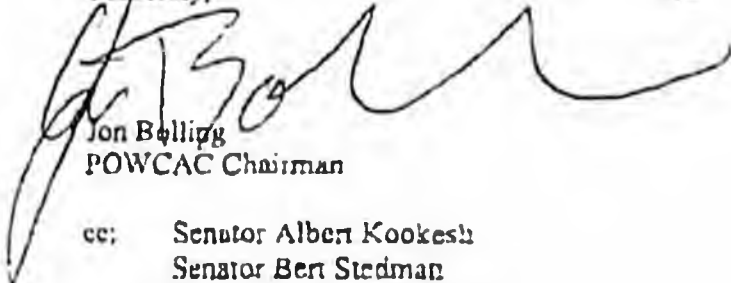
Prince of Wales Community Advisory Council (PCWCAC) is an association of communities on Prince of Wales Island (POW) dedicated to improving the quality of life on Prince of Wales. POWCAC achieves this goal by acting in an advisory capacity to State and Federal agencies concerning issues that affect Prince of Wales communities.

POWCAC met on March 30 Nauyasiti. Among the issues discussed was the Amerada Hess proposal. POWCAC supports the proposal.

The unique nature of the Amerada Hess fund provides an opportunity to meet pressing State and local capital needs around Alaska. Because Amerada Hess earnings cannot count toward annual Permanent Fund Dividend payments, appropriating the earnings toward many capital projects statewide provides tangible benefits to Alaska residents. Included in these benefits are the many economic development projects in the proposal, including lease lot development at statewide airports, the Transportation Access to Resources Initiative, and others.

The proposed use of earnings from the Amerada Hess fund will benefit all regions of Alaska. POWCAC supports this effort and will encourage the Alaska Legislature to support the proposal as well.

Sincerely,



Jon Belling
POWCAC Chairman

- cc: Senator Albert Kookesh
- Senator Bert Stedman
- Representative Jim Eklund
- Representative Bill Thomas

PARTICIPATING COMMUNITIES

----- Cookman Cove, Craig, Hollis, Hydaburg, Kashegan, Klawock, Nauyasiti, Thorne Bay, Whittier Pass



Affiliated with NAHB

April 8, 2005

The Honorable Frank Murkowski
Governor, State of Alaska
P.O. Box 110001
Juneau, AK 99811

BOARDS & COMMISSIONS
APR 18 2005

Governor Murkowski;

The Anchorage Home Builders Association is writing to you in support of the two bills you introduced, House Bills 187 and 188 that, if passed, would sell bonds for \$343 million in capital projects to be paid back with the earnings of the Amerada Hess fund in the Alaska Permanent Fund. The bills are currently in the House Finance Committee.

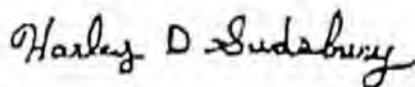
The Amerada Hess fund is a sub-account of the Permanent Fund that resulted from a settlement with oil companies about ten years ago. By law it can't be used to pay permanent fund dividends. Its only purpose to this point is to get larger and larger and it has grown to \$424 million. Your plan is to take the earnings of the Amerada Hess fund to sell \$343 million worth of bonds to fund capital projects from around the state. The debt service payments would be paid using the earnings of the Amerada Hess fund.

Included in the \$343 million are important road projects across the state that would do everything from providing access to areas of the state currently unavailable for economic development to relieving traffic congestion problems in Anchorage, Mat-Su and other areas of the state that have reached dangerous levels. Many of the growing deferred maintenance needs of the state would also be addressed.

Our construction industry needs these roads to continue to provide housing for the citizens of Alaska. It makes a lot of sense to use a fund whose only purpose is to get bigger and bigger for infrastructure that would benefit the entire state.

The Anchorage Home Builders Association is a non-profit trade association representing more than 330 members who are residential builders, remodelers and businesses related to the construction industry.

Sincerely,



Harley Sudsbury
President
Anchorage Home Builders Association

"Building Better Places to Live, Work and Play"

ANCHORAGE HOME BUILDERS ASSOCIATION, INC.

8301 Schoon Street, Suite 200 • Anchorage, AK 99518 • (907) 522-3605 • Fax (907) 522-3757



APR. 14. 2005 9:25AM GFCC

NO. 840 P. 1

GREATER * FAIRBANKS CHAMBER OF COMMERCE

800 Cushman St, Suite 114, Fairbanks, AK 99701
phone: (907) 452-1105, fax: (907) 456-6968

email: staff@fairbankschamber.org
website: www.fairbankschamber.org

April 13, 2005

Governor Frank Murkowski
State of Alaska
(907) 451-2858

Dear Governor Murkowski,

The Greater Fairbanks Chamber of Commerce (GFCC) recognizes and applauds the efforts of the Governor and the Legislature in pursuing a progressive, yet responsible and reasonable, 2006 capital budget.

To that end, we have reviewed the discussion advanced by SB155 and the Governors' proposed use of Amerada Hess funds (HB187/188 and SB 121/122).

First, the GFCC strongly supports Northern Region capital projects and improvements such as Dalton Highway upgrades and maintenance, Interior transportation projects such as those prioritized by the Fairbanks Metropolitan Area Transportation (FMAT) Policy Committee, and responsible capital improvements and maintenance for the public school system and the University of Alaska-Fairbanks. Many of these are included in the attached GFCC 2005 Legislative priorities.

Second, we have encouraged the Legislature, in both past and present years, to consider using Permanent Fund earnings reserve to help support state services and projects, while inflation proofing the principal of the fund (rather than the market value), and continuing to pay a reasonable annual dividend. The Legislature currently has the authority to, and should, use Permanent Fund earnings under the current system as necessary.

Third, we believe that the responsible and efficient use of Amerada Hess earnings to help meet the State's needs and to advance critically needed capital and infrastructure projects makes sense.

Benefactors

- ACS Directory
- Alaska Airlines
- Alaska Communications Systems
- Alaska Digital Printing
- Alaska Railroad
- Alaska USA Federal Credit Union
- Alaska Pipeline Service Company
- AJRT Alascom
- Boeing
- BP Exploration, Inc.
- CellularOne
- ConocoPhillips Alaska, Inc.
- Denali State Bank
- Optim Alaska
- Digital Express
- Doyak, Limited
- EspritMobil
- Fairbanks Building & Construction Trades Council "The Unions"
- Fairbanks Daily News-Miner
- Fairbanks Gold Mining Inc. Fort Knox Mine
- Fairbanks Memorial Hospital-Denali Center
- Fairbanks Natural Gas, LLC
- First National Bank Alaska
- First Hills Resources
- Flourine Alaska
- GC
- Golden Heart Lumber
- Golden Valley Electric Association
- KeyBank of Alaska
- MAC Federal Credit Union
- McCluskey Bank
- Northern Bank
- Phone Directories Company
- Sandra's Flowers & Gifts
- Seaford, Lincoln, Mercury
- Tanana Valley Clinic
- Totem Ocean Trail Express
- University of Alaska Fairbanks
- Usher's Coal Mine
- W&S Fargo
- Westmark Fairbanks Hotel & Convention Center

APR. 14. 2005 9:25AM GFCC

NO. 340 P. 2

GREATER * FAIRBANKS CHAMBER OF COMMERCE

800 Cushman St., Suite 114, Fairbanks, AK 99701
phone: (907) 452-1105, fax: (907) 456-6968

e-mail: staff@fairbankschamber.org
website: www.fairbankschamber.org

With these positions in mind, we urge the Legislature and the Governor to actively work together in unity to reach consensus by the end of the session regarding the use of these valuable revenue sources. Your mutual leadership is absolutely necessary to bring many important and much needed Statewide, Interior and Northern Region projects to timely reality.

The Greater Fairbanks Chamber of Commerce is committed to assist you in your efforts to build a better Alaska.

Sincerely,

Norman Phillips, Jr.
Norman Phillips, Jr.
Board Chair

Margaret Russell
Margaret Russell
Government Affairs Chair

Lanien Livingston
Lanien Livingston
President/CEO

cc: Governor Frank Murkowski
Alaska State Legislature

Benefactors

- ACS Directory
- Alaska Airlines
- Alaska Communications Systems
- Alaska Digital Printing
- Alaska Railroad
- Alaska USA Federal Credit Union
- Alaska Pipeline Service Company
- AT&T Alasoom
- Bowling
- BP Exploration, Inc.
- CellularOne
- ConocoPhillips Alaska, Inc.
- Central State Bank
- Design Alaska
- Digital Express
- Doyco, Limited
- ExxonMobil
- Fairbanks Building & Construction Trades Council "The Unions"
- Fairbanks Daily News Miner
- Fairbanks Cold Mining Inc.
- Carl Knox Mine
- Fairbanks Memorial Hospital Dental Center
- Fairbanks Natural Gas, LLC
- First National Bank Alaska
- First Hills Resources
- Rockline Alaska
- GCI
- Golden Heart Umbrella
- Golden Valley Electric Association
- Key Bank of Alaska
- MAL Federal Credit Union
- McMackinley Bank
- Northern Bank
- Clone Directories Company
- Sabrina's Flowers & Gifts
- Smith, Ford, Lincoln, Mercury
- Tanana Valley Clinic
- Turom Octwin Tre for Expenses
- University of Alaska Fairbanks
- Usibelli Coal Mine
- Wells Fargo
- Westmark Fairbanks Hotel
- 20 Conference Center

Introduced by: City Manager Healy
Date: April 12, 2005
Action: Adopted
Vote: Unanimous

CITY OF PALMER, ALASKA

RESOLUTION NO. 05-008

A RESOLUTION SUPPORTING GOVERNOR MURKOWSKI'S PROPOSED USE OF AMERADA HESS SETTLEMENT FUND PROCEEDS TO IMPROVE THE STATE'S TRANSPORTATION SYSTEM AND TO COMPLETE OTHER STATE AND MUNICIPAL CAPITAL IMPROVEMENTS

WHEREAS, State funds to finance capital projects have been limited for a number of years due to the State's reliance on federal funds to pay for capital projects, resulting in project delays and added cost; and,

WHEREAS, Governor Murkowski's Amerada Hess proposal, which if approved will allow proceeds from Amerada Hess settlement funds to be used for capital project funding, will allow the State to begin construction on needed capital projects considerably faster than if federally funded; and,

WHEREAS, Governor Murkowski's Transportation Initiative proposes specific projects eligible for Amerada Hess funding, including the Bogard Road extension to the Glenn Highway and planning for improvements to the Palmer-Wasilla Highway, that will reduce congestion, improve traffic safety, reduce travel times, and improve worker productivity; and,

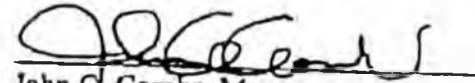
WHEREAS, Governor Murkowski's Transportation Initiative includes regionally significant transportation projects such as the Glenn Highway Corridor improvement that will have a direct, positive impact on Palmer residents commuting to work in Anchorage; and,

WHEREAS, Amerada Hess funds may also be used for other projects, such as the extension of public water and sewer utilities from the City of Palmer to the area of the new regional hospital.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Palmer that the City Council supports the use of Amerada Hess settlement proceeds to fund Governor Murkowski's Transportation Initiative and other capital projects, including the project to extend public water and sewer utilities to the area of the new regional hospital, and supports passage by the Alaska Legislature of HB 187, HB 188, SB 121 and SB 122 to establish the Alaska Capital Fund and the Alaska Capital Corporation to allow use of Amerada Hess settlement proceeds for these purposes.

Passed and approved by the City Council of the City of Palmer, Alaska, this twelfth day of April, 2005.


J. M. Bower, City Clerk


John C. Combs, Mayor

Requested by: City Planner
Prepared by: Planning Office
Meeting Date: April 12, 2005
Adopted: April 12, 2005

**WASILLA PLANNING COMMISSION
RESOLUTION SERIAL NO. 05-07**

**A RESOLUTION OF THE WASILLA PLANNING COMMISSION SUPPORTING THE
GOVERNOR'S PROPOSED CAPITAL INFRASTRUCTURE IMPROVEMENTS.**

WHEREAS, the City of Wasilla is one of the fastest growing communities within the State of Alaska; and

WHEREAS, Governor Murkowski has proposed funding a list of capital projects that includes projects vital to the City of Wasilla such as the Wasilla Transportation Corridor, the Bogard Road extension and the Palmer Wasilla Highway that will greatly reduce traffic congestion, improve traffic safety and reduce travel time; and

WHEREAS, the Governor's proposal includes tourism promotion projects that will have a positive and direct impact on residents and businesses in the City of Wasilla; and

WHEREAS, State funds to finance transportation projects have been limited for a number of years due to the state's reliance on federal funds, resulting in many delays and added development costs; and

WHEREAS, state funding will allow construction of capital projects faster than if the projects are federally funded.

NOW THEREFORE BE IT RESOLVED, that the Wasilla Planning Commission, supports the Governor's proposed capital improvements project list; and

BE IT FURTHER RESOLVED that the Wasilla Planning Commission recommends that the Wasilla to Big Lake Trail be added to the list of tourism projects included in the Governor's proposed capital improvements.

ADOPTED by the Wasilla Planning Commission on 4/12/05, 2005.

Stan Tucker
 STAN TUCKER, Chairman

ATTEST:
Sandra Garley
 SANDRA GARLEY, City Planner

[SEAL]

Post-It® Fax Note	7871	Date	4/15/05
To	Colleen J-L	From	Nilu
Co./Dept.		Co.	C. O. W.
Phone #		Phone #	373 90
Fax #	556-2526	Fax #	

Sponsored by: Assemblymember Allon
Adopted: 04/05/05

**MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 05-044**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY SUPPORTING THE GOVERNOR'S PROPOSED USE OF THE AMERADA HESS SETTLEMENT FUNDS TO IMPROVE THE STATE'S AND BOROUGH'S TRANSPORTATION SYSTEM AND OTHER STATE AND MUNICIPAL CAPITAL IMPROVEMENTS.

WHEREAS, the Borough's above average population growth has placed additional strains on the existing road network creating more congestion and reducing traffic safety; and

WHEREAS, State funds to finance capital projects has been limited for a number of years due to the States reliance on federal funds to pay for these capital requests, resulting in many delays and added costs. This funding mechanism through Amerada Hess will allow the State to begin construction for our well needed capital projects considerably faster than if federally funded; and

WHEREAS, the Amerada Hess proposal puts the fund to work for Alaskans, creating job opportunities, a vibrant economy, and access afforded by roads and improved transportation; and

WHEREAS, the Borough supports the funding of capital projects through the Amerada Hess proposal that puts this settlement money to work for Alaskans in ways that will improve our lives, reduce traffic congestion in the Matanuska-Susitna Borough, create access to communities, and develop important projects for Alaskans; and

WHEREAS, traffic congestion increases travel times which negatively affects business expenses and reduces worker productivity; and

WHEREAS, Governor Murkowski has proposed the use of Amerada Hess settlement proceeds to fund needed transportation improvements and other state and municipal capital projects; and

WHEREAS, the Governor's Transportation Initiative includes important Borough transportation projects such as the Bogard Extension, the Palmer-Wasilla Highway, and the Wasilla Transportation Corridor that will greatly reduce congestion, improve traffic safety, reduce travel times, and improve worker productivity; and

WHEREAS, the Governor's Transportation Initiative includes regionally significant transportation projects such as the Glenn Highway Corridor improvement that will have a direct, positive impact on Borough residents commuting to work in Anchorage; and

WHEREAS, Amerada Hess funds would also initiate additional growth in the Borough, both residential and commercial, by allowing the completion of the water and sewer extension from the city of Palmer to the new hospital, thereby creating many new employment opportunities; and

WHEREAS, other capital improvements that would occur in the Borough through the use of Amerada Hess Settlement proceeds include Byers Lake and Nancy Lake campground rehabilitation, Willow Maintenance Station replacement, and the provision of local match for Congressional transportation related earmarks; and

WHEREAS, funding Borough related campground improvements will address necessary major maintenance work while also improving the

quality of life for Borough residents and those visiting the Borough; and

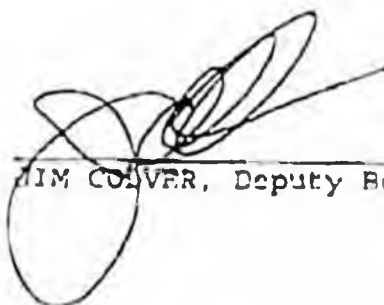
WHEREAS, replacing the Willow Maintenance Station is critically needed in order to provide effective highway maintenance and snow removal service within the George Parks Highway corridor; and

WHEREAS, the use of the Amerada Hess Settlement proceeds will have no impact on the Alaska Permanent Fund Dividend.

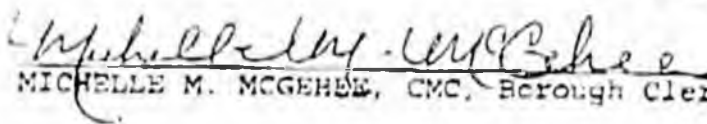
NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Assembly supports the use of the Amerada Hess Settlement proceeds to fund the Governor's Transportation Initiative and other critically needed state and municipal capital projects.

BE IT FURTHER RESOLVED, that the Matanuska-Susitna Borough Assembly supports the use of the Amerada Hess Settlement proceeds to complete the water and sewer extension from the city of Palmer to the new hospital.

ADOPTED by the Matanuska-Susitna Borough Assembly this 5 day of April, 2005.


TIM COLVER, Deputy Borough Mayor

ATTEST:


MICHELLE M. MCGEHEE, CMC, Borough Clerk (SEAL)

PASSED UNANIMOUSLY: Woodh, Allen, Kvalheim, Colver, and Vehrs



RESOLUTION

In support of Amerada Hess Proposal to Invest in Alaska's Future

A RESOLUTION SUPPORTING THE GOVERNOR'S PROPOSED USE OF THE AMERADA HESS SETTLEMENT EARNINGS TO IMPROVE THE STATE'S AND COMMUNITIES TRANSPORTATION SYSTEM AND OTHER CAPITAL IMPROVEMENTS.

WHEREAS, in 1977, shortly after oil started flowing in the Trans Alaska Pipeline, the state filed suit against the oil companies that were producing North Slope oil, with the claim that the companies were undervaluing the wellhead price of the state's royalty oil, thus depriving Alaskans of the full value for their resource. This lawsuit—called Amerada Hess because that was the first oil company listed in the complaint—was settled 18 years later before going to trial. Under the court settlement and subsequent legislation, the income from the settlement was specifically excluded from the annual Permanent Fund dividend calculation.

WHEREAS, the proposed legislation leverages the Amerada Hess account's interest earnings to sell \$340 million in bonds to finance much-needed capital projects that will help prepare for Alaska's future.

WHEREAS, under the proposal, these would be self-supporting bonds in which the annual debt service would be paid from the Amerada Hess account's annual earnings.

WHEREAS, the Amerada Hess proposal puts the fund to work for Alaskans, funding important projects in our state that will improve our day-to-day lives and prepare Alaska for its future.

WHEREAS, state funds available to finance capital infrastructure and to address deferred maintenance needs have been limited for a number of years.

WHEREAS, this funding mechanism will allow construction on transportation projects to begin considerably faster than if they are funded by federal funds, which add three-to-ten years in time and increase project costs. It also will allow the state to fund its priorities instead of the federal government's as required when using federal funds.

WHEREAS, four bills in the Alaska Legislature, House Bills 187 and 188 and Senate Bills 121 and 122, propose this mechanism as a way to pay for these important projects.

WHEREAS, the use of the Amerada Hess settlement earnings will put the settlement to work on behalf of Alaskans and without impacting the Alaska Permanent Fund dividend.

NOW, THEREFORE BE IT RESOLVED, that the **Alaska Coalition of Small Business** supports the leveraging of the Amerada Hess settlement earnings to fund important transportation projects and other critically needed infrastructure investments.

On behalf of the Alaska Coalition of Small Business on the 11th of April, 2005.



George Kallas
President

GREATER * FAIRBANKS CHAMBER OF COMMERCE

800 Cushman St., Suite 114, Fairbanks, AK 99701
phone: (907) 452-1105, fax: (907) 456-6968

e-mail: staff@fairbankschamber.org
website: www.fairbankschamber.org

April 13, 2005

Representative Kevin Meyer
Alaska State Legislature
(907) 465-3476

Dear Representative Meyer,

The Greater Fairbanks Chamber of Commerce (GFCC) recognizes and applauds the efforts of the Governor and the Legislature in pursuing a progressive, yet responsible and reasonable, 2006 capital budget.

To that end, we have reviewed the discussion advanced by SB155 and the Governors' proposed use of Amerada Hess funds (HB187/188 and SB 121/122).

First, the GFCC strongly supports Northern Region capital projects and improvements such as Dalton Highway upgrades and maintenance, Interior transportation projects such as those prioritized by the Fairbanks Metropolitan Area Transportation (FMAT) Policy Committee, and responsible capital improvements and maintenance for the public school system and the University of Alaska-Fairbanks. Many of these are included in the attached GFCC 2005 Legislative priorities.

Second, we have encouraged the Legislature, in both past and present years, to consider using Permanent Fund earnings reserve to help support state services and projects, while inflation proofing the principal of the fund (rather than the market value), and continuing to pay a reasonable annual dividend. The Legislature currently has the authority to, and should, use Permanent Fund earnings under the current system as necessary.

Third, we believe that the responsible and efficient use of Amerada Hess earnings to help meet the State's needs and to advance critically needed capital and infrastructure projects makes sense.

Benefactors

- ACS Directory
- Alaska Airlines
- Alaska Communications Systems
- Alaska Digital Printing
- Alaska Railroad
- Alaska USA Federal Credit Union
- Alaska Pipeline Service Company
- AT&T Alascom
- Boeing
- BP Exploration, Inc.
- CellularOne
- ConocoPhillips Alaska, Inc.
- Denali State Bank
- Design Alaska
- Digital Express
- Doyon, Limited
- Esprit/Mobli
- Fairbanks Building & Construction Trades Council "The Unions"
- Fairbanks Daily News-Sitka
- Fairbanks Gold Mining Inc. Fort Knox Mine
- Fairbanks Memorial Hospital - Denali Center
- Fairbanks Natural Gas, LLC
- First National Bank Alaska
- Flint Hill Resources
- Flow Alaska
- GCI
- Golden Heart Utilities
- Golden Valley Electric Association
- Key Bank of Alaska
- MAC Federal Credit Union
- Mt. McKinley Bank
- Northrim Bank
- Plouffe Directories Company
- Sandne's Flowers & Gifts
- Seekins Food, Lincoln Mercury
- Tahama Valley Clinic
- Totem Ocean Trailer Express
- University of Alaska Fairbanks
- Usibelli Coal Mine
- Wells Fargo
- Westmark Fairbanks Hotel & Conference Center

GREATER * FAIRBANKS CHAMBER OF COMMERCE

800 Cushman St., Suite 114, Fairbanks, AK 99701
phone: (907) 452-1105, fax: (907) 456-6968

e-mail: staff@fairbankschamber.org
website: www.fairbankschamber.org

With these positions in mind, we urge the Legislature and the Governor to actively work together in unity to reach consensus by the end of the session regarding the use of these valuable revenue sources. Your mutual leadership is absolutely necessary to bring many important and much needed Statewide, Interior and Northern Region projects to timely reality.

The Greater Fairbanks Chamber of Commerce is committed to assist you in your efforts to build a better Alaska.

Sincerely,

Norman Phillips, Jr.
Norman Phillips, Jr.
Board Chair

Margaret Russell
Margaret Russell
Government Affairs Chair

Lanien M. Livingston
Lanien Livingston
President/CEO

cc: Governor Frank Murkowski
Alaska State Legislature

Benefactors

- ACS Directory
- Alaska Airlines
- Alaska Communications Systems
- Alaska Digital Printing
- Alaska Railroad
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- Alaska Pipeline Service Company
- AT&T Alascom
- Boeing
- BP Exploration, Inc.
- CellularOne
- ConocoPhillips Alaska, Inc.
- Denali State Bank
- Design Alaska
- Digital Express
- Dynon, Limited
- Euron Mobil
- Fairbanks Building & Construction Trades Council "The Unions"
- Fairbanks Daily News-Miner
- Fairbanks Gold Mining Inc. Fort Knox Mine
- Fairbanks Memorial Hospital Denali Center
- Fairbanks Natural Gas, LLC
- First National Bank Alaska
- Flint Hill Resource
- Flowline Alaska
- GC
- Golden Heart Utilities
- Golden Valley Electric Association
- Key Bank of Alaska
- MAC Federal Credit Union
- Mt. McKinley Bank
- Northwest Bank
- Phone Directories Company
- Santina's Flowers & Gifts
- Southern Ford, Lincoln, Mercury
- Tanana Valley Clinic
- Totem Ocean Trailer Express
- University of Alaska Fairbanks
- Umbell Coal Mine
- Wells Fargo
- Westmark Fairbanks Hotel & Conference Center

HB

187

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAY 3 2005
SENATE FINANCE
COMMITTEE

DATE: 5/1/05

FURTHER:

DATE TURNED
IN TO OFFICE: 3 May 2005

Finance Committee considered CS FOR HOUSE BILL NO. 187(FIN)(efd fld)

HB 187 AMERADA HESS INCOME; CAPITAL INCOME FUND

"An Act relating to money deposited into the Alaska permanent fund as a result of the settlement of State v. Amerada Hess; relating to the Alaska capital income fund and to deposits of income from State v. Amerada Hess settlement money into the Alaska capital income fund."

and recommends:

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

CS Senate Bill:
 Same Title
 New Title

SCS House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
Rainie	4/24/05			✓	#1

APPROPRIATION - no fiscal note

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

FISCAL NOTE

REPORTED OUT

MAY 3 2005

SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 187(FIN)COMMITTEE
 (H) Publish Date: 4/27/05

Revision Date/Time (Note if correction):
 Title Alaska Capital Income Account

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

Sponsor Governor
 Requester House Finance Committee Component No. 103

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would create a new fund, the Alaska Capital Income Fund, in the State's general fund. In addition, the bill would change existing statutes to place the realized earnings from the settlement of State v. Amerada Hess into this new fund where they would be available for Legislative appropriation.

The additional staff time required to administer this account will fall under the APFC Finance Department's normal scope of duties. Therefore we do not expect additional costs as a result of this bill.

Prepared by: Michael Burns, Executive Director/CEO Phone 465-2047
 Division Alaska Permanent Fund Corporation Date/Time 4/26/2005
 Approved by: _____ Date 4/26/2005
 Agency _____

ALASKA STATE LEGISLATURE HOUSE FINANCE COMMITTEE

Representative Mike Chenault
Co-Chairman
(907) 465-3779

Fax: (907) 465-2833

Representative_Mike_Chenault@legis.state.ak.us

145 Main St. Loop #223
Kenai, Alaska 99611



Representative Kevin Meyer
Co-Chairman
(907) 465-4945

Fax: (907) 465-3476

Representative_Kevin_Meyer@legis.state.ak.us

716 W. 4th Avenue
Anchorage, Alaska 99501

State Capitol, Juneau, Alaska 99801-1182 Sponsor Statement

CS House Bill 187 (FIN) 'Amerada Hess Income, Capital Income Fund'

CS HB 187 (FIN) would establish the Alaska capital income fund within the general fund and would authorize the deposit into that fund the earnings on money received from State v. Amerada Hess, et al., IJU-77-847 Civ. (Superior Court, First Judicial District).

In 1992, the state's oil and gas royalty litigation (Am Hess litigation) was headed to trial. Both state and federal judges had expressed concerns about the capacity of Alaskan judges and jurors to participate in the case on an impartial basis in light of the fact that the earnings on the portion of any recovery in the case would be deposited into the permanent fund and be used to pay permanent fund dividends that all Alaskan judges and jurors receive. AS 37.13.145 (d) was enacted, which deposited into the principal of the permanent fund the earnings of all amounts received from settlement of this case and directed that no earnings of the Am Hess principal be used for dividends. Thus, the concern about impartiality was resolved by disallowing the earnings from the settlement from being used in calculating the annual dividend amount.

The Amerada Hess litigation is now settled, though the possibility of a re-opener subject to arbitration remains. Approximately \$424 million from this case, including earnings on the settlement receipts and inflation proofing, is contained in the Amerada Hess portion of the principal of the permanent fund.

This bill proposes to end inflation proofing of the Amerada Hess principal, maintaining a static balance in the Am Hess principal. That portion of inflation proofing that would have been deposited into the principal of the Amerada Hess sub account will now be deposited into the 'other' portion of the permanent fund principal.

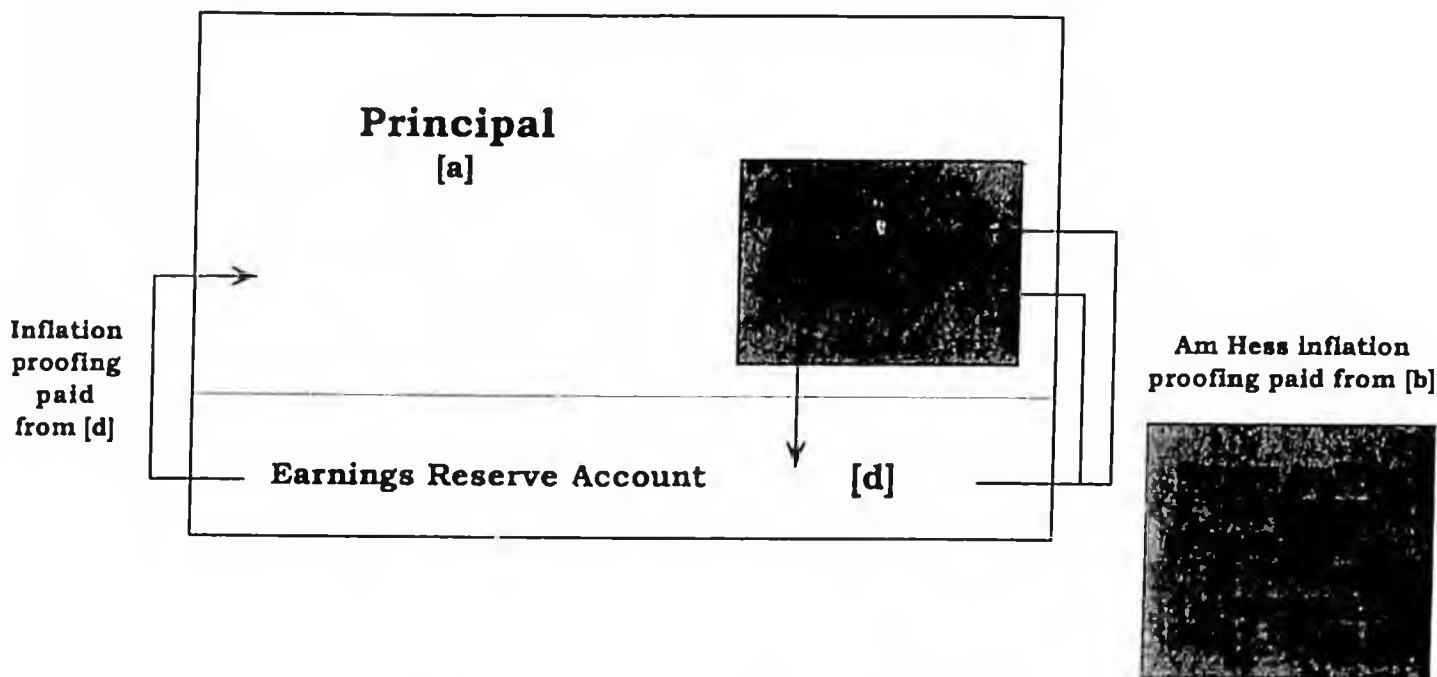
HB 187 would authorize the deposit of the earnings from the Amerada Hess principal (estimated to be \$30 million/year) to the new Alaska capital fund. Money deposited into the Alaska capital fund can be used for any valid public purpose.

This legislation has no effect on the dividend calculation and is neutral on the dollar amount of each Alaskan's dividend.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

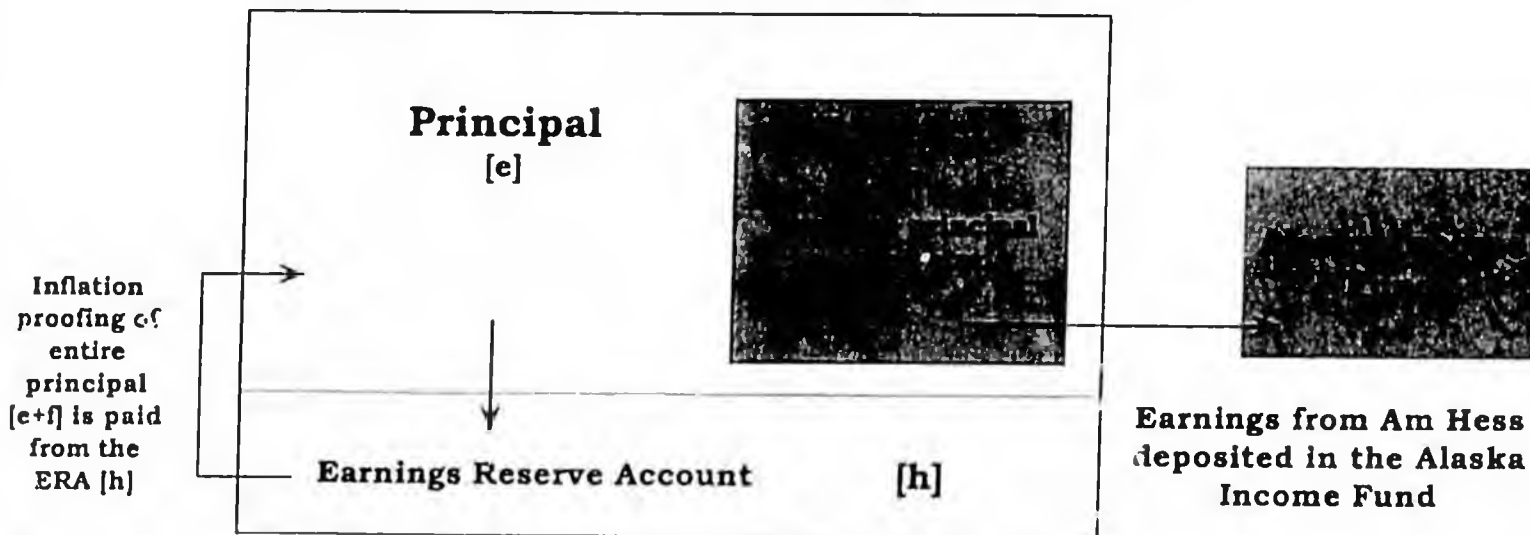
CURRENT SYSTEM

$$[c] \text{ Entire Principal} = \text{Principal} + \text{Am Hess} [a+b=c]$$



PROPOSED SYSTEM (HB 187)

$$[g] \text{ Entire Principal} = \text{Principal} + \text{Am Hess} [e+f=g]$$



Inflation proofing paid from [h], but only deposited into [e]

NEUTRAL ON DIVIDENDS

Cheryl Frasca
Re: Repeal of *Amerada Hess* earning sequestration
requirement in AS 37.13.145(d)

January 28, 2005

MEMORANDUM

State of Alaska
Department of Law

To: Cheryl Frasca
Office of the Governor

Date: January 28, 2005

From: Wilson L. Condon
Assistant Attorney General
Oil, Gas & Mining-Anchorage

Tel. No.: 269-5255

File No.: N/A

Re: Repeal of *Amerada Hess*
earning sequestration
requirement in AS 37.13.145(d)

I. INTRODUCTION

In 1991 the legislature enacted the current version of AS 37.13.145(d) as part of provisions governing management of the Alaska Permanent Fund Corporation ("APFC"). The statute imposes a financial sequestration requirement on earnings from settlement proceeds received by the State in ANS Royalty Litigation, commonly known as the *Amerada Hess* ("*AmHess*") litigation. In relevant part, AS 37.13.145(d) requires that:

[I]ncome earned on money awarded in or received as a result of State v. *Amerada Hess*, et al., IJU-77-847 Civ. (Superior Court, First Judicial District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money . . . is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund.

The legislature adopted the statute in order to negate an argument advanced by producers during the *AmHess* litigation that no Alaska judge or juror could be impartial in the adjudication of the matter because they had a financial stake in the outcome. According to the producers, any judgment returned would ultimately be deposited into the Alaska Permanent Fund, affecting the size of the annual Permanent Fund Dividend ("PFD").

Cheryl Frasca
Re: Repeal of *Amerada Hess* earning sequestration
requirement in AS 37.13.145(d)

January 28, 2005

All issues in the *AmHess* litigation were concluded and the case dismissed in 1995. Since the statute was adopted, the APFC has always used a separate sub-account to isolate any *AmHess* proceeds and the income earned on those proceeds. This sub-account is part of the principal account of the permanent fund. The purpose of the sub-account is: (1) to ensure that *AmHess* earnings are not included in the amount from which the PFD is annually paid; and (2) to track the amount to be transferred annually from the Fund's realized earnings account to Fund principal, and thereafter be allocated to the *AmHess* sub-account. Presently, no additional *AmHess* litigation proceeds are due from the producers, but annual earnings allocations and adjustments continue to be handled in conformity with AS 37.13.145(d).

II. QUESTIONS PRESENTED

1. Can the legislature repeal AS 37.13.145 at this time?

III. SHORT ANSWER

1. Yes, the legislature has authority to repeal the provisions of AS 37.13.145. However, the bias challenge raised by the producers in *AmHess* is one that is capable of repetition in future litigation. Most likely, it would be raised again.¹ Therefore, repeal of AS 37.13.145 may undermine the State's position in future litigation that Alaska judges and jurors are not financially impacted by litigation proceeds. The producers will argue that an agreement by the State to segregate future litigation proceeds is illusory. They will contend that any segregation requirement will eventually be repealed, and the money thereafter commingled with PFD funds. Thus, under their argument, judges and jurors will retain an expectation of recovery from the proceeds in the matter before them, thereby requiring their disqualification.

IV. DISCUSSION

As long as there are no contractual promises enforceable under the federal Contract Clause,² a valid general act may effectively repeal or supersede the provisions of a prior

¹ This is so because the disqualification issue was never fully litigated on the merits through appeal in either the state or federal litigation arising out of *Hess*.

² U.S. Const. art. 1, § 10, cl. 2 ("[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts.").

Cheryl Frasca
Re: Repeal of *Amerada Hess* earning sequestration
requirement in AS 37.13.145(d)

January 28, 2005

act.³ Here, there is no contractual promise with the *AmHess* parties to maintain a sequestration requirement for any fixed period of time, or indefinitely. No judicial order mandates the treatment. The reasons prompting enactment of the provision became moot when all issues in the case were settled in 1995. Thus, as a legal matter, the legislature is presently free to repeal the sequestration requirements of AS 37.13.145(d).

In practical terms, repeal of AS 37.13.145(d) would mean that the annual realized income of the Fund would be increased by the amount earned from approximately \$400 million of assets. Under the current distribution formula, this means that the amount of the annual PFD would be increased as a result of inclusion of *AmHess* proceeds in "the amount available for distribution to the dividend fund."⁴ The *AmHess* judges and potential jurors will now belatedly realize larger PFDs from repeal of the provision.

Although no legal obstacle impedes repeal of AS 37.13.145(d), the legislature may care to balance the benefits of such repeal versus the potential negative consequences. In the benefit column, there will be fairly insubstantial savings of APFD accounting time and bookkeeping entries isolating the funds and the earnings on those funds. Also in the benefit column, there will be an increased annual PFD available for all Alaskans. In the negative column, the legislature may have furnished the producers an evidentiary basis to argue in future litigation that "we all know that proceeds of this lawsuit will eventually find their way into the PFD, and therefore, no Alaskan judge or juror can be impartial."

I cannot say that a future state or federal court would entertain such an argument based on a one-time incidence of repeal. It is even more tenuous to suggest, as the producers would, that Alaskan judges and jurors follow the requirements of PFD accounting so closely to know of the repeal of AS 37.13.145(d). However, it may unnecessarily complicate future litigation. Therefore, in the absence of a more compelling justification for repeal than I currently see, I would counsel leaving the statute on the books.

WLC:AMP:cb

³ *State v. Lewis*, 559 P.2d 630 (Alaska 1977), cert. denied, 432 U.S. 901.

⁴ AS 37.13.145(d).

Amerada Hess Settlement

	Principal			Realized Earnings (over inflation)			Inflation-proofing			Total Settlements <u>Principal</u>
	<u>Beginning</u>	<u>Contributions</u>	<u>Ending</u>	<u>Beginning</u>	<u>Additions</u>	<u>Ending</u>	<u>Beginning</u>	<u>Additions</u>	<u>Ending</u>	
FY 1992	Inception	82,099,000	82,099,000	0	0	0	0	2,005,000	2,005,000	84,104,000
FY 1993		16,411,000	98,510,000	0	4,641,000	4,641,000	2,005,000	4,541,000	6,546,000	109,697,000
FY 1994		98,510,000	111,723,000	4,641,000	5,620,000	10,261,000	6,546,000	3,615,000	10,161,000	132,145,000
FY 1995		111,723,000	173,440,000	10,261,000	6,145,000	16,406,000	10,161,000	5,060,000	15,221,000	205,067,000
FY 1996		173,440,000	176,300,000	16,406,000	18,441,000	34,847,000	15,221,000	5,864,000	21,085,000	232,232,000
FY 1997		176,300,000	184,147,000	34,847,000	21,377,000	56,224,000	21,085,000	7,058,000	28,143,000	288,514,000
FY 1998		184,147,000	208,769,000	56,224,000	31,254,000	87,478,000	28,143,000	6,853,000	34,996,000	331,243,000
FY 1999		208,769,000	208,769,000	87,478,000	36,086,000	123,564,000	34,996,000	5,102,000	40,098,000	372,431,000
FY 2000		208,769,000	215,655,000	123,564,000	30,331,000	153,895,000	40,098,000	8,307,000	48,405,000	417,955,000
FY 2001		215,655,000	229,242,000	153,895,000	7,687,000	161,582,000	48,405,000	14,543,000	62,948,000	453,772,000
FY 2002		229,242,000	194,083,000	161,582,000	(23,384,000)	138,198,000	62,948,000	(5,154,000)	82,112,000	394,393,000
FY 2002		194,083,000	194,083,000	138,198,000	0	138,198,000	62,112,000	4,318,000	82,112,000	394,393,000
FY 2003		194,083,000	194,083,000	138,198,000	0	138,198,000	62,112,000	6,160,000	68,272,000	400,553,000
FY 2004		194,083,000	194,083,000	138,198,000	14,713,000	152,911,000	68,272,000	9,133,000	77,405,000	424,399,000
	Total	194,083,000		Total	152,911,000		Total	77,405,000		

Note: FY2002 reductions are the result of an audit correction of an over deposit of settlement principal and related earnings.

Legislative Research Services

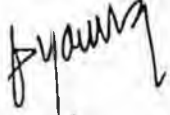
Alaska State Legislature
Legislative Affairs Agency
Division of Legal and Research Services

State Capitol, Juneau, AK 99801
Phone: 907-465-3991
Fax: 907-465-3908

March 8, 2005

Memorandum

TO: Representative Lesil McGuire

FROM: Patricia Young 
Manager

RE: Use of Funds from Settlement of Amerada Hess (*ANS Royalty Litigation*)
LRS 05.211, Supplemental Material

As I understand it, the core question behind your request for background on *Amerada Hess*, has to do with the language in AS 37.13.145(d) which specifies as follows about proceeds from the case:

... income earned on money awarded in or received as a result of *State v. Amerada Hess, et al.*, 1JU-77-847 Civ. (Superior Court, First Judicial District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund.

This provision was a very narrow piece of legislation, designed specifically to address the defendants' claim that any judge and jurors in Alaska would face an insurmountable conflict of interest because they would all be permanent fund dividend recipients. The attached copy of *Exxon Corporation v. Heinze*, 32 F. 3d 1399 (1994 U.S. App.) details the history of the conflict of interest issue and its resolution in the *ANS Royalty Litigation* (aka *Amerada Hess*). As you will see, the court ruled that the final version (the current version) of the law cured the bias problem. When all avenues of appeal on the conflict of interest issue ran dry, the producers settled the oil royalty claims and counterclaims. The underlying issues never came before a judge and jury.

Tamara Cook, legislative counsel, notes that a settlement agreement that prescribes how the recipient party can use the money would be a very unusual document. Ms. Cook believes that in this situation, there can be no conflict because there is no judge or jury making a decision. She suggests that the Department of Law review their copies of the settlement documents for any language that limits the use of the funds.

I hope this is helpful. Please let me know if you have questions or if I can provide you with any other information.

LEXSEE 32 F3D 1399

EXXON CORPORATION, Plaintiff-Appellant-Cross-Appellee, v. HAROLD C. HEINZE; CHARLES E. COLE, Attorney General for the State of Alaska; RONALD SWANSON, Director of the Division of Lands; JAMES E. EASON, Director of the Division of Oil and Gas, Defendants-Appellees-Cross-Appellants.

Nos. 92-35266, 92-35323

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

32 F.3d 1399; 1994 U.S. App. LEXIS 21908; 94 Cal. Daily Op. Service 6273; 94 Daily Journal DAR 11467

November 2, 1993, Argued, Submitted, Seattle, Washington
August 17, 1994, Filed

PRIOR HISTORY: [**1] Appeal from the United States District Court for the District of Alaska. D.C. No. CV-91-543-JKS. James K. Singleton, District Judge, Presiding.

DISPOSITION: VACATED and REMANDED

LexisNexis(R) Headnotes

COUNSEL: Thomas Gibbs Gee and David D. Sterling, Baker & Botts, Houston, Texas; and Joseph R. D. Loescher, Hughes, Thorsness, Gantz, Powell & Brundin, Anchorage, Alaska, for the plaintiff-appellant-cross-appellee.

Bruce M. Botelho, Deputy Attorney General, Juneau, Alaska; and Deborah L. Williams, Hellen, Partnow & Condon, Anchorage, Alaska, for the defendants-appellees-cross-appellants.

JUDGES: Before: Eugene A. Wright, Alfred T. Goodwin, and Procter Hug, Jr., Circuit Judges. Opinion by Judge Goodwin.

OPINIONBY: ALFRED T. GOODWIN

OPINION: [*1400] OPINION

GOODWIN, Circuit Judge:

Exxon Corporation ("Exxon") n1 appeals an order dismissing its 42 U.S.C. § 1983 lawsuit and denying its prayer to enjoin certain Alaska state court litigation over state oil and gas royalties. Exxon contends that the state court litigation violates its due process right to an unbiased forum. Because a partial settlement has substantially changed the posture of the case, and because the fac-

tual record is now insufficient to review Exxon's claims on their [**2] merits, we dismiss for lack of ripeness, vacating the district court's order.

n1 Chevron U.S.A., Inc. ("Chevron") was originally a coparty to Exxon's appeal; however, Chevron and Alaska settled, agreeing to dismiss Chevron's appeal, No. 92-35389, and to dismiss Chevron as a party to the State's cross-appeal, No. 92-35323. For convenience, we refer to Exxon as the sole appellant and cross-appellee throughout.

I.

In 1977, the State of Alaska filed a state court action against Exxon and eighteen other companies producing gas and oil on Alaska's North Slope ("the producers"). See *Alaska v. Amerada Hess Corp. et al*, Civil No. 1JU-77-847 (hereinafter "the *ANS Royalty Litigation*"). The State sought a declaration of its rights under certain mineral leases which require the producers to pay [*1401] royalties on the gas and oil they extract from state lands.

In 1983, the State amended its complaint to add a claim for underpayment of past royalties, alleging that the producers had systematically underestimated the value of certain [**3] gas and oil. The producers counterclaimed for overpayment of royalties. The parties agreed to sever the gas royalty and other gas claims from the oil royalty claims and to litigate the oil royalty claims first.

In 1987, after extensive discovery on the oil royalty claims, several producers, including Exxon, filed suit in federal court, contending that the pending *ANS Royalty Litigation* violated their due process rights and requesting injunctive and declaratory relief under 42 U.S.C. § 1983. *Standard Alaska Production Co. v. Schaible*, No.

87-621 (D. Alaska, Nov. 2, 1987). The complaint alleged that the outcome of the *ANS Royalty Litigation* would substantially affect the Alaska Permanent Fund, and, consequently, the annual Permanent Fund dividends Alaska residents receive each year. n2 Because Alaska state judges and potential jurors are eligible to receive Permanent Fund dividends, the producers argued, they had a financial interest in the case, rendering them unconstitutionally biased.

n2 The Alaska State Constitution requires state administrators to place 25% of all state oil and gas royalties in the Alaska Permanent Fund which is used only for income-producing investments. Alaska Const. Art. IX § 15. Under the Permanent Fund Dividend Program, enacted in 1982, the State pays Alaska residents approximately 50% of the income received each year from these investments. *Alaska Stat. §§ 43.23.045(b), 37.13.140*. Each person who has resided in Alaska for a year or more - and thus all Alaska state judges, potential jurors, and their family members - are eligible to receive these payments or Permanent Fund dividends. In fact, since Alaska judges must have resided in Alaska for five years and Alaska jurors are selected from a list of Permanent Fund recipients, see *Alaska Stat. § 09.20.050(b)*, jurors and judges are, by definition, eligible to receive Permanent Fund dividends. Between 1988 and 1992, the annual Permanent Fund dividend paid to each resident ranged from \$826.90 to \$952.63, or approximately \$3,600 for a family of four.

[**4]

Then-District Judge Kleinfeld, an Alaska state resident, recused himself from the federal case, agreeing that one might question the impartiality of a judge who receives Alaska Permanent Fund dividends, but expressly declining to reach the due process issue or rule on the fairness of the state court forum. R.T. March 8, 1988. The Chief Judge of the Ninth Circuit then appointed Judge Belloni, a non-Alaskan, to hear the case.

Judge Belloni ultimately dismissed the producers' § 1983 complaint without prejudice, rejecting the State's Eleventh Amendment defense, but holding that the controversy was not ripe for federal review because the producers had not raised the bias issue in a state court motion to disqualify. Judge Belloni challenged the State to provide a fair forum, and invited the producers "to re-open this federal case" if "the State Officials fail to provide an unbiased forum within a reasonable time." *Standard Alaska Prod. Co. v. Schraible*, No. 87-521, Unpublished Opinion at 7 (D. Alaska June 20, 1988). We affirmed,

agreeing that "until a proper motion for disqualification is made in the state court, the disputed factual questions concerning the alleged bias of all Alaska [**5] judges and jurors cannot be reviewed by any federal court." *Standard Alaska Prod. Co. v. Schraible*, 874 F.2d 624, 630 (9th Cir. 1989), cert. denied, 495 U.S. 904 (1990).

After we decided *Schraible*, the Alaska legislature amended the Permanent Fund dividend legislation to provide that "income earned on money awarded after trial" in the *ANS Royalty Litigation* would "not [be] available for distribution to the dividend fund." *Alaska Stat. § 43.23.045(b)* (1989) (repealed 1991). In addition, the Alaska Supreme Court amended Alaska Rule of Civil Procedure 47(c) to provide that an Alaska juror's eligibility to receive Permanent Fund dividends did not constitute grounds for challenging the juror for cause. n3

n3 The amended rule allows challenges for cause when the juror "has a financial interest, other than that of a taxpayer or a permanent fund dividend recipient in the outcome of the case." Alaska R. Civ. P. 47(c)(12) (1989).

After the Supreme Court denied [**6] certiorari, *Schraible*, 495 U.S. 904 (1990), and the state court imposed [*1402] a deadline for filing a motion to disqualify, Exxon moved to disqualify Alaska Superior Court Judge Carpeneti, who was presiding over the state court litigation. n4 Exxon argued that the 1989 amendment had not cured the bias problem because it did not address: (1) payments received pursuant to a declaratory judgment; (2) payments received as a result of a settlement or summary judgment; or (3) payments received as a result of royalty-in-kind adjustment clauses. Judge Carpeneti issued a "Notice of Intention to Grant Motion for Disqualification," concluding that judges who receive Permanent Fund dividends have a "direct financial interest or another interest which strongly resembles a direct interest in the outcome of this case," and ruling that the 1989 amendments had not eliminated that interest. *In re ANS Royalty*, No. 1JU-77-847, Order No. 91-9 at 9 (Sup. Ct. Alaska March 14, 1991). Judge Carpeneti also found that the "Rule of Necessity" did not apply. *Id.* He gave the state seventy days to remedy the bias problem.

n4 Exxon contends that this motion was based exclusively on state law and argues that it expressly reserved its "right" to have federal courts decide federal constitutional issues. Appellants' Br. at 14 n.6 (citing *England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 411, 11 L. Ed. 2d 440, 84 S. Ct. 461 (1964)).

[**7]

In response, in May 1991, the Alaska legislature again amended *Alaska Stat. § 43.23.045*, replacing the 1989 amendment with an amendment requiring any award received as a result of the *ANS Royalty Litigation* (including royalty-in-kind adjustments from third parties and interest earned on such funds) to be deposited into the Permanent Fund principal and not made available for distribution as dividends. *Alaska Stat. § 43.23.045(e)* (1991) (current version at *Alaska Stat. § 37.13.145(d)* (1992)).ⁿ⁵ The legislature also enacted a section providing that the amendment would be automatically repealed if the Alaska Supreme Court held that eligibility to receive Permanent Fund dividends under the unamended statute would not disqualify a judge or juror from hearing the *ANS Royalty Litigation*. *Alaska Stat. § 43.23.045(e)* (1991) (current version at *Alaska Stat. § 37.13.145(d)* (1992)).

ⁿ⁵ The amended statute provides that

... income earned on money awarded in or received as a result of [the *ANS Royalty Litigation*], including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund.

[**8]

Judge Carpeneti ruled that these amendments cured the bias problem and denied Exxon's motion to disqualify. Exxon filed a motion to reconsider, arguing that the newest amendments did not eliminate the bias problem because they did not address the producers' counterclaims and because the repeal provision "reinforced" each Alaskan's interest. Judge Carpeneti denied the motion to reconsider, ruling that the producers had waived any challenge based on the counterclaims and rejecting Exxon's reliance on the repeal provision on its merits. A second superior court judge affirmed, and the Alaska Supreme Court summarily denied Exxon's petition for review and motion for an expedited appeal. *BP Exploration v. Alaska*, No. S-4654, S-4662, S-4689 (Alaska filed Aug. 23, 1991).

Exxon and Chevron then filed the instant § 1983 action in federal court, again seeking to enjoin the *ANS Royalty Litigation*. Exxon moved to disqualify Judge Singleton, the Alaska District Judge assigned to the federal case. Judge Singleton denied Exxon's motion to disqualify, rul-

ing that a citizen's eligibility to receive Permanent Fund dividends is a "bare expectancy," not a financial interest, and noting that even [**9] if justification for recusal existed, the Rule of Necessity might require him to hear the case. *Exxon Corp. v. Heinze*, 792 F. Supp. 72, 76 (D. Alaska 1992) (citing *United States v. Will*, 449 U.S. 200, 212-16, 66 L. Ed. 2d 392, 101 S. Ct. 471 (1980)). Chief Judge Holland, reviewing Judge Singleton's ruling pursuant to 28 U.S.C. § 144, affirmed. *Exxon Corp. v. Heinze*, 792 F. Supp. 77, 79 (D. Alaska 1992).

Judge Singleton then denied the producers' motion for a preliminary injunction and [*1403] dismissed the complaint with prejudice, relying on the Rule of Necessity. R.T. March 12, 1992 at 17. Exxon and Chevron appealed. Thereafter, in April 1992, Chevron and Exxon settled the oil royalty claims and counterclaims. The severed gas claims and counterclaims remain.

II.

Both parties agree that the posture of this case has changed significantly since Judge Singleton dismissed it. Both parties, however, urge us to reexamine Judge Singleton's orders in light of the facts as they then existed. We decline to do so. Because of the settlement, the [**10] correctness of Judge Singleton's rulings, on the facts as they then existed, is moot. *Northern Alaska Envtl. Ctr. v. Hodel*, 803 F.2d 466, 469 (9th Cir. 1986). We will not issue an advisory opinion on the merits of Judge Singleton's various orders regarding the settled oil claims.

However, Exxon urges that its appeal is not entirely moot, as the severed gas claims and counterclaims remain. It asks us to decide if the same bias problems apply to the remaining claims and notes that Judge Singleton's dismissal with prejudice may preclude it from returning to federal court. Exxon also emphasizes that litigation before financially interested judges and jurors raises fundamental issues of due process, even when the judges' financial interest is relatively small. See *Connally v. Georgia*, 429 U.S. 245, 251, 50 L. Ed. 2d 444, 97 S. Ct. 546 (1977) (paying magistrates a \$5 fee for granting a search warrant application, but nothing for denying warrant applications, violates due process); *Tumey v. Ohio*, 273 U.S. 510, 523, 532, 71 L. Ed. 749, 47 S. Ct. 437 (1927) [**11] (paying adjudicator \$12 per conviction, but nothing for acquittals, violates due process).

We agree that "the Due Process Clause entitles a person to an impartial and disinterested tribunal," *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980), and that "[a] fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136, 99 L. Ed. 942, 75 S. Ct. 623 (1955).

n6 Moreover, like the more stringent federal judges' disqualification statute, 28 U.S.C. § 455, the Constitution is concerned not only with actual bias but also with "the appearance of justice." *Id.* Thus, the question is not whether the Alaska judges and jurors are actually biased or even whether they "would do their very best to weigh the scales of justice equally between contending parties," *Id.*, but whether the alleged pecuniary interest is sufficiently "direct, personal, [and] substantial" that it "would offer a possible temptation to the average man." *Tumey*, 273 U.S. at 523, 532. [*12] n7 Regardless of his personal integrity, "no man can be the judge in his own case [or] try cases where he has an interest in the outcome." *In re Murchison*, 349 U.S. at 136.

n6 See also *Aetna Life Ins. Co. v. Lavole*, 475 U.S. 813, 822, 89 L. Ed. 2d 823, 106 S. Ct. 1580 (1986); *Withrow v. Larkin*, 421 U.S. 35, 47, 43 L. Ed. 2d 712, 95 S. Ct. 1456 (1975) (The "probability of actual bias on the part of a judge or decision-maker is too high to be constitutionally tolerable" when "the adjudicator has a pecuniary interest in the outcome."); *Gibson v. Berryhill*, 411 U.S. 564, 36 L. Ed. 2d 488, 93 S. Ct. 1689 (1973); *Ward v. Village of Monroeville*, 409 U.S. 57, 34 L. Ed. 2d 267, 93 S. Ct. 80 (1972).

n7 But see *In re New Mexico Natural Gas Antitrust Litigation*, 620 F.2d 794 (10th Cir. 1980) (reversing judge's decision to recuse himself from a case which might reduce state residents' utility bills); *In re Virginia Elec. & Power Co.*, 539 F.2d 357 (4th Cir. 1976) (same).

[*13]

However, as Alaska emphasizes, this case also implicates other serious issues, such as a state's sovereign interest in its courts, the need to prevent the federal system from being used as a strategic forum for delay, and litigants' interest in the speedy resolution of cases. Federal courts have long hesitated to interfere with on-going state litigation, and have repeatedly recognized the dangers of doing so. See, e.g., *Younger v. Harris*, 401 U.S. 37, 43, 27 L. Ed. 2d 669, 91 S. Ct. 746 (1971). Given the disruptive effect of allowing parties to transform every challenge to a state tribunal into a federal due process claim, we will not lightly interfere with pending state litigation. *Schaible*, 874 F.2d at 629.

[*1404] Balancing these interests, and examining the case as it currently exists, we conclude that Exxon's due process claim is not ripe for federal review. See *Abbott Lab. v. Gardner*, 387 U.S. 136, 148-49, 18 L. Ed. 2d 681, 87 S. Ct. 1507 (1967). Whether a dispute is ripe de-

pends on "the fitness of the issues for judicial decision and [*14] the hardship to the parties of withholding court consideration." *Id.* at 149; *Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation v. Bd. of Oil & Gas*, 792 F.2d 782, 789 (9th Cir. 1986). A claim is "fit for decision if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." *Schaible*, 874 F.2d at 627.

Here, Exxon's bias claims require further factual development. The parties have filed no pleadings and conducted only limited discovery on the remaining gas claims and counterclaims. Without any information on these claims' value or their potential impact, if any, on Permanent Fund dividends, we cannot weigh intelligently the potential bias of Alaska judges and jurors or determine whether their alleged interest has "sufficient substance to disqualify them, given the context in which this case arose." *Gibson*, 411 U.S. at 579.

Moreover, Exxon concedes that the settlement and Alaska's curative legislation have eliminated much of the bias [*15] problem. It argues that bias remains (1) because the gas counterclaims might reduce the funds available for dividend distribution and (2) because the repeal provision implies that State litigation proceeds might ultimately be distributed as dividends and has a subjective impact on jurors.

However, on the counterclaims, Exxon has shown only that the curative legislation does not mention the counterclaims by name. It has not shown that state courts will interpret the law in such a way that the counterclaims will actually affect the Permanent Fund dividends. State courts might, for example, rule that, any recovery on the counterclaims will simply reduce the State's recovery on other claims, such as the settled oil claims. We cannot tell, based on the record, whether state courts will interpret state law so as to eliminate the counterclaims' potential impact on Permanent Fund dividends. Nor can we determine whether any of Exxon's counterclaims have merit: The State argues that, on some claims, Exxon has paid no royalties, and thus cannot counterclaim for overpayment of royalties. Such issues require further factual development.

Exxon's arguments about jurors' subjective perceptions of [*16] the Fund or lack of understanding of the curative legislation do not apply to ongoing discovery and will have no impact unless and until the case goes before a jury. Exxon concedes that Alaska judges will understand the curative legislation, and will not be confused about the litigation's capacity to increase their dividends. Moreover, as the State emphasizes, any "subjective" juror bias might be addressed by a properly conducted voir dire. *Los Angeles Memorial Coliseum Comm'n v. NFL*.

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726 F.2d 1381, 1400 (9th Cir.), cert. denied, 469 U.S. 990 (1984).

Exxon has not shown that withholding review will cause it substantial hardship. *Abbott Lab.*, 387 U.S. at 148. Extensive discovery must occur before the case is ready for trial. Exxon does not allege that any remaining bias problems affect Alaska judges' fitness to rule on discovery issues and does not object to Alaska judges ruling on discovery issues. In fact, Exxon emphasizes that, if necessary, the case can be removed to another forum after discovery is complete.

Because the parties have not yet developed a factual [**17] record on the value of the remaining claims or their potential impact (if any) on Alaska Permanent Fund dividends, we cannot evaluate Exxon's bias claims on

their merits. Exxon does not object to state judges presiding over discovery, and many of its arguments pertain to *jurors*, not judges. This case may never go to a jury, and, if it does, the State may be able to remedy any problems of subjective juror bias with a properly conducted voir dire. Thus, the case is not ripe for review.

We express no opinion on the merits of the parties' arguments regarding abstention and [*1405] the Rule of Necessity. The district court order dismissing Exxon's complaint with prejudice is VACATED, and the case is REMANDED to the district court to dismiss without prejudice.

VACATED and REMANDED, neither party to recover costs on appeal.

Amerada Hess Chronology re: bias issue

1. September 2, 1977. State of Alaska files lawsuit against 19 oil producers related to underpayment of royalties. *State of Alaska v. Amerada Hess Corp., et al.*, No. 1JU-77-847 Civ. (Super. Ct. Alaska).
2. November 2, 1987. Producers file suit in federal district court, *Standard Alaska Prod. Co. v. Schaible*, No. 87-621 (D. Alaska), claiming PFDs create impermissible bias for judges and jurors in *Am Hess* case.
3. 1988. Judge Kleinfeld issues unpublished decision recusing himself from the federal case because of receipt of PFDs. Case assigned to Judge Belloni in Oregon.
4. June 20, 1988. Judge Belloni issues unpublished decision finding bias issue unripe and challenges Alaska to provide a fair forum for case.
5. April 29, 1989. Ninth Circuit dismisses federal bias case as unripe. *Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624 (9th Cir. 1989), *cert. denied*, 495 U.S. 904 (1990).
6. May 13, 1989. First Am Hess segregation enacted. CSHB 276(Fin) am, ch. 38, SLA 1989 (amending AS 43.23.045(b) to segregate income from "money awarded after trial" from PFD fund).
7. October 12, 1989. Alaska Supreme Court amends civil and criminal rules to provide that receipt of PFD does not provide basis for challenging a juror for cause. Alaska S.Ct. Order 1013 (amending Civil Rule 47(c) and Criminal Rule 24(c)).
8. March 14, 1991. Judge Carpeneti issues "Notice of Intention to Grant Motion for Disqualification," and indicating that 1989 segregation legislation did not go far enough to remove bias issues. *State of Alaska v. Amerada Hess Corp., et al.*, No. 1JU-77-847 Civ., Order 91-9 (Super. Ct. Alaska).
9. June 6, 1991. Second Am Hess segregation enacted. HCS CSSB 213(JUD), ch. 18, SLA 1991 (adding new subsection to AS 43.23.045 to segregate income from "money awarded in or received as a result" of the Am Hess case from PFD fund).
10. August 23, 1991. Judge Carpeneti rules that the new legislation cured the bias problem and the Alaska Supreme Court denies petition for review. *BP Exploration v. State of Alaska*, No. S-4654, S-4662, S-4689 (Alaska 1991).
11. 1991. Oil producers re-file federal bias suit. *Exxon Corp. v. Heinze*, Civ. A91-0543.
12. February 24, 1992. Judge Singleton issues order declining to recuse himself from case on account of receipt of PFD. *Exxon Corp. v. Heinze*, 792 F.Supp. 72 (D. Alaska 1992).
13. March 3, 1992. Judge Holland affirms Judge Singleton's decision and declines to remove reuse himself as well. *Exxon Corp. v. Heinze*, 792 F.Supp. 77 (D. Alaska 1992).
14. July 1, 1992. Current Am Hess segregation enacted. HCS CSSB 39 (FIN), sec. 19, ch. 134, SLA 1992 (same language as in second Am Hess segregation, but enacted at AS 37.13.145(d)).
15. April 1992. Oil phase of Am Hess litigation settles.
16. April 17, 1994. Ninth Circuit determines that appeal of refusal to recuse by Judges Singleton and Holland are not ripe. *Exxon Corp. v. Heinze*, 32 F.3d 1399 (9th Cir. 1994).
17. March 1995. Gas phase of Am Hess litigation settles.

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February 25, 2005

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

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would establish the Alaska capital income account as a separate account of the Alaska permanent fund, and would authorize the deposit into that account of the earnings on money received from State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District).

In 1992, the state's oil and gas royalty litigation (State v. Amerada Hess, et al., 1JU-77-847 Civ. (Superior Court, First Judicial District)) was headed to trial. Both state and federal judges had expressed concerns about the capacity of Alaskan judges and jurors to participate in the case on an impartial basis in light of the fact that the earnings on the portion of any recovery in the case would be deposited into the permanent fund and be used to pay the permanent fund dividends that all judges and jurors receive. AS 37.13.145(d) was enacted, which deposited into the principal of the permanent fund the earnings of all amounts received from settlement of this case. Thus, the concern about impartiality was resolved by disallowing the earnings from the settlement from being used in calculating the annual dividend amount.

The Amerada Hess litigation is now completed, though the possibility of a re-opener subject to an arbitration remains. Approximately \$425 million from this case, including earnings on settlement receipts and inflation-proofing, was deposited into the permanent fund.

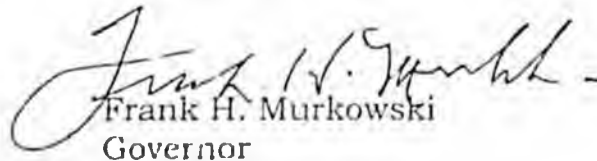
This bill proposes to end inflation proofing of the part of the permanent fund principal attributable to the Amerada Hess settlement and to authorize the deposit of the earnings from the settlement proceeds into a separate

The Honorable John Harris
February 25, 2005
Page 2

account of the Alaska permanent fund called the Alaska capital income account. The money in this separate account could then be appropriated by the legislature for any valid public purpose, including covering debt service on bonds to finance capital improvements in the state issued by the State of Alaska Capital Corporation under a companion bill I also am transmitting.

I urge your prompt and favorable action on this measure.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure

HB

1888

HFIN

FILE

Background Paper

**Use of the Amerada Hess
Settlement to Fund
Capital Projects**

Office of Management and Budget

02/28/05

Amerada Hess Royalty Oil Dispute and Settlement

Settlement's History

The fight with North Slope oil producers started in 1977, almost as soon as oil began to flow through the Trans-Alaska pipeline. That year the state filed a lawsuit accusing oil companies of undervaluing their oil and gas and thus denying the state the full value of its 12.5% royalty share. In 1989, the state filed claims against 15 companies for \$902 million. The dispute became known as the Amerada Hess case, named after the first company listed alphabetically in the lawsuit.¹

Royalty oil is the state's ownership share of the crude coming out of the ground. The state takes its royalty share in two ways: in-kind, which is sold to Railbelt refineries and a Fairbanks electrical utility; and in value, which is sold back to the producers and priced at the wellhead net of transportation costs. The problem came in figuring out how to value the royalty oil. The state claimed that the companies used "bookkeeping fictions and intracorporate transactions" to under value the oil at market and overstate transportation costs, which combined to artificially lower the wellhead value.² The production at issue occurred between 1977 and 1986 from the Kuparuk River and Prudhoe Bay oilfields.

The case became the longest running legal battle between the state and North Slope producers, lasting 18 years. One issue that came up early in the course of the litigation was that since 25% of royalty payments are dedicated to the Permanent Fund, earnings from settlement payments would eventually trickle into annual dividends paid out to Alaska residents. This issue was first raised in 1987 when three oil company defendants filed a lawsuit in federal district court to enjoin the Amerada Hess case from proceeding to trial in any court in Alaska. They claimed they could not receive a fair trial in Alaska because every judge and juror had a financial interest in the outcome of the case by reason of their respective annual Permanent Fund Dividends, which would be increased by any earnings derived from damages awarded to the state in Amerada Hess.³

¹ The Amerada Hess company was actually a very minor player in the case and settled out of court with the state in 1989 for \$319,000.

² "State Settles Oil Fight - \$100 Million Ends 18-Year Battle," Ralph Thomas, *Anchorage Daily News*, April 7, 1995.

³ Transmittal from Governor Hickel for SB 213, March 18, 1991.

Amerada Hess Royalty Oil Dispute and Settlement

In June 1988, the federal district court dismissed the action, ruling that the due process issue must be addressed in the state court before being asserted in the federal court. The companies appealed. In 1989, the Ninth Circuit Court of Appeals encouraged the parties to seek a legislative solution. Governor Cowper immediately introduced corrective legislation. This was ultimately passed into law (Ch 38, SLA 1989) in May 1989. Codified as AS 43.23.045 (b) Dividend Fund, it provided that:

income earned on money awarded after trial in State v. Amerada Hess, et al, 1JU-77-847 Civ. (Superior Court, First Judicial District) shall be treated in the same manner as the Alaska permanent fund except that it is not available for distribution to the (dividend) fund, and shall be annually deposited into the principal of the Alaska permanent fund.

Independently, in April of the same year the Ninth Circuit affirmed the district court's disposition, requiring the oil companies to raise the issue of disqualification in state Superior Court. The companies sought review by the U.S. Supreme Court but their petition was denied.

In October 1990, the companies filed a motion to disqualify the Alaska courts. In March 1991, Judge Carpeneti ruled that AS 43.23.045(b) removes most, but not all, of the sources of revenue flowing to the Permanent Fund dividend that created the bias. He also found that the statute failed to prevent additional monies from going to the dividend fund as a result of the so-called Amerada Hess price adjustment clauses in royalty-in-kind (RIK) contracts. He agreed with claims by the oil companies that if the state prevailed, it would result in a \$300 million judgement against refineries and the Fairbanks utility for in-kind purchases. Part of any judgement then would flow to the Permanent Fund and increase Permanent Fund Dividends (by \$10 in the first year, increasing to about \$40 in FY2015).

According to Judge Carpeneti, this failure to deal with RIK recoveries would require the Alaska court to disqualify itself. The result was another piece of legislation introduced by Governor Hickel in March of 1991 that became part of a more comprehensive rewrite of Permanent Fund statutes (19 Ch 134 SLA 1992) that included repealing AS 43.23.045(b) above. A new section was added to AS 37.13.145 Disposition of Income statute:

(d) Notwithstanding (b) of this section, income earned on money awarded in or received as a result of State v. Amerada Hess et al, 1JU-77-847 Civ. (Superior Court, First Judicial District), including settlement, summary judgement, or adjustment to a royalty-in-kind

contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available to the dividend fund, and shall be annually deposited to the principal of the Alaska permanent fund.

One final note on the legal history: 19 Ch. 134 SLA 1992 contained a conditional repealer stating that if the Alaska Supreme Court made a final determination that "no judge or juror is disqualified from serving as a judge or juror solely because the judge or juror may qualify to receive a permanent fund dividend," subsection (d) would be repealed, i.e., earnings on the Amerada Hess principal would be added into the annual dividend calculation.

Eventually, almost all of the state's claims were settled out of court. The final piece fell into place in 1995, when the state settled an assortment of gas royalty claims against three companies—BP, Exxon, and Mobil—for the last \$100 million of about \$1 billion in total settlements. Altogether the state spent nearly \$100 million in building its legal case. Over the course of the litigation, the share of settlements deposited into the Permanent Fund totaled \$194.1 million. Realized earnings on the Amerada Hess settlement money since the first deposit in FY 92 have added another \$230.3 million to the settlement principal, which totaled \$424.4 million at the end of FY 04.

Amerada Hess Settlement

	Principal			Realized Earnings (over inflation)			Inflation-proofing			Total Settlement Principal
	Beginning	Contributions	Ending	Beginning	Additions	Ending	Beginning	Additions	Ending	
FY 1992	Inception	82,099,000	82,099,000	0	0	0	0	2,005,000	2,005,000	84,104,000
FY 1993		82,099,000	98,510,000	0	4,641,000	4,641,000	2,005,000	4,541,000	6,546,000	109,697,000
FY 1994		98,510,000	111,723,000	4,641,000	5,620,000	10,261,000	6,546,000	3,615,000	10,161,000	132,145,000
FY 1995		111,723,000	173,440,000	10,261,000	6,145,000	16,406,000	10,161,000	5,060,000	15,221,000	205,067,000
FY 1996		173,440,000	176,300,000	16,406,000	18,441,000	34,847,000	15,221,000	5,864,000	21,085,000	232,232,000
FY 1997		176,300,000	184,147,000	34,847,000	21,377,000	56,224,000	21,085,000	7,058,000	28,143,000	268,514,000
FY 1998		184,147,000	208,769,000	56,224,000	31,254,000	87,478,000	28,143,000	6,853,000	34,996,000	331,243,000
FY 1999		208,769,000	208,769,000	87,478,000	36,086,000	123,564,000	34,996,000	5,102,000	40,098,000	372,431,000
FY 2000		208,769,000	215,655,000	123,564,000	30,331,000	153,895,000	40,098,000	8,307,000	48,405,000	417,955,000
FY 2001		215,655,000	229,242,000	153,895,000	7,687,000	161,582,000	48,405,000	14,543,000	62,948,000	453,772,000
FY 2002		229,242,000	194,083,000	161,582,000	(23,384,000)	138,198,000	62,948,000	(5,154,000)	62,112,000	394,393,000
FY 2002		194,083,000	194,083,000	138,198,000	0	138,198,000	62,112,000	4,318,000	62,112,000	394,393,000
FY 2003		194,083,000	194,083,000	138,198,000	0	138,198,000	62,112,000	6,160,000	68,272,000	400,553,000
FY 2004		194,083,000	194,083,000	138,198,000	14,713,000	152,911,000	68,272,000	9,133,000	77,405,000	424,399,000
	Total	194,083,000		Total	152,911,000		Total	77,405,000		

Note: FY2002 reductions are the result of an audit correction of an over deposit of settlement principal and related earnings.

Legislation to Leverage Amerada Hess Settlement Earnings To Finance Capital Projects

Summary

1. Create the Alaska Capital Fund

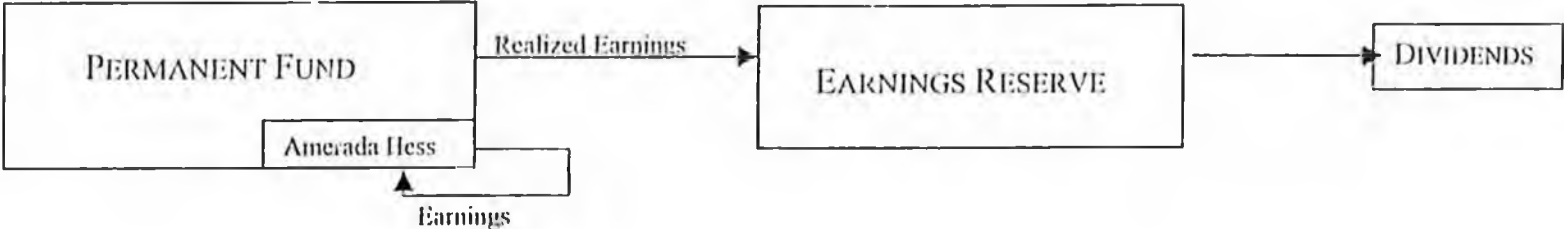
- Legislation establishes the Alaska Capital Fund
- The realized earnings off of the Amerada Hess principal (expected to be in the \$30+ million/yr. range) would be deposited into the Alaska Capital Fund.
- The Alaska Capital Fund is established within the Earnings Reserve Account of the Permanent Fund
 - ✓ The purpose of putting it in the ERA instead of the general fund is so the balance can be carried forward without being subject to the annual CBR sweep.
 - ✓ The ability to carry fund balance forward is critical to providing security of payment to Wall Street despite expected volatility of earnings.
 - ✓ The Alaska Capital Fund would be invested the same as the ERA and retain its own earnings.
 - ✓ The Alaska Capital Fund would accumulate realized earnings for 2 years, beginning in FY 05, before being drawn down to pay debt service.
 - ✓ The accumulated balance would fund reserve accounts to secure debt.
- AS 37.13.145(c) would be changed so there would be no inflation proofing of the Amerada Hess principal from the Alaska Capital Fund.
 - ◆ Changes are made to the Alaska Permanent Fund section of the FY 05 and 06 budget bills so that Amerada Hess realized earnings are deposited into the Alaska Capital Fund and Amerada Hess principal is exempt from inflation proofing.
 - ◆ The Amerada Hess portion of Permanent Fund principal would remain at \$424 million thereafter.

2. State of Alaska Capital Corporation Created

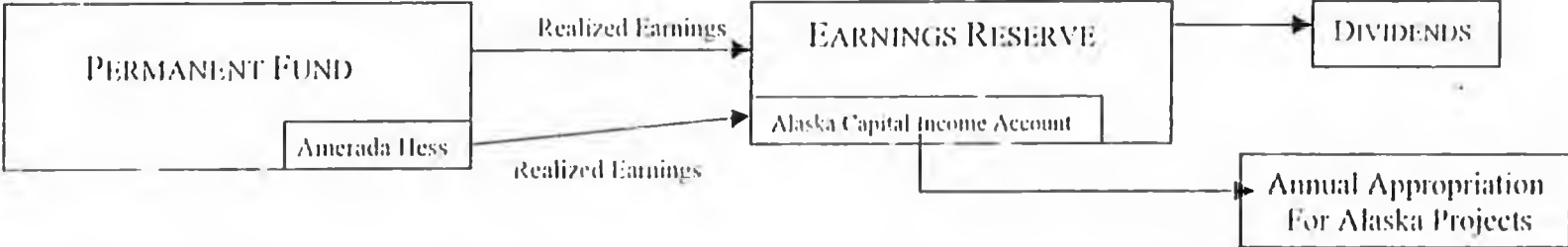
- Legislation establishes the State of Alaska Capital Corporation. The Corporation is closely linked to the Department of Revenue and State Bond Committee that would issue stand-alone moral obligation debt of the state totaling \$343 million.
 - ♦ The Alaska Capital Fund would be the source of revenue to pay debt service on bonds issued by the corporation.
 - ♦ Historically the Permanent Fund average annual earnings have been 8.94% and the ten year forecasted rate of realized return is 7.61%.
 - ♦ Modeling shows debt service may be paid with a realized rate of return as low as 5.5%, but given market volatility it is extremely important to be able to withstand short term bear markets.
 - ♦ A debt service reserve fund and an advance funded debt payment account along with the fund balance of the Alaska Capital Fund provide a high probability of an available funding source.
- Debt service on the bonds will be paid through annual legislative appropriations from the Alaska Capital Fund to the Corporation.
 - ♦ The moral obligation of the state is necessary to provide further assurance to bondholders that annual debt service payments will continue even during improbable unanticipated prolonged down market periods, when there may be low or negative Amerada Hess realized earnings paid into the Alaska Capital Fund.
 - ♦ Consultations with credit rating agencies and financial advisors have provided assurance that there will be no negative effect on the state's credit rating by issuing these bonds.
 - ♦ Investment grade ratings in the "A" range are expected on the bonds.
 - ♦ Bonds will be issued with a requirement to pay interest only with a final, theoretical principal maturity date of 20 years. Purchasers, however, understand that the actual repayment of principal will be based on Amerada Hess earnings deposited into the Alaska Capital Fund. Expectations are that the bonds will be paid off much sooner than 20 years.

ALASKA CAPITAL INCOME ACCOUNT

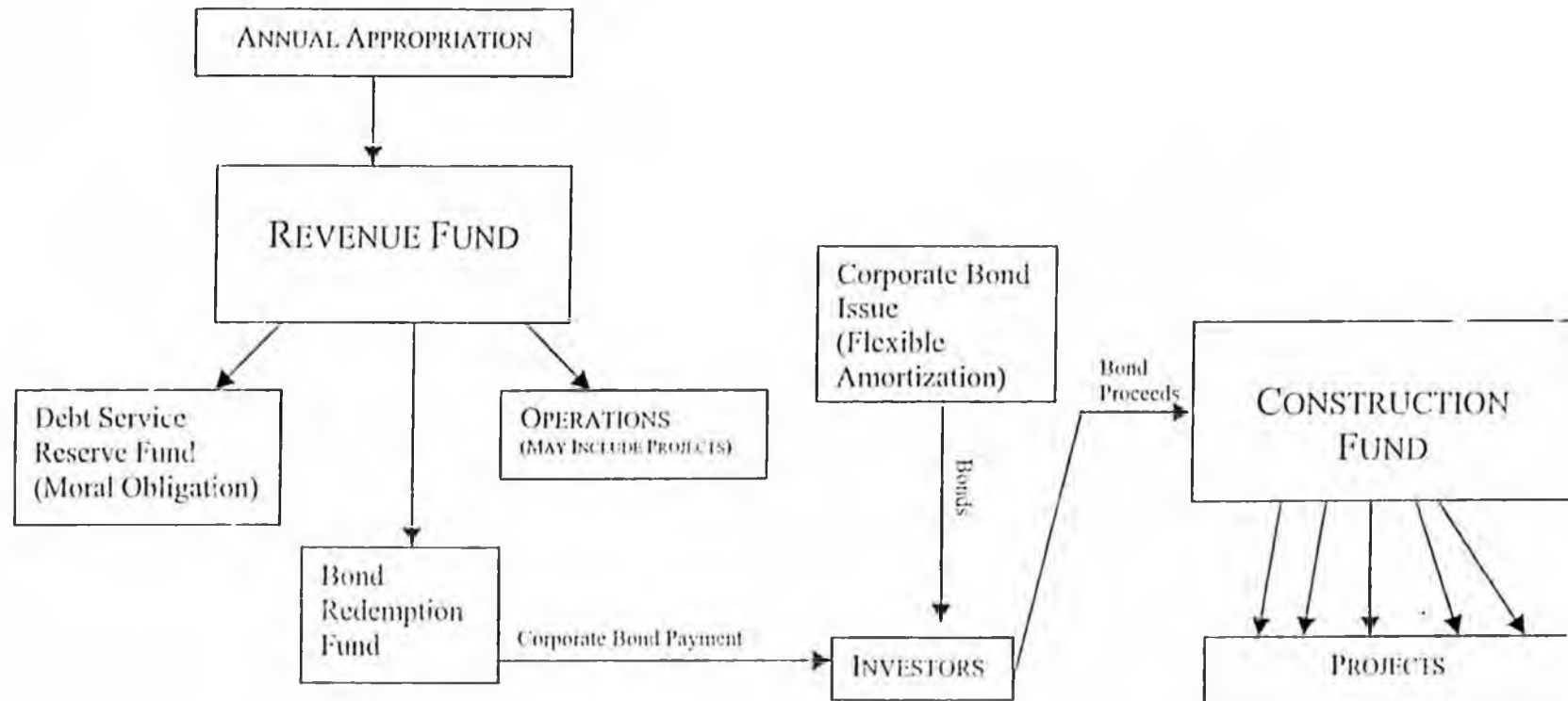
CURRENT



PROPOSED



STATE OF ALASKA CAPITAL CORPORATION



Alaska Capital Income Account										
Am Hess Principal			424,399,000							
Am Hess Transfer Rate										
Blended Rate										
	Earnings Rate	Beginning Balance	Amerada Hess Earnings	Earnings	Transfer to SOA CC	Ending Balance				
2005	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2006	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2007	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2008	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2009	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2010	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2011	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2012	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2013	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2014	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2015	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2016	7.61%	-	32,296,764	1,228,891.87	33,525,656	-				
2017	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2018	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2019	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2020	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2021	7.00%	-	29,707,930	1,039,777.55	30,747,708	-			average annualized earnings rate	
2022	7.00%	-	29,707,930	1,039,777.55	30,747,708	-		7.43%		
2023	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2024	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2025	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2026	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2027	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2028	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2029	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2030	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2031	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2032	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2033	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2034	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2035	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2036	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2037	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				
2038	7.00%	-	29,707,930	1,039,777.55	30,747,708	-				