

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

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May 5, 1995

Mr. Brian Rogers, Chair
Alaska Long-Range Financial Planning Commission
P. O. Box 80690
Fairbanks, AK 99708

Re: A Statutory Budget Plan

Brian
Dear ~~Mr. Rogers~~:

Enclosed is a copy of a proposal I have developed for a statutory plan to get the state budget balanced. I know that you and the other members of the Commission are extremely busy trying to absorb the flood of information being given to you, but I ask that you at least read the 2-page "Executive Summary" of this statutory approach. Then, if you have any questions about any of the plan elements, you can look in the main body of the report for details, or you can contact me.

Most if not all of the other plans for balancing the budget involve amending the Alaska Constitution. This requires a two-thirds vote of each house of the Legislature, and it is quite possible that no plan of a constitutional nature can obtain these super-majorities. If so, then a statutory plan would be the best we can get, in terms of political reality.

Thank you for your time and consideration of this proposal. I wish you and the Commission all the best in your efforts.

Very truly yours,



Thomas K. Williams

Enclosure
TKW:lm

cc: Other Commission Members (w/ enclosure)

AVOIDING THE CRASH

**A PROPOSAL
FOR A STATUTORY PLAN
TO BALANCE STATE SPENDING WITH
SUSTAINABLE STATE REVENUES**

By Thomas K. Williams

**Submitted to the
Alaska Long-Range Financial Planning Commission**

May 5, 1995

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
CHAPTER 1. INTRODUCTION	1
CHAPTER 2. ELEMENTS OF THE PLAN FOR THE SPENDING SIDE OF THE BUDGET EQUATION	4
CHAPTER 3. ELEMENTS OF THE PLAN FOR THE REVENUE SIDE OF THE BUDGET EQUATION	15
CHAPTER 4. A VOTE IN 1996, THE LINCHPIN OF THE PLAN	20

A STATUTORY PLAN FOR LONG-TERM SOLVENCY

by Thomas K. Williams[†]

EXECUTIVE SUMMARY

Alaska's \$600 million gap between unrestricted revenues and expenses will rise to over \$1 billion a year as North Slope oil production — which still provides nearly \$5 out of every \$6 in unrestricted revenue — continues to decline. Absent other action, state cash reserves will run out in 3 - 4 years, at which time the State faces potential insolvency.

The goal of a long-range fiscal plan is to bring spending into balance with sustainable revenues with the least amount of pain for Alaskans, while avoiding this looming threat of insolvency.

The State has five basic tools available in formulating a long-range fiscal plan:

- spending cuts
- economic development
- new or increased taxes
- using part of the Permanent Fund income
- using present cash reserves to soften the impacts of other actions

Studies show that any one of these tools, by itself, will not be sufficient to get the budget into balance and avoid the threat of insolvency. Only a combination of tools can succeed.

[†] Mr. Williams was Alaska's Commissioner of Revenue in 1979-82, when the flood of state revenue from Prudhoe Bay reached its peak. He was Governor Hammond's lead spokesman in reforming the laws for investing state funds and in significantly transforming and expanding the roles of AHFC and AIDEA. He was also one of the original Trustees of the Alaska Permanent Fund. Before serving as Commissioner, he was Director of Petroleum Revenue for the State (1975-79). He is currently Alaska Tax Counsel for BP Exploration (Alaska) Inc. Before joining BP in 1987, he was in private legal practice in Anchorage with Bogle & Gates (1983-84) and then was general counsel for Cook Inlet Region, Inc. (1984-87). Mr. Williams holds A.B. and M.A. degrees from Princeton and Harvard, respectively, and a law degree from Stanford. **All statements in this paper are solely the personal views and opinions of Mr. Williams and should in no way be construed as reflecting any view or opinion on the part of his employer. So blame him, not BP.**

The proposed plan asks voters in the 1996 general election to approve the following 12-point statutory program that addresses both the spending side and the funding side of the budget equation:

SPENDING	FUNDING
• Let state employees have part of any savings they are responsible for • Allow termination of agencies/programs by Executive Order • Require Governor to submit budgets over next 5 years that are each 5% smaller than prior year's budget • Allow impoundment of appropriated funds • Enact a "fiscal emergency" response plan • Reform state travel policies: > Use 1 travel agent > Concentrate travel on 1 airline carrier > State earns the mileage awards • Reform "merit" pay increases: > Limit to top 1/3 > One-time-only award, not permanent pay increase > Does <u>not</u> affect cost-of-living increases • Deliver public education (K-12) more efficiently, emphasizing new information technology	• Fund capital projects through bonds instead of capital appropriations • Limit use of cash reserves to \$300 million per year • Reinststate the personal income tax if "spending side" measures don't balance the budget • Reform the use of Permanent Fund income: > First call on income is for inflation-proofing > Half of remaining income is for PFDs, with fraction to be reduced (e.g. to 1/3 or 1/4) if budget not balanced after other measures > Rest of income goes into General Fund

The chief advantage of putting this plan (or a similar one) to a vote of the people is the political "cover" it can provide for elected officials. Before the election they can support the plan by saying they support the idea of letting the people vote on the plan, without having to say they agree with any unpopular points within that plan. After the election, if the plan is approved, they can take any further actions needed to carry it out and say they are merely carrying out The Will of The People.

A second advantage of having a vote is that, if the plan passes, elected officials may be less likely to try to undo it the first time it becomes inconvenient for them.

CHAPTER 1. INTRODUCTION

The gap between Alaska's unrestricted state revenues and its spending of those revenues is about \$600 million a year. It threatens to run away to over a billion dollars a year in just a few years as oil production — which accounts for \$5 out of every \$6 in unrestricted revenue — will continue to decline despite new corporate investments on a massive scale to slow the decline down.

This gap is real. This gap is serious. If it is not addressed, state government faces insolvency in just a few years. If Alaska does go broke, the lives of thousands of Alaskans will be disrupted in the wrenching of the state economy that will follow.

The purpose of a fiscal plan is to avoid those shocks, or at least to soften the blow by spreading the effects out over a reasonable time instead of getting hit all at once.

This paper does not try to re-invent the work of others in analyzing the size and growth of the fiscal gap, or in analyzing what options Alaska has and how much they could contribute toward solving the gap. Rather, it builds from the conclusions others have reached. Briefly, those are —

- Spending cuts alone won't solve the fiscal gap, although they are an integral part of any solution.
- The state's current cash reserves will be exhausted in 3 - 4 years if nothing else is done; conversely, if the draw against them were to be limited to, say, \$300 million a year, then these reserves could be available for nearly a decade or so, allowing time for other, more painful budget-balancing measures to phase in gradually.
- Some combination of revenue-enhancing measures will be necessary, in addition to spending cuts; the options so far identified for enhancing state revenues are:
 - > revenues from new economic development

(Side comments: Unfortunately, revenues from the most promising kind of new economic development that would come in time to avoid insolvency — namely, revenues from continued oil development on the North Slope outside of ANWR — are already included in state revenue forecasts, which thus understate the extent of the potential fiscal crisis if the state responds to it in a way that scares off the massive new investments needed for this development to occur.

(Revenues from the Gas Pipeline or from possible petroleum development in ANWR would come too late to meet the immediate solvency crisis, although they could make a material contribution in the long term if either or both of them come about.

(Nonpetroleum development will be too little and too late to make a significant contribution to solving the short-term solvency crisis.

(Under current state law, only petroleum development "pays its way" in the sense of paying more into the state treasury than is paid out of the treasury for increased government services caused by that development)

- > new or increased taxes (e.g., personal income tax, state sales tax, "user fees;" increased taxes on motor fuel, alcohol, tobacco, etc.)
- > to use some of the Permanent Fund income

It currently appears that all three kinds of "revenue enhancements" — revenues from new development, new or increased taxes, and using some Permanent Fund income — will need to be used, in addition to spending cuts and conserving cash reserves, if the state budget is to be brought into balance for the long term.

The purpose of this paper is to describe how these elements could be combined into a statutory plan to balance the budget. The details about how much of each element should be used in the plan lie outside the scope of this paper, and are ultimately matters for the Legislature to decide if it moves forward with a statutory plan. The objective for now is to outline the framework or skeleton that such a plan should have.

Of course, the primary drawback to any plan of a statutory nature is that it is not binding on future Legislatures, which can simply repeal or rewrite the statutes containing the plan. However, the plan proposed below addresses this shortcoming of statutes, by infusing its statutory provisions with an aura of sanctity arising from a vote of the people. If the people vote on a statutory plan and approve it, then elected officials should be less inclined to dismantle it the first time it becomes inconvenient for them.¹

On the other hand, the principal advantage of a statutory plan is purely pragmatic — it only takes a simple majority of each house in the Legislature to enact it.

¹ This disinclination to overturn the plan should arise in two ways. First, overturning the plan would look like defiance of The Will of The People. Such defiance usually comes across as arrogance and has been the ruin of more than one political career in the past. Second, it provides "political cover" for refusing to undo the plan. The elected official can gain this cover by listening sympathetically to an aggrieved constituent's complaints about the plan, and then saying some variation of "I really understand your problem and personally I may even agree with you, but my duty is to carry out The Will of The People."

In contrast, any plan embodied in a constitutional amendment would require a two-thirds vote of each house in order to be put before the people for a vote. While a constitutional plan offers the advantage of being mandatory for future Legislatures, that very same mandatory nature makes it difficult to obtain the requisite two-thirds votes in the Legislature.²

Advocates of a fiscal plan might prefer to see it enshrined in the Alaska Constitution to ensure that it will be followed. But political realities may dictate, and Alaska's failure to adopt any constitutional plan over the last decade strongly suggests, that the only type of plan that can actually get through the legislative process is a statutory one. If that turns out to be the case, then Alaska will need the strongest kind of statutory plan that it can get.

² Another reason why it will be hard to get the two-thirds votes for a constitutional plan is the lack of flexibility to change it if it needs to be changed. Any such change would itself need to receive two-thirds votes in the Legislature as well as a majority of the voters. And constitutional amendments can be voted on only in general elections, which are held only once every two years. By the time such a plan could be changed, it might have wrought disaster on the state. So unless there are provisions to "bail out" of a plan if it goes bad, legislators may be reluctant to vote for it as a constitutional amendment even though they approve of the elements of the plan. But once such "bail out" provisions are introduced into a proposed constitutional amendment, they will tend to end up being broadly drafted by the time the Legislature approves the amendment even if they were narrowly drafted to begin with. Thus, because of the "bail out" provisions, a constitutional plan, while supposedly mandatory in nature, could turn out in practice to have even less binding effect on future legislatures than a voter-approved statutory plan.

CHAPTER 2. ELEMENTS OF THE PLAN FOR THE SPENDING SIDE OF THE BUDGET EQUATION

The proposals below for the spending side of the budget equation group themselves into two basic varieties. In the first variety are proposals to create processes that lead to answers about how to save money. In the second are several specific answers.

Processes. Cutting state spending has two parts. One is to eliminate agencies and programs, or phase them out. The other is to do things more efficiently.

One of the difficulties in eliminating agencies and programs is that there is little consensus among Alaskans about which ones to cut out first. Every program and agency has its own constituency of people who enjoy it or benefit from it, and who stand to suffer, be injured or become unhappy if it is not continued. These people naturally rush to the foreground to protest when their program or agency is threatened. It's the "don't gore my ox!" or DoGMO syndrome, the elder brother of NIMBY.³

Wouldn't things be easier and less rancorous if we started by identifying the agencies and programs we most need to keep? Unlike the question of what to eliminate, Alaskans largely agree on what is most important for government to be doing. They want it to provide the basics— things like public education, public safety, jails, a system of justice to protect our rights and freedom, facilitating trade and travel. So why not start with these programs, agree to continue them, figure out what they cost, and then move on to progressively less essential or less urgent programs until the available money is used up? Then what's left can either be eliminated, or the people who want those programs can be asked to pay taxes or user fees to cover the costs of keeping them. That's just a suggestion to any legislator or Governor who reads this, and there's no good way to put it into statute. It just seems like a better way to frame the debate.

Efficiency — that is the second side of spending cuts. Here there are a number of things that could be done statutorily to save money without sacrificing what we get from government.

One of the most important lessons learned by private enterprise in its drive for greater and greater efficiency during the last few years is this: No one knows better what's useless, unnecessary or wasteful on the job than the person doing that job. From this homely, obvious truth flows an equally compelling corollary: The way to achieve the greatest increase in efficiency and productivity is to give employees the freedom and authority to change the way they do

³ "Not in my back yard!"

their jobs, so long as they achieve what they're supposed to achieve in performing their jobs.⁴

There is no intrinsic reason why the lessons learned in the private sector cannot be applied in government. Contrary to the stereotypes of them, state employees are not inferior to their counterparts in business, nor are they lazier or less motivated.

Government is not efficient primarily because the incentives for its employees run the wrong way. Instead of being rewarded, efficiency is punished. For example, if an agency saves money by being more efficient and turns that money in, unspent, to the treasury at the end of the fiscal year, there is a real risk that its next budget will be cut since it obviously "doesn't need the money." The more money being turned in, or "lapsed," the greater this risk becomes.

Such a cut is seen by the agency as something bad, something punitive, and hence something to be avoided. Why is it seen this way? In large part it's because the hierarchical structure of government leads agency managers to think that having a larger and larger budget and increasing the number of employees under their supervision will cause them to be promoted or upgraded into higher positions in the hierarchy, where the pay is higher as well as the status. Cutting an agency's budget after it has been efficient and not spent all its money works against these ambitions of the agency's management. The cut sets them back in their ambitions.⁵ The managers' resulting anger, disappointment or frustration will be taken out in turn on the people working for them — perhaps especially those who saved the money — since the agency management cannot hurt their superiors in the bureaucracy or the legislators who do the actual cutting of the agency's budget. So everyone in the agency suffers: the managers who are at least temporarily frustrated in their ambitions, and the staff feel the managers' response.

Every manager and supervisor in the state government has learned this lesson.

⁴ Of course, success in giving this freedom and authority to employees depends on each employee's knowing exactly what the targets are that he or she supposed to achieve in the job. Without this, individual efforts can be at cross-purposes, and instead of pulling together to achieve a common goal, employees end up pulling in different directions — and efficiency is lost instead of being gained.

⁵ In fairness one must point out that many managers resist budget cuts for less selfish reasons. Often they believe a cut in their budget would reduce the agency's flexibility to deal with unforeseen situations. When the unexpected happens, it is much easier and faster to respond to it by using some money that was "in reserve" instead of trying to get funds from another agency or through a supplemental appropriation. But the point is not about the motivation of the managers, but about the fact that they almost universally won't cut their budgets unless they are ordered to, and even then they are reluctant to do so.

For precisely similar reasons many agency managers are loathe to eliminate staff even when they clearly are no longer needed.⁶ Reducing staff means having less justification for moving to that next higher position; and in terms of status among one's peers at a given level of the pyramid, having fewer employees makes one less powerful and with less status. For other managers the reason for their resistance to cutting staff is more "humanitarian" — they don't want to cause hardship for the employees and their families by firing them, or they want to avoid the unpleasant, often emotional meetings face-to-face with the employees to give them the bad news.

Plan Element No. 1. Let state employees have part of any savings that they are responsible for.

The first step in breaking the "bureaucratic" mind-set and achieving greater efficiency in government is to reverse the incentives. Agency managers and their staff must be rewarded for saving money, and the rewards must be sufficient to overcome management's reluctance to cut staff. If efficiency improves by 25%, for example, then it does no good to have a 12-person staff working only 75% of the time and sitting idle, waiting to go home, for the other 25%. For the full savings to be realized, the staff needs to be reduced to nine who are working with no idle time.

Letting people share in the savings they're responsible for creating is a simple, direct incentive. Its simplicity and directness ensure that it would motivate people in the right direction.

But, like many "simple" ideas, the devil with this one is in the details. What is to keep an agency from padding its budget, so everyone in it can share in a windfall (for the first year at least)? What about an agency that stays within its budget but gets saddled with new functions by new legislation? How high up from an agency can the savings be shared? for example, if there are savings by two divisions out of three in a department, can the Commissioner's Office share in the savings of the two? If the Legislature appropriates less money to an agency than there was in the Governor's budget, do the agency's employees share in the difference between the Legislature's budget for them and the Governor's if they come in below the Legislature's appropriation, or do they only share to the extent they're below the appropriation? The following answers most of these questions about details.

First of all, the rewards should flow from the bottom up. That is, starting in the lowest-level governmental unit, when such a unit lapses money in its budget, the staff in that unit would share among themselves 5% of the amount so lapsed (as to the determination of the size of this "lapsed" amount, see below).

⁶ A case in point was when Alaska repealed the personal income tax in 1980. Not a single state income tax auditor was fired. One or two in the Seattle office may have resigned instead of relocating to Alaska, but the rest were all reassigned to work on other taxes. The author was, at the time, quite proud of this achievement in "protecting the staff."

This reflects the fact that the people "in the trenches" doing the actual work generally know better than their supervisors how to do that work more effectively or more efficiently. By giving them the primary incentive to be more efficient, the enormous potential of the "bureaucracy" will be harnessed for the goal of efficiency.⁷

Next, at the next tier up — let's say sections are the bottom level and the next level up is a division — the management and division-level staff (i.e., staff not assigned to any particular section within the division) would divide among themselves 2.5% of the amount lapsed by each section within that division.⁸ In other words, for a given lapse by a section within the division, the total amount being divided at the division level would be half as much as the pool that is divided up among the staff in the section that caused the savings. Of course, no one in a division would share in any lapse originating in a different division; they only share in the savings arising within their own division.

For the next tier up — from the division level, this might be the commissioner and department-level staff — the amount to be divided among them from a unit's lapsed funds would again be half of what it is at the next level down, or 1.25% in this example. Each tier up would divide half as much, in total, of a given lapse as the tier immediately below it. And again, of course, no commissioner or department-level staff would share in any money lapsed by a unit in another department.⁹

⁷ If the savings were to come as the result of eliminating positions within a group, those who lose their positions should share in the "lapse pool" in proportion to the amount of time that they were working with that group during the year.

⁸ The reason for sharing with the higher-ups in the department is obvious. If they didn't share, they would have little incentive to allow the troops in the trenches to make the savings, especially those savings would reduce the size or apparent status of the higher-ups' domains. But under this proposal, the higher-ups potentially have very strong incentives to encourage savings by those below them. This is because, even though the pool to be shared gets halved in size for each level up in government one goes, the number of people in each level of government to share in that reduced pool will be getting smaller even faster (unless managers at each level have, on average, only two units or less reporting to them from the next level down, in which case that hierarchy should be reorganized to have fewer managers with broader areas of responsibility). This faster shrinkage in the number of people up the chain of command who share in a savings means the per-capita amount at a higher level will be greater than the per-capita amount in the next level down. In addition, a higher-up would stand to share in lapsed funds from each of the bottom-level units within his or her span of authority, further increasing the higher-up's incentive to encourage all units within his or her control to become more efficient.

⁹ For political and public-policy reasons, the Governor's staff should share only in savings originating within their ranks as if they were a separate department, while the Governor should not share at all in any savings even though that position embodies the executive power of the state and all departments report to the Governor. Similarly, judges and justices should not share in savings arising in the Judicial Branch, although the Court Administrator and support staff should, assuming this system were extended beyond the Executive Branch. However, this system would be inappropriate for the Legislative Branch (except possibly the Ombuds-

(footnote continues on next page)

Under this proposal, for any given lapse of funds, the total amount distributed to state employees would have to be less than 10% of the lapsed amount, no matter how many levels of government may end up sharing in it, because the pool being shared at any given level is half of the pool for the level below it.¹⁰ This means that at least 90% of the savings will always be realized, despite the fact that employees up and down the line who are responsible for that savings would share in it.

To avoid "games" with agency budgets, the amount of lapsed funds available for sharing should be measured from the lesser of the Governor's budget requests (including supplemental requests) for that unit and the amount actually appropriated (including supplemental appropriations¹¹) for it. For a few units or programs — such as fighting forest fires, or responding to a disaster — the amount spent each year depends primarily on factors beyond their control, and so authority would have to be given to the Governor to authorize adjustments to eliminate the unfair effects of those uncontrollable factors.

The important thing about this proposal is that, for the first time, it would create an incentive for government to become smaller and do things better, on its own initiative. In the past, state government has shown enormous knowledge, tenacity, resilience and creativity in thwarting the efforts of Legislatures and Governors alike to reduce its size. Now it is necessary to harness these vast abilities to a different end, and we can!

Plan Element No. 2. Enact legislation allowing the termination of state agencies and programs by Executive Order.

Having given people the incentive to be more efficient, it is necessary to give them the authority to act in order to achieve that efficiency. One of the key ways to do this is to abolish those parts of state government that aren't working or don't make sense to keep any longer.

By using the Executive Order procedure, the Governor can act decisively and immediately to eliminate such programs and agencies. If in doing so, the Governor makes a mistake or the Legislature simply disagrees with the deci-

man's office) because the Legislature makes all the appropriations and there would be far too many conflicts of interest, either in fact or in appearance.

¹⁰ For the mathematically inclined, $1 + 1/2 + 1/4 + 1/8 + \dots + 1/(2^n) = 1 + (2^n - 1)/(2^n)$. As "n" approaches infinity, $(2^n - 1)/(2^n)$ approaches 1, and hence the total for the series of fractions approaches $1 + 1$, or 2. Thus, if the bottom-level unit shares 5%, then the total for all levels can approach, but can never actually reach or exceed, two times that amount, or 10%, no matter how many levels of government there actually are above that unit which are sharing in its lapsed funds.

¹¹ "Supplemental" appropriations would include not only additional funds appropriated during the fiscal year at the request of the agency, but also any additional funds appropriated to an agency because of a non-zero fiscal note for new legislation that affects that agency.

sion, the Legislature retains the power to disapprove and annul the Executive Order by adopting a resolution to that effect.

The problem with the present system for eliminating programs and agencies is that it has failed miserably. There are over 20,000 state employees for a populace of 600,000; in other words, out of every 30 men, women, children and infants in Alaska, one is a state employee. In large part the reason for this failure is in the nature of the Legislature, which creates the programs and agencies where all these people are working. The legislative process is simply ill-suited to eliminate programs because sometimes all it takes to save a program is just one legislator in a key committee position who wants that program to continue. That legislator might use his or her position to smother legislation to repeal that program by not letting it advance out of committee, or, equally effective, could use that position to hold up other legislation in order to bargain for votes from other members to defeat or amend the legislation.

In order to ensure that Executive Orders could be used effectively, it may also be necessary to amend the State Personnel Act to ensure that there are no problems under any of the state collective bargaining agreements in laying people off or firing them and eliminating their positions. For collective bargaining agreements that are already in place, the state would have to respect the terms of those agreements until they expire or come up for renegotiation, at which time the new statute would be applied in the new contracts for those bargaining units.

Plan Element No. 3. *Require the Governor to submit budgets for each of the next five fiscal years that are 5% smaller than the budget in the preceding year; and if it isn't, automatically cut the salary of every non-clerical and non-secretarial position in the Governor's Office and everyone in a division-director level position or higher in the rest of the Executive Branch, by 5% for that fiscal year.*

Fitting closely with Plan Element No. 2, this proposal would tend to force the Governor to use the authority conferred under that Element. If the Governor has to shrink the budget, he or she is going to have to look for ways to make government smaller. And again, with Element No. 1 giving the state civil service a powerful financial incentive to save money, the Governor should be able to mobilize the "bureaucracy" to look for ways to make itself smaller, even at the expense of some of its members.

In any event, it is surely better to give the people running the programs a target to meet in reducing their expenses, and to force them to look for ways to reduce costs, instead of having less informed "outsiders" — be they legislators, the Long-Range Financial Planning Commission, or the author of this paper — try to prescribe what programs to reduce or eliminate.

The "in terrorem" threat to people's salaries might seem excessive to some, but it would surely motivate the state's top management to meet the 5% target. Without this extra push, it is doubtful that the sharing in lapsed funds

under Plan Element No. 1 would be sufficient to ensure that this target would actually be met each year.

Plan Element No. 4. *Allow impoundment of appropriated funds.*

It seems foolish and wasteful to require the Executive Branch to spend money that it doesn't want to spend. The strongest case for not allowing impoundment is where the appropriation is for a program enacted into law over the Governor's veto. In terms of respect for the Separation of Powers between the branches of state government, allowing impoundment for such a veto-overridden program would largely frustrate the Legislature's act of overriding the veto because the Governor, having lost the contest over whether the program should be enacted or not, would nevertheless be able snatch "victory" from the Legislature by impounding the money to implement the program.

There are two ways to accommodate this Separation of Powers issue. One is to allow impoundment except for programs that have been vetoed and overridden into law. This would preserve the Legislature's "victory" in overriding a veto while still giving Governors latitude to act in the great majority of cases. The second is to recognize that the emergency of the looming fiscal crisis outweighs the Separation of Powers issue for the time being. Such a recognition could be in the form of a general power to impound that sunsets after a specified period — say, five years.

Either way, the point is this: If the Executive Branch is going to do a half-hearted job implementing a program, there is no point in wasting money by requiring the Executive to spend all the money appropriated for that program. Instead, where there is such a strong disagreement between the Executive and Legislative Branches over a program, it is the responsibility of both sides to try to compromise so that each can live with the result. At least for now, Alaska simply cannot afford the luxury of indulging in inter-Branch contests of will over programs that are not going to be effectively and efficiently implemented.

Plan Element No. 5 *Enact a "fiscal-emergency response plan" — that is, a clear, detailed plan for suspending non-essential government functions if a fiscal emergency suddenly develops.*

In 1986 a sudden and dramatic collapse in world oil prices put Alaska into a potentially catastrophic fiscal emergency, which fortunately disappeared when prices rebounded a little later. Today Alaska remains just as vulnerable to oil prices as it was then. Alaska also remains vulnerable to any extended disruption in the flow of oil from the North Slope. A natural disaster like the 1964 earthquake could require massive state expenditures to cope with the emergency. Any of these types of events could destroy or gravely damage the state's fiscal footings.

To be prepared for the unexpected, Alaska needs to have a plan for the orderly shut-down of non-essential state functions if an major fiscal emergency were suddenly to develop. Such a plan should provide for different degrees of

shut-down depending on how severe the fiscal emergency is. For example, it might say that if a "hole" in the state budget suddenly opens up that is over "X" million dollars, the Governor will take Steps A, B and C; if the hole is "X plus Y" million dollars, then Steps D, E, F and G will be taken in addition to the first three; and so on.

As with recommendations about permanently eliminating particular state programs and agencies, it is beyond the scope of this paper to suggest which state functions should be shut down, and in what order, if there were a sudden fiscal emergency. Rather, the Governor should develop such a plan in cooperation with the Legislature. Legislation (or a legislative resolution) should be passed now, calling for the Governor to develop the statutory aspects of such a fiscal-emergency plan and to submit them to the Legislature as soon as possible.

Non-Process Actions. As noted at the outset of this chapter, two types of proposals are being offered. The first group, above, is comprised of proposals for new processes that will result in savings to the state. The second group, below, has specific cost-saving actions. However, none of the proposals below relates to any specific agency or program.

Plan Element No. 6. *Reform state travel policies by: (1) concentrating state travel onto a single airline carrier as much as possible, in order to bargain for special fares from the airline, (2) consolidating all travel reservations through a single travel agency, which wins the business through competitive bid on the commission to be charged, and (3) putting all "frequent flier" mileage onto one general account in the state's name, so the mileage awards go to the state instead of the individual employee.*

The first two parts of this Plan Element would realize savings in travel costs by exploiting the huge volume of travel done by state employees. The first part — concentration of travel onto a single airline — is feasible because the largest part of state travel is over a fairly small number of routes: between Anchorage and Juneau, or Anchorage and Fairbanks, for example. Guaranteeing a large monthly volume of passengers on each route should get the state a significant discount from the normal airfares for those routes. Similarly, having one state travel agency should save in commissions because the agency can make up in volume what it would give up on each individual booking. This saving could be augmented by also requiring state contractors to book their employees' reservations through the state's travel agent.

The frequent-flier mileage proposal is probably the most controversial — particularly with state employees. But there are two solid reasons for doing it. First, the frequent-flier mileage is not a benefit of state employment; it is a consequence of travel on state business. The state should get the benefits of its expenses for travel, instead of giving those benefits to employees.

Second, the IRS is taking the position that travel mileage awards are taxable income of the employee receiving such an award as the result of traveling on business. To the extent one disagrees with the first reason and contends instead that airline mileage is some sort of compensation to state employees for being away from home on state business, one is simply making the IRS's case for it on the issue of taxability. In light of the likely taxability of frequent-flier benefits, the state is an obvious target for the IRS because they can pick up a lot of currently untaxed "income" of state employees without a lot of time or effort by IRS agents. So it is only a matter of time before the state has to include the value of airline mileage as part of the employee's gross income reported to the IRS. This, in turn, will mean extra costs to keep track of the mileage each employee earns. It probably will also mean additional withholding tax being taken out of the pay checks of frequent-flier state employees.

Plan Element No. 7. *Reform "merit" pay increases for state employees by: (1) allowing each supervisor to give merit awards only to the top third of employees working for that supervisor, and (2) making the merit award a one-time bonus or a temporary one-year raise.*

There are two things wrong with the present system of "merit" increases in pay for state employees. One is that the idea of "merit" has been so watered down that state employees are given this pay raise each year even for mediocre performance. Indeed, withholding a "merit" increase from an employee has come to be seen as a form of discipline for inferior performance, so that it is all but automatically given to employees whose work is not so bad as to deserve punishment.

The second problem with "merit" increases is that, even if they were truly given for merit, they reward employees during the rest of their careers with the state for doing a good job during just the one year for which the increase is granted. This happens because the increase moves them into a higher step within the pay range for their position, and that becomes their new base-line for pay. An award for merit in the following year simply compounds the increase for the first year, by moving employees into the next higher step in the pay range, where they will then remain until the next merit increase.¹²

The reward for superior performance in any given year should not be an annuity for the rest of the employee's career. It should be something to be re-earned each year, and if it isn't earned in any particular year, no reward should be given that year.

¹² This progression into the higher end of the pay range stops when the employee reaches "Step F." See AS 39.27.011(a). Steps beyond "F" are "longevity" steps, and one moves from one step into the next higher one simply by spending a certain number of years in the lower step with a rating of "good" or better. For instance, it takes two years in "Step F" to move into the first "longevity" step, called "Step J." To move from "J" to "K" takes two more years, from "K" to "L" five years, and from "L" to "M" four years. See AS 39.27.022(a) and (b).

Let it be clearly understood that "merit" increases are not increases to offset increases in the cost of living. Cost-of-living increases are made from time to time to the whole salary structure. So if an employee is in, for example, Step B of Range 16, he or she can remain in that step and will receive the appropriate increase in pay to compensate for increases in the cost of living when the salary structure is adjusted. There is no justification to move this employee to Step C of Range 16 because of increases in the cost of living, so long as the whole salary structure is adjusted for cost-of-living increases on a timely basis in order to be fair to state employees.¹³

Some may object to this Plan Element on the ground that employees gain value as they gain experience, and so they should be paid more. "Merit" increases do this, they say. The response to this objection is simple: True, many people can and do get more valuable over time, but not everyone does. A few actually get worse. Moreover, even for those who do become more valuable with experience, they do not materially gain in value with every second or minute of experience. It takes time before there consistently is a material improvement in the quality of their performance. How long it takes to gain this improvement depends on the individual. But however long it takes for any given individual, as people gain enough experience to become materially more valuable, they can and should be promoted into higher, more responsible positions. This way, the work they do is indeed more valuable, and they are entitled to be paid more for doing it. But (apart from cost-of-living increases) no one should be paid more simply to keep doing the same work, because the work being done does not increase in value.¹⁴

Plan Element No. 8. *Deliver public education more efficiently, by aggressively exploiting developments in information technology.*

One third of the state operating budget — some \$0.75 billion out of \$2.35 billion — goes to pay for the costs of public education for kindergarten through 12th grade. This is the largest single spending component in the state budget.

¹³ Cost-of-living increases should not be confused with location differentials. Cost-of-living increases are to offset the effects of inflation on the buying power of employees' salaries. Location differentials reflect the fact that some places in Alaska are more expensive to live than others, regardless of the rate of inflation in the economy. Thus, a position that begins at Step A of Range 18 in Anchorage might begin at Step F of Range 18 in Nome, which historically has been a more expensive place to live than Anchorage. Governor Knowles has recently proposed a reform of the present system of location differentials.

¹⁴ The exception to this is where greater experience means a person can perform a greater volume of work — for example, processing 10 Permanent Fund Dividend applications an hour, instead of six. But, for this type of job, the base rate of pay should be set at a reasonable level reflecting the value of processing six PFD applications an hour, with a premium based on output over this norm of six per hour. In this way the reward (increased salary) is paid only as long as the employee earns it, and it doesn't get built into his or her base-line where it will be paid for the rest of his or her career with the state.

No one wants to short-change Alaska's children when it comes to education, yet this area of expenditure is simply too large not to be addressed in any comprehensive plan to bring the budget into long-term balance.

One of the most promising areas in which education might be delivered with considerably greater efficiency is in information technology.¹⁵ Why should there be a physics teacher in every high school in Anchorage, for example, when an interactive information system could allow a single teacher to teach physics in all of the high schools, either at once or in rotation? In fact, one can readily expand this question and ask why there should be more than one or two physics teachers statewide, if Alaska were appropriately hooked up to an information system.¹⁶

Alaska right now has a particularly interesting opportunity to get hooked up. AT&T is one of the leaders in developing the new information technology, and it is now directly entering the Alaska market through its acquisition of Alascom. Why not approach AT&T¹⁷ and ask them to use Alaska and its school system statewide as a full-scale demonstration project for the latest in this technology? The challenges that Alaska presents would provide a rigorous test of the technology. And, because it is coming into the state for the first time, AT&T might be more eager than usual to do this, in order to gain a good reputation here in its own right. The State might want to sweeten the deal by offering to co-venture up to, say, \$100 million in capital funds over the next three or four years to help AT&T install or upgrade the statewide infrastructure to make the system work.¹⁸

¹⁵ A proposal along these lines was made during the last Hickel Administration, but little came of it.

¹⁶ Obviously, physics is not the only course that could be taught this way. Indeed, this approach might be extendible all the way down to first grade. Although young students need an adult physically present in the classroom to maintain discipline and order, it might be possible that such supervision could be provided by someone who does not have the high credentials necessary to teach but still has enough experience and/or training to be effective with the children. In rural schools, if this supervision came from someone already living in the village, this approach could reduce the number of teachers and their families that the State has to support in outlying schools, with potentially significant savings in costs. But real savings could also be realized under such a program even in urban school districts.

¹⁷ Nothing in this proposal would prevent the State from approaching any other leader in the field at the same time it approaches AT&T. But going to only one company first could allow a deeper and stronger relationship to be established for the long term — one that could ultimately be less costly overall than the initial gain that might be realized by having companies compete to win the State's business.

¹⁸ The infrastructure for delivering this information technology to schools statewide would have numerous side benefits, once it is installed. For instance, it could facilitate teleconferencing of legislative and administrative hearings. Although the State does have such a network already, it is quite primitive and outdated. There is no capacity to transmit pictures or live video,

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CHAPTER 3. ELEMENTS OF THE PLAN FOR THE "FUNDING" SIDE OF THE BUDGET EQUATION

Plan Element No. 9. *Fund capital projects through bonds instead of capital appropriations.*

Among states the conventional way to pay for new capital projects is to issue bonds. Alaska has not had a state bond sale since 1984. In part this was due to concern that the "Prudhoe curve" for state revenues might lead to a downgrading of the State's bond rating by the rating agencies if the State kept issuing bonds farther and farther into that "curve." A lowered state rating would tend, in turn, to lower the ratings of state agencies like AHFC, raising the interest rates they would have to pay on their own bonds. It was also likely that there would be a similar lowering of the bond ratings for most, if not all, municipalities in Alaska if the State's own rating went down, raising their interest costs, too. Moreover, for a long time the State could afford to avoid taking these risks because it had the cash resources on hand to pay for new capital projects simply by appropriating the money. But no more.

Using bonds for new capital projects has a short-term advantage of allowing those projects to be built with less state money up front. For a state facing a fiscal crisis while numerous needs for capital infrastructure are still unmet, issuing bonds is a godsend. The projects can go forward, yet at the same time precious cash resources can be conserved to cover the transition to a balanced budget.¹⁹

This does not mean the State should go on a bonding spree, however. Each bond sale entails a commitment to repay those bonds over a period of time. If new bond sales occur faster than old bonds are paid off, the total obligation to pay the "debt service" on all the outstanding bonds will increase. If people aren't careful, the total debt service could rise to the \$150 million a year that we're now spending under the state capital budget.²⁰ Should we get to that

for example, and even voice communication can involve a lot of manual switching of micro-phones on and off.

¹⁹ For example, a \$100 million project that is financed by 10-year bonds payable semiannually at 8% annual interest would have debt service of \$14.7 million a year to repay those bonds. Instead of spending \$100 million now, the Legislature could get this project and spend only \$14.7 million right away, freeing up over \$85 million. Actually, because voters first have to approve the bonds before they would be issued, legislators could take credit for the capital project right away, but even the \$14.7 million wouldn't become payable until after the election approving the bonds and after the bonds are actually issued. So the full \$100 million could be conserved for perhaps up to two years or a little more, while political benefits from the capital project would inure immediately.

²⁰ Suppose, for example, that the State went on a program of issuing each year \$100 million of 10-year bonds like those described in the preceding footnote. In the first year the debt service is \$14.7 million, reflecting the fact that one series of bonds is outstanding. In Year 2 it is

(footnote continues on next page)

situation, we would have no net advantage over where we are now, in terms of solving the fiscal gap. Indeed, we'd have a disadvantage, because interest on the borrowed money makes bonds more expensive over their lifetime than an up-front cash appropriation.

Using bonds also has an advantage in the sense that they have to be put to a vote of the people before the capital projects can proceed. This isn't the case when the projects are funded by appropriations, and there are many examples that could be offered of projects that went forward in the past that would not have been approved if they had been put to a vote.

Plan Element No. 10. *Enact legislation limiting the total draw against state cash reserves to \$300 million in any fiscal year, with an exception to allow a greater draw if needed to respond to a true emergency.*

Currently the state's cash reserves are simply being drawn down by whatever amount is needed to fill the gap between estimated revenues and the amount being appropriated by the Legislature. But if this continues there simply won't be any cash reserves left in just three or four years.

It seems a much more prudent idea to try to use the cash reserves over a longer period of time and thereby allow other, more painful measures to be phased in gradually, so that the state economy doesn't take the full force of the blow all at once. With the proposed limit of \$300 million on the annual draw on these reserves, they should last for 10 years or so (barring emergencies).

This is one Plan Element that has no chance of working unless it is submitted to the voters and approved. Even so, it won't work unless other Elements of a comprehensive plan are already enacted before the 1996 election or are approved in that election and put into action at the same time. The "moral persuasion" from a vote of the people for it won't be enough to ensure that this Plan Element will be followed if there's a gap between revenues and expenses and no other measure is available to bridge it.

\$29.4 million — \$14.7 million for the first year's bond issue and another \$14.7 million for the new bond issue. In Year 3 it's \$44.1 million, as there are now three bond issues outstanding. By Year 10 it is \$147 million, as the last \$14.7 million is paid for the first year's bonds and there are nine other bond issues in various stages of being paid off. In Year 11 a new bond issue replaces the bonds issued for Year 1, which are now paid off, so the total debt service remains \$147 million for the 10 series of bonds that are outstanding. In Year 12 new bonds replace the bonds for Year 2, and the debt service is still \$147 million. In this way the State could build up its debt service to \$147 million and could then stay at that level indefinitely, so long as it continues to issue similar new bonds to replace those that have just been paid off. This would correspond to the present situation in which Alaska spends \$150 million a year on its capital budget. Of course, if the State issued bonds at a faster rate, then the debt service would become greater than the current spending level of \$150 million a year for capital projects.

Adopting Plan Element No. 9 would take some of the pressure off from this 10th Element because cash that would have been spent on capital projects will be conserved.

Plan Element No. 11. Reimpose the personal income tax, but only if Plan Elements 1 - 9 are adopted and fail to solve the fiscal gap.

A lot has already been said about reimposing the personal income tax. It has the advantage of taxing income of many non-residents who earn money in Alaska and create a demand for government services here, but who currently do not pay anything to cover the extra cost of providing those services. In fact, this is also true for Alaska residents who don't work in the petroleum industry. They create a demand for government services, but they and their industry only pay a fraction of the costs of providing those services.

Another advantage of the income tax is that it is deductible for federal income tax purposes.²¹

Perhaps the biggest advantage of the income tax over the other major tax option²² — a state sales tax — is that the income tax won't interfere with the system of taxation set up by local governments, many of which rely on a local sales tax. If the State imposed a sales tax of its own, the total sales tax burden in some localities would become as almost heavy as that in New York City, perhaps even heavier. Such a burden would be a direct weight on economic activity there, stifling it.

No new tax may be desirable, but some new tax is inevitable. The personal income tax is the least of evils in this area.²³

²¹ This deduction is available only for those who itemize deductions on their federal tax returns, not for those taking the standard deduction. If Congress adopts a flat-rate tax to replace the present federal income tax, the deduction for state income taxes may or may not carry over into the new tax.

²² According to the Governor's Office of Management and Budget in 1993, the personal income tax would yield \$250 - \$400 million a year, while a state sales tax would yield \$125 million a year for each 1% in the tax rate. In contrast, each 1¢ increase in motor fuel taxes would yield a little less than \$5 million a year, while a 5% fish landing tax would yield \$14 million a year. Increased "sin" taxes on alcohol and tobacco would also make only small contributions to solving the fiscal gap.

²³ To date most discussions of the income tax assume that it would be reimposed at the same rates as the old tax before it was repealed. These ranged from 3% to 14.5% for individuals, depending on their income-bracket and filing status (single, head of household, or married filing jointly). See AS 43.20.011(a) - (c) (1977 version of AS 43). However, the tax could be reimposed at any other rates that seem appropriate to meet the demands of the budget situation. The matter of the precise tax rates to use is a detail, albeit an important one, for the Legislature and the Governor to resolve as the legislative package for this plan moves forward.

Plan Element No. 12. *Reform the use of Permanent Fund income by: (1) giving highest priority to inflation-proofing the Fund, (2) dedicating one-half of the Fund's real income (i.e., income left over after inflation-proofing) for Permanent Fund Dividends at first, but if Plan Elements 1 - 9 and 11 are adopted and fail to solve the fiscal gap, reducing this fraction (e.g., to one-third or one-quarter), and (3) dedicating the remainder of the Fund's real income to the General Fund.*

Without inflation-proofing, the Permanent Fund will be merely the "Temporary Fund." Inflation will steal it away like a thief in the night. The loss of value in the Fund's principal that is caused by inflation should be seen as negative income. Then the real "income" is the income that is left over after this negative income.

Currently the highest priority for Permanent Fund income is to pay Permanent Fund Dividends (PFDs), with only second priority for inflation-proofing. This needs to be reversed, or else we could end up unintentionally consuming the Fund to pay PFDs to ourselves.

Of the real income of the Fund — that is, the income left over after inflation-proofing — a portion can continue to be used for PFDs, while part of it should put into the General Fund where it can be used to pay some the costs of government. It is appropriate to dedicate at least some of the Permanent Fund's real income to cover the costs of government because the Fund was originally proposed and approved by the voters for this purpose — to be a source of state income to replace the oil revenues when the oil is gone. While the oil isn't completely gone yet, production for several years already has been below the point where petroleum revenues were sufficient to cover the costs of government. As petroleum revenues decline yet further, it is time to put the Permanent Fund to its original purpose.

This being the case, then why should we continue to pay PFDs, especially if we also reinstate the personal income tax? Why pay ourselves money and then tax it back?

There are two reasons to continue the PFDs, even with a personal income tax. One is that taking away the PFDs is equivalent to a tax, but its effects are hardest on those with the least amount of other resources. In other words, this "tax" falls hardest on those least able to pay. That is unfair and regressive. Conversely, if we keep the PFDs and reimpose the income tax, those who will lose their PFDs to the tax will be those who can most easily afford to lose them, while at the same time those who are least able will pay little tax and thus will keep their PFDs. This is fairer and progressive.

The second reason to continue PFDs is to keep the people of Alaska as a constituency to protect the Permanent Fund. Currently there are two things, and two things only, that determine how much the PFDs are: how well the Fund did in its investments, and how many eligible Alaska residents there are. If PFDs

were eliminated or capped at some arbitrary dollar amount, the people's direct stake in how well the Fund is invested would be broken. In the past it has been powerful public opinion that protected the Fund against attempts to "raid" it by subverting its investment powers to political ends. If Alaskans lose their direct personal stake in how well the Fund performs, then public opinion will weaken and may become inadequate to protect the Fund. The sorry story of the Alberta Heritage Fund in Canada shows what happens when a large governmental fund is allowed to invest in politically-driven "investments" at less-than-market rates. Alaska must not repeat Alberta's mistake, and keeping PFDs will help keep us on the right track.

At some point it may well be necessary to reduce the fraction of real income that goes for PFDs, in order to avoid taking even more drastic budgetary actions. However, until then, the proposal would set the fraction at 50% of the Permanent Fund's income, which is almost the same as it is now.²⁴ Later, if it becomes necessary, the fraction could be reduced to a third or perhaps even a quarter. But it should not go below a quarter because then the PFDs to each person are likely to be too small to make enough difference to people to keep them mobilized to protect the Permanent Fund and its fiduciary²⁵ investment policies.

²⁴ The amount that is deposited into the PFD distribution account each year is half of the "income available for distribution." AS 37.13.145(b). This "income available for distribution" in turn equals 21% of the Permanent Fund's total income over the five most recent fiscal years. AS 37.13.140. If this percentage were 20% instead of 21%, then one-fifth (20%) of the five-year total of Fund income would be "income available for distribution," and over time the PFDs would take exactly half of the Fund's income. However, since this percentage is one percentage point over one-fifth, the PFD program uses up 52.5% of the Fund's income over time instead of half.

²⁵ A fiduciary is one who acts in a position of trust for the benefit of another. It is no accident that the Legislature chose to use the term "trustee" as the title for the members of the governing board of the Alaska Permanent Fund Corporation. See AS 37.13.040. The Permanent Fund is a public trust for the benefit of all Alaskans, present and future (see AS 37.13.020(1)); and it has been invested for a decade and a half under a standard consistent with that trust. See AS 37.13.120 (holding the Fund's investments to a "prudent-investor" standard of care and diligence).

CHAPTER 4. A VOTE IN 1996, THE LINCHPIN OF THE PLAN

While some of the Plan Elements could be enacted by the Legislature on a stand-alone basis, they should instead be assembled into a package to be submitted to the voters in the 1996 general election for approval.

Polls repeatedly show that Alaskans are willing to entertain the prospect of increased taxes or giving up some of their Permanent Fund Dividends only after serious cuts are made in state spending. The public has the perception that there is a lot of waste in state spending, and they don't want to give the government any tax money or Permanent Fund income if it will only allow that waste to continue.

As seen from the 12 Plan Elements, most of the statutory plan focuses on ways to reduce spending by making government more efficient. By combining them with proposals about taxes, Permanent Fund income and conserving the state's cash reserves, a balanced package can be presented to satisfy the public's demand for spending cuts before any "revenue enhancements."

The legislative package would consist of a number of bills for the various Plan Elements.²⁶ Each bill would have a section in it saying that the bill will not become effective unless the voters approve a spending-plan proposition on the ballot in the 1996 general election. If the voters approve the plan, then each bill in the package would take effect. If they reject the plan, then none of the bills would take effect because the precondition for becoming effective would not be met. In order to have the spending-plan vote in 1996, there would also have to be one additional bill, placing the question on the ballot and setting out the exact wording of the ballot proposition to describe the plan which people will be voting on.

If the voters approve the plan, then some of the Plan Elements would take effect immediately. These could include all of the "spending side" measures, as well as the Elements for using bonds, for limiting the annual draw against cash reserves, and for making inflation-proofing the first use of Permanent Fund income. Other Plan Elements would not take effect immediately after the election because they would have further preconditions that would have to be met. These delayed Elements include reimposing the personal income tax²⁷ and reducing the fraction of Permanent Fund income dedicated for PFDs.

²⁶ It would be simplest if all the Plan Elements could be rolled into one single bill. However, the Alaska Constitution requires that each bill be limited to a single subject. Even though all the Plan Elements address the subject of "balancing the state budget," this is probably not good enough to satisfy the Constitution's single-subject requirement. So, instead of one bill, there would be several bills, each one dealing with one of the "subjects" in the Plan Elements.

²⁷ The precondition on reimposing the income tax is that there still be a budget gap after the "spending side" measures have been tried. Most analyses predict that the "spending side"

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By putting its Elements into effect automatically after approval — either immediately or on a delayed basis when other preconditions are met — the plan minimizes the amount of further legislation that legislators would have to pass to implement it after the vote. Of course, they will still have to pass budgets that follow the plan, but a favorable vote of the people and the measures put in place as a result of that vote should make it easier for future Legislatures to do so.

measures won't be sufficient by themselves to bridge the annual budget gap. If so, then the income tax will come back into effect right after the election. But it would be possible, under the right set of circumstances, for an unexpected rise in oil prices to temporarily fill the gap and delay the time when the personal income tax would be needed. So a precondition that the income tax be needed is not an idle or meaningless gesture to gain public support for the plan.

SCOMM

101:45

SYNOPSIS OF BOROUGH FEASIBILITY STUDIES CONDUCTED DURING 1988 AND 1989

COPPER RIVER BASIN
LOWER YUKON REGION
DELTA GREELY REGION
NORTHWEST BRISTOL BAY REGION
DENALI REGION
SOUTHWEST REGION/DILLINGHAM AREA
CHATHAM REGION
YUKON-KOYUKUK REGION
PRINCE WILLIAM SOUND REGION
WESTERN ALEUTIANS REGION

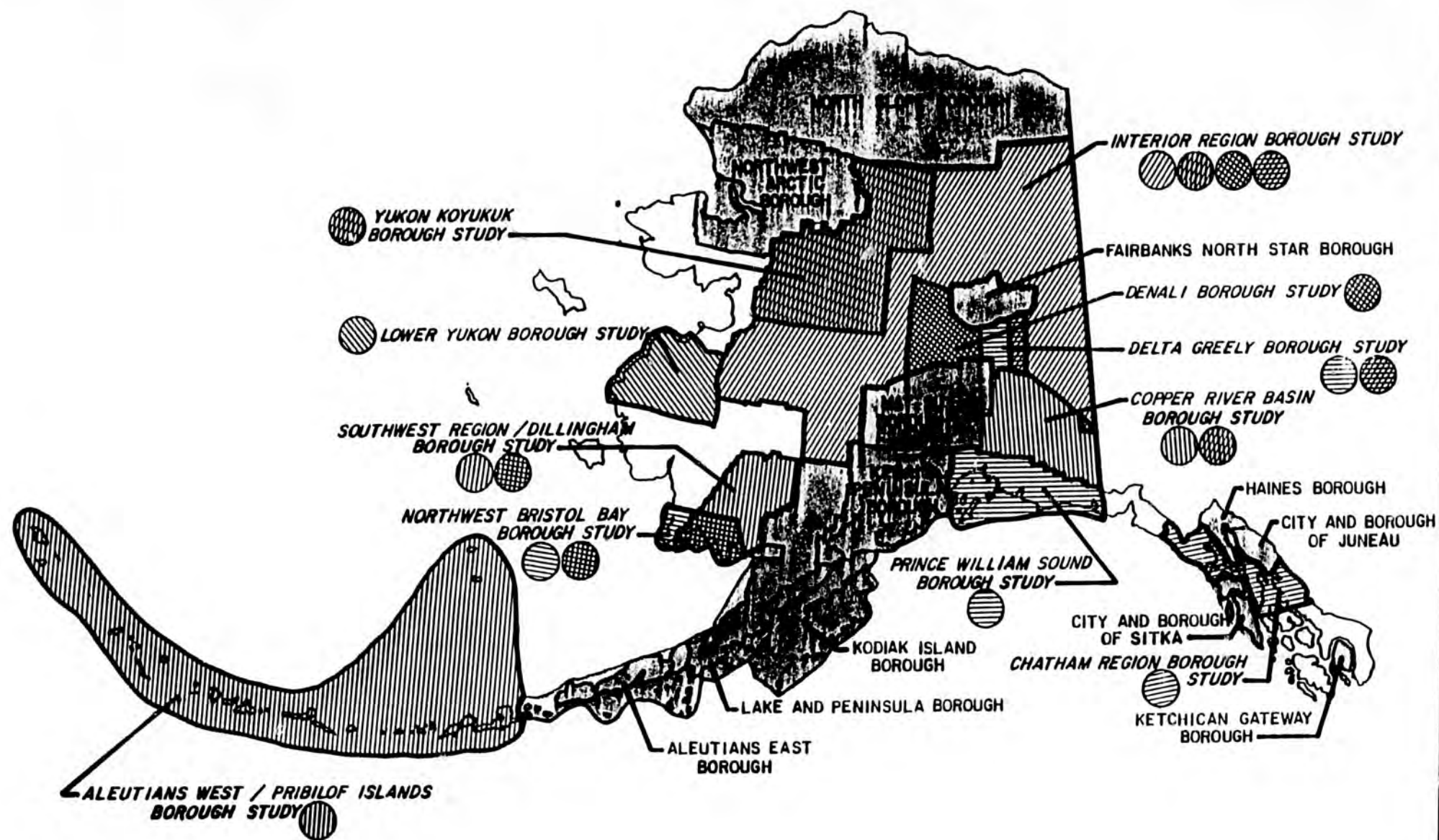
PREPARED BY THE STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS
MUNICIPAL AND REGIONAL ASSISTANCE DIVISION
SEPTEMBER, 1989



STEVE COWPER
GOVERNOR

DAVID G. HOFFMAN
COMMISSIONER





INTRODUCTION

This publication provides a synopsis of ten borough feasibility studies which were conducted since 1988. Each study was undertaken at the request of residents or city officials within the particular study area.

Nine of the studies were conducted by the Department of Community and Regional Affairs. The remaining study was conducted by a private contractor with funding from the Department.

In addition to the studies which have been completed, the Department is currently assisting with a borough study for the vast Interior Region. This study is being conducted by the Tanana Chiefs Conference, Inc., and is funded in part by a grant from the State Legislature. The Interior Region study is expected to be completed before January, 1990.

The number of studies, coupled with several recent borough incorporations, as well as a number of pending borough annexation and incorporation proposals, reflects what has become an unprecedented level of interest in the topic of regional government.

Readers who are interested in details concerning any of the ten studies summarized in this publication should contact the Department for further information. In addition, the Department offers publications providing general information concerning boroughs. The Department's Regional Government Study (January, 1988) was prepared at the direction of the legislature to examine issues relating to the formation of boroughs in the unincorporated regions in the state. In August, 1988, the Department published Regional Government in Alaska to provide a general guide to borough government. Topics covered include the process for incorporation, the powers and duties of boroughs and revenue programs available to boroughs.

BOROUGH FEASIBILITY AT A GLANCE

REGION	DEFINITELY	YES, IF...	DOUBTFUL
Copper River Basin	☒		
Lower Yukon			☒
Delta Greely	☒		
Northwest Bristol Bay			☒
Denali Region	☒		
Southwest/Dillingham	☒		
Chatham		☒	
Yukon-Koyukuk		☒	
Prince William Sound	☒		
Western Aleutians		☒	

COPPER RIVER BASIN STUDY

The study area is identical to the Copper River Regional Educational Attendance Area. This area encompasses an estimated 20,649 square miles. The region includes the communities of McCarthy, Chitina, Tonsina, Lower Tonsina, Kenny Lake, Copper Center, Mendeltna, Tazlina, Glennallen, Gulkana, Gakona, Chistochina, Nabesna, Slana and Paxson. All of these communities are unincorporated. The population of the region is estimated to be 2,735.

The study concluded that a hypothetical borough exercising the minimum powers required by law (education and planning) is quite viable. In fact, given anomalies in one particular State funding program, it was projected that the hypothetical borough could operate on State and federal funding alone (i.e. no local taxes). Not only could the borough operate without local taxes, but generous State and federal aid would permit the borough to accumulate a surplus of funds estimated at more than \$5 million dollars at the end of its first four years.

In the event local taxes ever did become necessary, the region has the capacity to generate significant revenues with minimal rates of taxation. If incorporated, the per capita property tax base in the region would be second only to the North Slope Borough among Alaska's 162 municipalities.

Approximately 94% of the taxable value of the region stems from the 150 miles of the trans-Alaska pipeline located within the study area. Concerns on the part of residents that the trans-Alaska pipeline will rapidly depreciate in value leaving a "bankrupt" government in the near future seemed to be unfounded. The study examined Alaska Department of Revenue projections of the value of the pipeline well into the next century. It was concluded that (based upon current populations) the per capita value of the pipeline alone in the study area in the year 2006 would exceed the present per capita value of all taxable property in the Municipality of Anchorage.

The report noted that because the value of property in the region is so great, special statutory property tax limitations would apply. It was indicated, however, that there were two significantly different versions of how that statute should be implemented and that a special legislative committee was examining the issue. One interpretation provided that the limitation applied to the amount of property which could be taxed (\$451,402,178 of the region's \$986,021,000). The other provided that the limitation applied not to the value of property, but to the amount of revenue which could be generated from property taxes for operating budget purposes.

The local effect of the two interpretations was that the hypothetical borough's tax rate would have to be 2.2 times greater under the former version than it would have to be under the latter version. The varying interpretations could also impact funding from State programs, particularly for education and State Revenue Sharing. The special legislative committee referred to in the report has decided to support the interpretation that the limitation applies to the amount of revenue which may be generated. The committee is preparing a formal recommendation urging that regulations be adopted to formally establish this interpretation.

Beyond issues of financial viability, the study concluded that the region appeared to meet the other standards for borough incorporation. Specifically, the population of the region appears to be socially, culturally and economically integrated reasonably well. Further, the population is large and stable enough to support a borough and the region generally conforms to natural geography.

LOWER YUKON REGION STUDY

The study area includes the entire Lower Yukon Regional Educational Attendance Area and the Kashunamiut Regional Educational Attendance Area encompassing approximately 19,355 square miles. Communities within the region include Alakanuk, Chevak, Emmonak, Hooper Bay, Kotlik, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, Scammon Bay and Sheldon Point.

The Department concluded that a borough in the region is probably not financially viable under present circumstances. Several characteristics of the region led to this conclusion. Significantly, it suffers from a minimal property tax base (about 20% of the statewide average). Since the area's taxable property values are so limited and because property taxes are relatively expensive to administer, property tax was dismissed as an impractical source of revenue for a borough in the region.

Therefore, a hypothetical borough would probably be compelled to rely upon a general sales and use tax and a raw fish sales and use tax. The existing general sales and use tax levies in eight cities in the region combined with a borough general sales and use tax would require a 5% to 6% general sales tax in these cities alone. When considering the region's high unemployment rate (13.6% reported in the study), the region's high cost of living (26% greater than Anchorage) and the region's low per capita income (lowest of any in the state), this tax burden is considered to be so excessive as to render a regional government impractical.

Beyond the issue of financial viability, the study concluded that the region appeared to meet the other standards for borough incorporation. Specifically, the population of the region appears to be socially, culturally and economically integrated reasonably well. The population is large and stable enough to support a borough and finally, the region generally conforms to natural geography.

DELTA GREELY REGION STUDY

The study area encompasses an estimated 7,182 square miles located within the Delta-Greely Regional Educational Attendance Area. The region contains Big Delta, Delta Junction, Healy Lake and Fort Greely with a total estimated population of 4,702. Only Healy Lake is not accessed by either the Richardson or Alaska Highways.

The study concluded that a hypothetical borough exercising the minimum powers required by law (education and planning) is quite viable. Like the Copper River Basin, anomalies in one particular State funding program would permit a borough to operate on State and federal funding alone (i.e. no local taxes). Here again, generous State and federal aid would permit the borough to accumulate a surplus of funds estimated at more than \$5 million dollars at the end of its first four years.

In the event local taxes ever did become necessary, the region has the capacity to generate significant revenues with minimal rates of taxation. Approximately 90% of the taxable value of the region stems from the 90 miles of the trans-Alaska Pipeline located within the study area. Like the Copper River Basin, concerns on the part of residents that the trans-Alaska Pipeline will rapidly depreciate in value leaving a "bankrupt" government in the near future seemed to be unfounded. The study examined Alaska Department of Revenue projections of the value of the pipeline well into the next century. Based upon current populations, the per capita value of the pipeline alone in the study area in the year 1999 would exceed the present per capita value of all taxable property in the Municipality of Anchorage.

Beyond issues of financial viability, the study concluded that the region appeared to meet the other standards for borough incorporation. Specifically, the population of the region appears to be socially, culturally and economically integrated reasonably well. The population is large and stable enough to support a borough and finally, the region generally conforms to natural geography.

Residents expressed a preference that in the event a regional government were to be formed, it should be a unified municipality (rather than having a borough separate from the second class City of Delta Junction). Current law however presumes the existence of a borough first. Thus, there appears to be no practical impediment to borough incorporation in the region, if regional municipal government is desired by local residents.

NORTHWEST BRISTOL BAY REGION STUDY

This region includes the communities of Goodnews Bay, Platinum, Togiak, Twin Hills, Manokotak, Aleknagik, Clark's Point and Ekuk. All but Twin Hills and Ekuk are incorporated. The population of the region is estimated to be 1,605.

The study concluded that a borough in the region would be financially viable. In fact, a substantial budget surplus was projected for a borough exercising minimum mandatory powers even without any local taxation measures. By the end of the fourth year of operation, a borough might be expected to accumulate a surplus of \$1.5 million.

The region also enjoys the apparent capacity to generate significant revenues in the event local taxes ever became necessary. Because of the region's significant fisheries, a 1% sales and use tax on fish would be expected to generate more than \$400,000 annually.

Aside from financial viability, the study area has one definite problem. The communities requesting the study purposefully excluded Dillingham from consideration. In the Department's view, the "Northwest Bristol Bay Region" is actually a sub-region, or area within the northern portion of the Bristol Bay Region. Dillingham is a regional hub for provision of goods and services. Its exclusion appears inconsistent with social, cultural and economic patterns existing in the area. Dillingham is the location of a range of basic services and facilities which residents of the study area require. These include a hospital, a senior citizens' center, and the region's primary civilian airport. Basic goods and services are provided via Dillingham.

Thus, while a borough in this configuration would be financially viable, it appears that it would fail to include all areas which are socially, culturally and economically integrated to the maximum degree possible as required by Alaska's Constitution. Thus, the report concluded that a Northwest Bristol Bay Borough would probably conflict with the standards established in law for the formation of boroughs.

DENALI REGION STUDY

The study area is comprised of an estimated 13,520 square miles including all of the Railbelt Regional Educational Attendance Area (REAA) and roughly the southeast one-eighth of the adjoining Yukon Koyukuk REAA. That portion of the Yukon Koyukuk REAA which is included in the study area encompasses the home-rule City of Nenana and the unincorporated communities of Minto and Manley Hot Springs. The area's resident population was estimated at 2,997.

The area is reaching a critical juncture with respect to determining the shape which its future local and regional government will take. The Matanuska-Susitna Borough has filed a formal petition for annexation of a portion of the study area (Cantwell to Healy and Denali Park). Residents of a portion of the study area (Cantwell to Anderson) are currently developing a petition for incorporation. Additionally, the Tanana Chiefs Conference is conducting a borough feasibility study of Alaska's Interior region, including the study area.

In view of these related activities, the report stressed that the feasibility study boundaries were hypothetical in the strictest sense of the word. The Department stressed that it does not promote the study area boundaries examined in this document or infer that they are in any way "preferred", "ideal" or "suggested."

The study indicated that a borough would need to levy either a bed tax, property tax or both, particularly after the third year of borough operation. These funds would be needed to meet the required local contribution to education and to deliver basic borough services. The petition for incorporation being developed would provide for a 4% bed tax, a 2% sales tax on utilities and a \$0.05/ton severance tax on minerals.

Potential impacts of borough incorporation were compared with the likely impacts of annexation to the Matanuska-Susitna Borough. If the area were annexed to the Matanuska-Susitna Borough, the level of taxation would probably be higher than that initially imposed by a new borough conforming to the study area boundaries.

The Matanuska-Susitna Borough levies an areawide tax of 9.2 mills and a non-areawide mill levy of 1.66 for a total mill areawide and non-areawide levy of 10.86 mills. The Matanuska-Susitna Borough also imposes a five percent bed tax.

Beyond issues of financial viability, the study concluded that the region appeared to meet the other standards for borough incorporation. Specifically, the population of the region appears to be socially, culturally and economically integrated reasonably well. The population is large and stable enough to support a borough and finally, the region generally conforms to natural geography.

SOUTHWEST REGION/DILLINGHAM STUDY

The study area encompasses an estimated 23,128 square miles on the northern shores of Bristol Bay. The area includes the communities of Dillingham, Clark's Point, Ekuk, Aleknagik, Ekwok, Koliganek, New Stuyahok, Portage Creek, Togiak, Twin Hills, Manokotak and Levelock. The study area has an estimated population of 4,133, more than half of whom reside in Dillingham.

The study concluded that a borough in the region would be quite viable. The study noted that it may not be necessary for the borough to levy any taxes to carry out the minimum functions required by law; however, a 1% sales and use tax would enhance the financial viability of the potential borough, particularly given the uncertainties surrounding the projections for raw fish tax revenues. With a 1% borough sales and use tax, the estimated surplus would range from about \$300,000 (low range) to approximately \$1.2 million (high range) during its first year of operation.

The vast difference in the range noted above stems from differences between data of the Department of Fish and Game and the Department of Revenue concerning the value of fisheries harvests in the region. Depending upon which agency's data were used, the variations in state aid and the projected 1% local tax varied in excess of \$900,000 annually. The differences in data were believed to be, in part, the result of inaccurate reporting of fisheries harvest data.

Beyond issues of financial viability, the study concluded that the region appears to meet the other standards for borough incorporation. Specifically, the population of the region appears to be socially, culturally and economically integrated reasonably well. The population is large and stable enough to support a borough. In addition, the region generally conforms to natural geography.

CHATHAM REGION STUDY

The study area includes about two-thirds of the territory within boundaries of the Chatham Regional Educational Attendance Area (REAA). The greater Kake region, which is within the boundaries of the Southeast Island REAA, is also included. The study area encompasses an estimated 14,483 square miles of land and 7,617 square miles of adjacent marine areas. It includes the Cities of Angoon, Hoonah, Kake, Pelican, Tenakee Springs and the unincorporated communities of Elfin Cove and Gustavus. The study area also encompasses the Greens Creek Mine on Admiralty Island.

The report concludes that a borough in the study area is presently financially viable. For such a borough to carry out the minimum functions required by law, it was concluded that the levy of a sales tax and/or moderate property taxes would be necessary. The Department estimated that a 5 mill borough property tax could generate approximately \$755,525 per annum, and a 2% general sales tax could generate approximately \$257,018. The combined revenues from such taxes would permit a hypothetical borough to meet expenses during its first year, realize a substantial budget surplus during each of the next two years, and balance revenues and expenditures in the fourth year and succeeding years.

The basis for key revenue conclusions relating to the Chatham study area could be fundamentally altered if a current petition for annexation of approximately 140 square miles of the study area is approved. On June 1, 1989, the City and Borough of Juneau submitted a petition for the annexation of a portion of Admiralty Island encompassing the Greens Creek Mine. Taxable value of the area containing the Greens Creek Mine has been estimated at \$62,000,000.

The mine's proprietors have expressed a strong preference for inclusion of the mine in the City and Borough of Juneau over inclusion of the property in a Chatham borough. The Greens Creek Mine facilities represent approximately 41% of the total estimated value of taxable property in the entire study area. Thus, exclusion of the mine could obviously diminish the viability of borough incorporation in the study area.

In addition to being financially able to support borough government, the region appears to meet most of the other readily quantifiable standards for borough incorporation. For example, the population of the region is nearly three times that required by law. There are at least seven communities in the region, where the law requires only two. Available data suggests that the population of the region is reasonably stable.

A number of residents of the region maintain, however, that communities in the study area are not sufficiently socially, culturally and economically interrelated to meet the standards for borough incorporation. The analysis of whether the boundaries of the study area conform generally to natural geography would also benefit from further examination.

The area does not encompass one entire regional educational attendance area; however, the law does not require such as long as all remaining standards for borough incorporation have been met. Whether the study area includes all areas necessary for full development of municipal services merits further investigation, especially in view of such factors as the shifting scenario in the timber industry and the potential for annexation of the Greens Creek Mine to the City and Borough of Juneau. Air and/or water transportation patterns also should be further examined if and when serious consideration is devoted to borough formation in the region.

YUKON-KOYUKUK REGION STUDY

The study area comprises an estimated 46,764 square miles encompassing approximately 75% of the Yukon-Koyukuk Regional Education Attendance Area. The population of the area is estimated at 2,694. The City of Galena is the area's largest population center. Other communities included in the study area are Allakaket, Campion Station, Bettles, Evansville, Hughes, Huslia, Indian Mountain, Kaltag, Koyukuk, Nulato and Ruby.

The report concluded that a borough providing the minimum levels of services would be financially viable if it levied a 6 mill property tax. This financial viability is due in large part to the presence of a 130 mile portion of the trans Alaska Pipeline within the region. Taxable property within the boundaries of the study area was estimated to total \$767,000,000. Of this total value, \$715,000,000 (93%) represents value of oil and gas property.

The report noted that because the value of property in the region is so great, special statutory property tax limitations would apply. It was indicated, however, that there were two significantly different versions of how that statute should be implemented and that a special legislative committee was examining the issue. One interpretation provided that the limitation applied to the amount of property which could be taxed (\$444,635,271 of the region's \$767,000,000). The other provided that the limitation applied not to the value of property, but to the amount of revenue which could be generated from property taxes for operating budget purposes.

The local effect of the two interpretations was that the hypothetical borough's tax rate would have to be 1.7 times greater under the former version than it would have to be under the latter version to raise the same amount of money. The varying interpretations could also impact funding from State programs, particularly for education and State Revenue Sharing. The special legislative committee referred to in the report has decided to support the latter version. The committee is preparing a formal recommendation urging that regulations be adopted to clarify the matter. If the recommendation is implemented, the level of taxation projected in the study would decline substantially.

As with certain other study areas, concerns that the trans-Alaskapipeline will rapidly depreciate in value leaving a "bankrupt" government in the near future seemed to be unfounded. The study showed that (based upon current populations) the per capita value of the pipeline alone in the study area would exceed the present per capita value of all taxable property in the Municipality of Anchorage well into the next century.

Beyond issues of financial viability, the study concluded that the region appeared to meet most of the other standards for borough incorporation. Specifically, the population of the region appears to be socially, culturally and economically integrated reasonably well. The population is large and stable enough to support a borough.

It is arguable, however, whether the boundaries of the study area conform generally to natural geography and include all areas necessary for full development of municipal services.

PRINCE WILLIAM SOUND REGION STUDY

The boundaries of the study area are identical to those of the Chugach Regional Educational Attendance Area. The region includes the communities of Valdez, Cordova, Tatitlek and Chenega. The population of the study area was estimated to be 7,320.

This study (prepared by a private contractor funded jointly by the Department and the City of Valdez) concluded that a borough exercising only the mandatory powers of education, taxation and planning, platting and land use regulation would be quite viable in the region. According to the study, during its first, second and fifth years of operation, a borough would have to levy real and personal property taxes of 0.85 mills, 2.98 mills and 3.70 mills respectively, to raise the required funds for borough operation.

As expected, the trans-Alaska pipeline and Valdez oil terminal properties represent the greatest concentration of taxable property value in the region - 87% of the total value, or \$1.37 billion worth of taxable value (1987 value).

The study projected values of the pipeline and Valdez oil terminal properties through the rest of this century. The study noted that, based upon known and proven oil reserves, the total value of all real property in the region might be expected to decline from a January 1, 1987 estimate of \$1.713 billion to a 1995 value of \$1.041 billion and to a year 2000 value of \$764 million.

The report also touches on the special statutory property tax limitations which would apply to a hypothetical borough in the region. As noted in the synopsis of the Copper River and Yukon Koyukuk studies, there are two significantly different interpretations of the manner in which these special limitations would apply. This study, however, addressed only the interpretation that the limitation applies to the amount of revenue which would be generated (as opposed to the value of property upon which taxes could be levied).

As noted in the discussion of the Copper River and Yukon Koyukuk studies, the special legislative committee examining issues relating to the various interpretations of the property tax limitation law has concluded that the limitation should apply to amounts of revenue which may be raised. The committee is preparing a formal recommendation urging that regulations be adopted to implement its recommended interpretation. The projections in the study are based upon the approach supported by the committee.

Beyond issues of financial viability, the study concluded that the region appeared to meet the other standards for borough incorporation. Specifically, the population of the region appears to be socially, culturally and economically integrated reasonably well. The population is large and stable enough to support a borough. In addition, the region generally conforms to natural geography.

WESTERN ALEUTIANS/PRIBILOF ISLANDS REGION

This report evaluated the feasibility of forming a borough in the Western Aleutian Islands under three configurations. The configurations consisted of the territory from Unalga Pass to Fenimore Pass (Area 1); the territory from Unalga Pass to Adak Strait (Area 2); and the territory from Unalga Pass to and including Attu Island (Area 3). Brief consideration was also given to inclusion of the Pribilof Islands REAA in the latter configuration. The population of the four configurations ranged from 2,047 to 8,416.

The study concludes that a borough in any of the configurations would be financially viable. Under the first configuration, it is projected that no local revenue measures would be necessary until the borough's fourth year of operation. At that time, a minimal 0.25% (one-quarter of one percent) levy on the sales and use of raw fish is projected to be adequate to increase the minimal operating surplus that year. The remaining configurations appear financially viable in the absence of any local revenue measures. This can be attributed to potential revenues available from state and federal programs.

Beyond the issue of financial viability however, questions exist whether the study areas meet the standards for borough formation. Given the military nature of certain of the "communities" in the second and third study configurations, questions might be raised as to whether the populations of all communities in under these configurations are adequately interrelated socially, culturally or economically to meet the standard for borough incorporation.

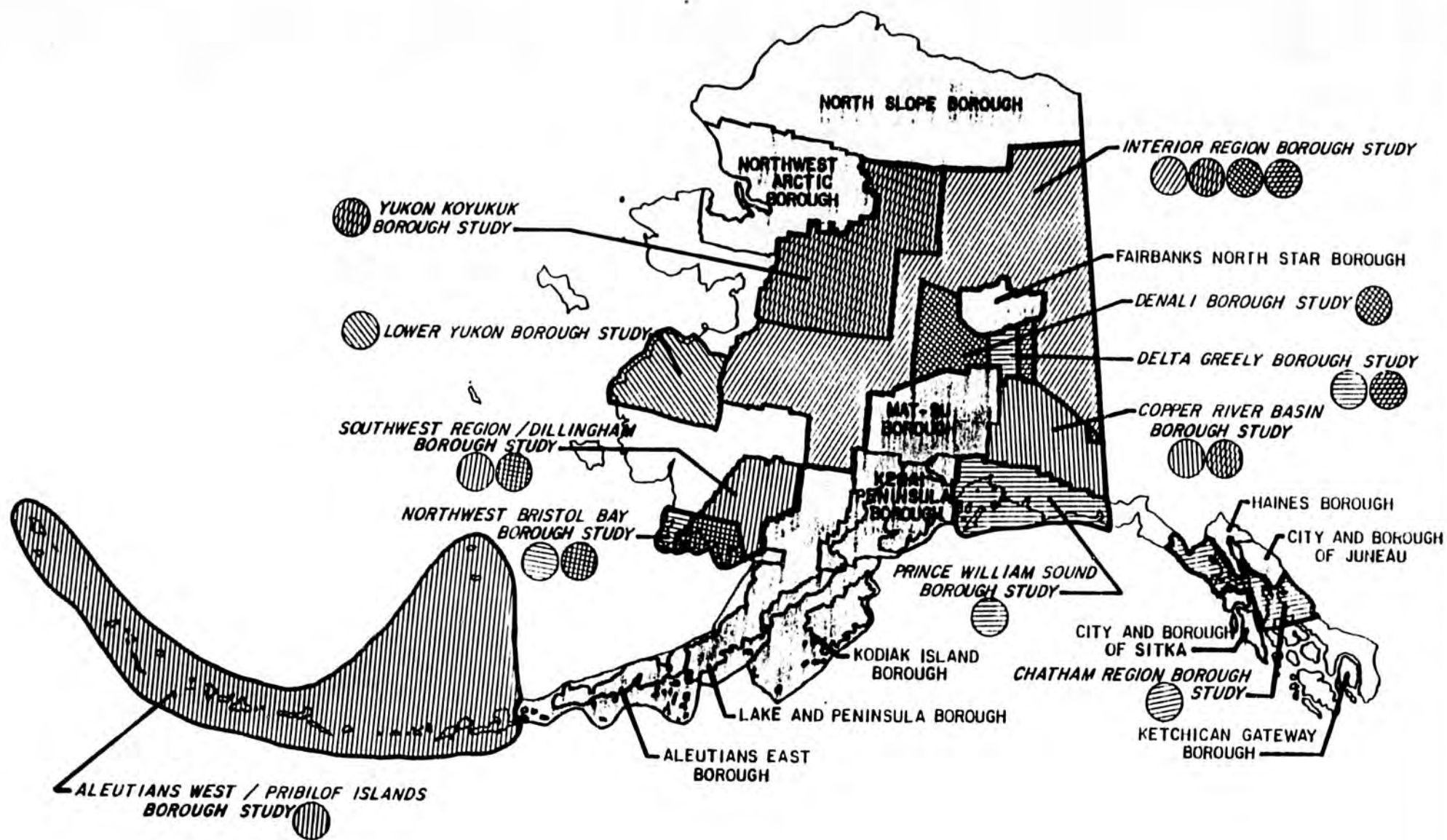
Further, while all study configurations may be financially feasible, a potential concerns exist in the relationship of each study area's population distribution to voter representation on any borough assembly. Under all study scenarios, the assembly would face domination by one community simply due to the number of residents in communities throughout the study areas.

SUMMARY OF FINANCIAL PROJECTIONS

<u>BOROUGH STUDY REGION</u>	<u>STATE/FED REVENUES 4TH YEAR</u>	<u>LOCAL REVENUES 4TH YEAR</u>	<u>TOTAL COSTS 4TH YEAR</u>	<u>SURPLUS (DEFICIT) 4TH YEAR</u>	<u>CUMULATIVE SURPLUS YEARS 1-4</u>
COPPER RIVER	\$7,061,603	\$15,000	\$5,845,100	\$1,231,503	\$5,520,400
LOWER YUKON (lo/hi)	\$18,667,754 to \$18,771,798	\$170,826 to \$210,281	\$18,853,300 to \$18,853,300	(\$14,720) to \$128,779	\$151,300 to \$365,200
DELTA GREELY	\$7,503,517	\$15,000	\$6,252,300	\$1,266,217	\$5,740,300
NW BRISTOL BAY	\$6,359,011	\$15,000	\$5,944,000	\$430,011	\$1,484,100
DENALI	\$5,866,702	\$865,657	\$6,400,200	\$332,159	\$1,641,800
SW REGION DILLINGHAM (lo/hi)	\$11,093,648 to \$11,756,348	\$623,620 to \$873,960	\$11,406,900 to \$11,406,900	\$310,368 to \$1,223,408	\$1,655,400 to \$4,644,900
CHATHAM	\$7,283,877	\$1,027,543	\$7,900,800	\$410,620	\$1,891,400
YUKON KOYUKUK	\$7,245,891	\$2,684,811	\$9,662,800	\$267,902	\$2,459,915
PRINCE WILLIAM SOUND *	\$8,048,700	\$4,374,000	\$12,422,700	\$0	\$0
WESTERN ALEUTIANS					
Area #1	\$2,945,383	\$15,000	\$2,950,000	\$10,383	\$703,300
Area #2	\$7,120,600	\$15,000	\$6,729,400	\$406,200	**
Area #3	\$7,173,400	\$15,000	\$6,729,400	\$459,000	**

* The study did not include projections for year 4, projections for year 5 are shown.

** The study did not project budget surpluses for years 1-3.



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Notice: This opinion is subject to correction before publication in the Pacific Reporter. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501.

87-2 922

THE SUPREME COURT OF THE STATE OF ALASKA

WALTER J. HICKEL, Governor
of the State of Alaska,
DARREL J. REXWINKEL,
Commissioner of the
Department of Revenue for
the State of Alaska, and
the STATE OF ALASKA,

Petitioners and
Cross-Respondents,

v.

STEVE COWPER,

Respondent and
Cross-Petitioner.

Supreme Court Nos. S-6294/6304

Superior Court No.
3AN-93-6848 CI

O P I N I O N

[No. 4089 - May 27, 1994]

Petitions for Review from the Superior Court
of the State of Alaska, Third Judicial
District, Anchorage, John Reese, Judge.

Appearances: James L. Baldwin, Stephen C.
Slotnick, Juneau, Jenifer A. Kohout,
Anchorage, Assistant Attorneys General, and
Bruce M. Botelho, Attorney General, Juneau,
for Petitioners and Cross-Respondents.
Douglas Pope, Thomas A. Ballantine, Wagstaff,
Pope & Katcher, Anchorage, for Respondent and
Cross-Petitioner.

Before: Moore, Chief Justice, Rabinowitz,
Matthews and Compton, Justices, and Bryner,
Justice, pro tem.

MATTHEWS, Justice.

by assignment made pursuant to article IV,
Alaska Constitution.

In Hickel v. Halford, 202 P.2d 171, Op. No. 4069 (April 4, 1994) (Halford), we addressed the meaning of the term "administrative proceeding" as used in article IX, section 17 of the Alaska Constitution.¹ This is one of the terms which describes

¹ Article IX, section 17 provides as follows:

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

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

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

(continued...)

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

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

¹(...continued)
of the members of each house of the legislature.

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

fiscal year." Alaska Statute 37.10.420 also establishes the means by which appropriations from the budget reserve fund are repaid.²

² AS 37.10.420 provides:

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

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

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

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

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

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

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

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

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

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

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

(continued...)

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

Following passage of the Act, the current respondent and cross-petitioner, former Governor Steve Cowper, applied to this court for a limited remand in the pending Halford case so that he could challenge the constitutionality of the Act.³ Petitioners and cross-respondents, Governor Walter J. Hickel, Commissioner of

²(...continued)

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

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

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

³ See Halford, Op. No. 4069 at 6-12, for a full statement of the earlier proceedings in this case.

Revenue Darrel J. Rexwinkel, and the State of Alaska (hereafter referred to as the State), applied to this court for original jurisdiction to consider the constitutionality of the Act. We granted a limited remand to the superior court so that Gov. Cowper could move to amend his complaint in order to challenge the constitutionality of the Act.⁴

On remand, the consolidated cases were severed and Gov. Cowper was allowed to amend his complaint to allege that the Act was unconstitutional. He then moved for partial summary judgment on this question. The State also moved for a partial summary judgment declaring the Act constitutional. The superior court granted expedited consideration of the summary judgment motions. Following briefing and oral argument, the court declared the Act unconstitutional on April 8, 1994.⁵ In a written decision the superior court held that AS 37.10.420 is unconstitutional because it unduly limits the funds counted as available for appropriation. The court explained that "[i]f a simple majority vote can withdraw the funds . . . it is available for appropriation . . . [unless]

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

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

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

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

I. STANDARD OF REVIEW

The State argues that this court should defer to the legislature's interpretation of section 17. The State bases this argument on a "strong presumption" in favor of legislative interpretations, State ex rel. Udall v. Colonial Penn Ins. Co., 812 P.2d 777, 783 (N.M. 1991), and the presumption that statutes are constitutional, Bonjour v. Bonjour, 592 P.2d 1233, 1237 (Alaska 1979). Further, the disputed terms in section 17(b) involve appropriations, and the power to appropriate is wholly legislative, Alaska Const. art. IX, § 13. The State misconstrues the applicable standard of review.

The cases cited by the State do not support the proposition that courts should defer to legislative interpretations

of ambiguous constitutional provisions. On the contrary, in each of the cases cited by the State, the court clearly is engaged in interpreting the constitutional provision.⁶ Nor does the legislature's role in making appropriations somehow alter or increase its authority to define constitutional terms merely because the terms contain the word "appropriation." This court retains the same power to interpret constitutional terms regardless of the subject matter of the term.⁷

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

⁷ The legislature's interpretation of the constitutional terms at issue in this case may be considered more persuasive than otherwise because of its greater familiarity with appropriations. Deference in such circumstances is at most, however, a single tool for use by this court in interpreting the constitution. If the legislature adopted AS 37.10.420 contemporaneously with its approval of the Legislative Resolve No. 129 (eventual Article IX, section 17), that would be considered a significant indication of the actual meaning of section 17. A statement by the Eighteenth Legislature of the intent of the Sixteenth Legislature would not bear great weight even if the subject was the meaning of a statute; the applicable degree of deference is lessened by the fact that at issue is the meaning of a constitutional amendment for which the legislature is not the ultimate adopting authority. Our discussion of the weight to be afforded a subsequent legislative statement of the meaning of an earlier statute in Hillman v. Nationwide Mut. Fire Ins. Co., 758 P.2d 1248, 1252-53 (Alaska 1988), is relevant here.

(continued...)

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

⁷(...continued)

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

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

possible to avoid the conclusion that they are unconstitutional." Sonneman v. Hickel, 836 P.2d 936, 940 (Alaska 1992).

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

Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe abstrusely any constitutional term that has a plain ordinary meaning. Rather, absent some signs that the term at issue has acquired a peculiar meaning by statutory definition or judicial construction, we defer to the meaning the people themselves probably placed on the provision. Normally, such deference to the intent of the people requires "[a]dherence to the common understanding of words."

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

II. DISCUSSION

A. "Amount Available for Appropriation"

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

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

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

⁹ AS 37.05.146 provides:

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

(continued...)

9 (...continued)

program receipts:

- (1) federal receipts;
- (2) University of Alaska receipts (AS 14.40.491);
- (3) individual, foundation, or corporation gifts, grants, or bequests that by their terms are restricted to a specific purpose;
- (4) receipts of the following funds:
 - (A) highway working capital fund (AS 44.68.210);
 - (B) correctional industries fund (AS 33.32.020);
 - (C) loan funds;
 - (D) international airport revenue fund (AS 37.15.430);
 - (E) funds managed by the Alaska Housing Finance Corporation (AS 18.56.020), the Alaska Railroad Corporation (AS 42.40.010), the Municipal Bond Bank Authority (AS 44.85.020), the Alaska Aerospace Development Corporation (AS 14.40.821), or the Alaska Industrial Development and Export Authority (AS 44.88.020);
 - (F) fish and game fund (AS 16.05.100);
 - (G) school fund (AS 43.50.140);
 - (H) training and building fund (AS 23.20.130);
 - (I) retirement funds (AS 14.25, AS 22.25, AS 26.05.222, AS 39.35, and former AS 39.37);
 - (J) permanent fund (art. IX, sec. 15, Alaska Constitution);
 - (K) public school fund (AS 37.14.110);
 - (L) second injury fund (AS 23.30.040);
 - (M) fishermen's fund (AS 23.35.060);
 - (N) FICA administration fund (AS 39.30.050);
 - (O) receipts of the employee benefits program established under AS 39.30.150 -- 39.30.180;
 - (P) receipts of the deferred compensation program established under AS 39.45;
 - (Q) clean air protection fund (AS 46.14.260);
 - (R) receipts of the group insurance programs established under AS 39.30.090.
- (5) receipts of or from the trust established by AS 37.14.400 -- 37.14.450, except reimbursements described in AS 37.14.410.

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

¹⁰ These additional funds include the Railbelt energy fund, AS 37.05.520, the Alaska marine highway system vessel replacement fund, AS 37.05.550, the educational facilities maintenance and construction fund, AS 37.05.560, the oil and hazardous substance release response fund, AS 46.08.010, the power cost equalization and rural electric capitalization fund, AS 42.45.100, the power project fund, AS 42.45.010, the Alaska science and technology endowment, AS 37.17.020, and the permanent fund earnings reserve account, AS 37.13.145.

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

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

for appropriation so long as a simple majority can make the funds available.

We reject both interpretations. The text of section 17 cannot support the State's narrow interpretation. However, Gov. Cowper's position would require a complete restructuring of the established financial system of the state government. We are unwilling to add "missing terms" to the Constitution or to interpret existing constitutional language more broadly than intended by the framers or the voters. Instead, we consider it appropriate, as well as consistent with both the language of the amendment and the intent of the framers, to focus on the legal status of the various funds implicated in relationship to the legislative power of appropriation. The "amount available for appropriation" must include all funds over which the legislature has retained the power to appropriate and which are not available to pay expenditures without further legislative appropriation. It must also include all amounts which the legislature actually appropriates for the fiscal year, whether or not they could have been considered available prior to the appropriation.

Our analysis of a constitutional provision begins with, and remains grounded in, the words of the provision itself. We are not vested with the authority to add missing terms or hypothesize differently worded provisions in order to reach a particular result.¹² Our task is to identify the meaning that the people

¹² On this basis alone, we must reject the State's plea to convert the term "amount available for appropriation," as used in (continued...)

probably placed on the term. Halford, Op. No. 4069, at 15. The dictionary definitions of the controlling words "amount" and "available" provide a helpful starting point. Webster's Third New International Dictionary defines "amount" as "a: the total number or quantity . . . ; b: the sum of individuals . . . ; c: the quantity at hand or under consideration." Id. at 72. Relevant definitions of "available" are "3: such as may be availed of: capable of use for the accomplishment of a purpose: immediately utilizable . . . ; 4: that is accessible or may be obtained . . . : at disposal esp. for sale or utilization." Id. at 150.

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

¹²(...continued)
section 17(b), to either "amount available for appropriation from the [unrestricted] general fund" or "revenues available for appropriation." If the definition of "amount available for appropriation" in AS 37.10.420 is to withstand constitutional scrutiny, it must be because it is in conformity with the text of section 17(b), and not because section 17(b) is missing words which would make it conform to AS 37.10.420.

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

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

¹³ (...continued)

way, usually by the source of the funds, predominately the federal government.

The State never asserts or shows evidence, however, that the term "available for appropriation" is actually used in any particular way in the budget process. Rather, it argues that the term "should be interpreted with reference to revenue sources customarily considered by the legislature when it considers the state budget." It is also not clear that the legislative definition of "amount available for appropriation" includes all monies "customarily considered by the legislature." Although it probably does include all revenues customarily considered, it may not include all amounts so considered.

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

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

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

indications of the voters' probable understanding of section 17's terms.

Section 17(b) allows a simple legislative majority to use the constitutional budget reserve fund in order to make up the difference between the "amount available for appropriation" for a given fiscal year and the "amount appropriated for the previous fiscal year." If net state assets are included in the total amount available, then they would have to be actually expended before the budget reserve fund could be reached by a simple majority to keep spending at a constant level. Even if we consider only net assets which exist in a cash form -- such as the balances contained in any one of the State's several revolving loan funds¹⁶ -- the existing state programs dependent on these funds would have to be curtailed if these funds were expended on another purpose. These funds are maintained, however, because in the judgment of the legislature they serve worthwhile purposes. Therefore, one of the uses the legislature presumably would want to make of the newly available money would be to reestablish these funds. Yet, to the extent that any of these funds were started and funded before the previous year, there would not be an equivalent appropriation in the previous year to balance out the appropriation required in the

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

present year. Gov. Cowper's interpretation of section 17(b)'s majority access formula would, in effect, require reductions in the level of government service until no liquid funds remained before a simple majority could reach the budget reserve.

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

Similarly, both the legislative history of section 17 and extrinsic evidence of the voter's understanding of the amendment's provisions indicate that elimination of state services and/or liquidation of state assets was not considered a necessary prerequisite to simple majority access to the budget reserve. Both

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

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

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Representative Rieger and Representative Brown stated in committee that if revenues declined, a simple majority could appropriate from the fund to make up the difference.¹⁸ Statements in the voter pamphlet indicated similar conditions to appropriation. The statement in support of the amendment in the voter pamphlet states:

The Legislature will be able to spend money from the Budget Reserve only if:
• revenues are less than the amount appropriated the previous year, in which case money could be appropriated from the Budget Reserve in an amount not to exceed the shortfall[.]

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

The statement in opposition expresses a similar understanding:

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

(Emphasis eliminated.)

These statements demonstrate that Gov. Cowper's expansive reading of "amount available for appropriation" is not consistent with the purpose of the amendment or the probable understanding of the drafters and voters.

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

On the surface, these statements may appear to support the State's interpretation of "amount available for appropriation" as including only revenues received by the State within the fiscal year.¹⁹ This interpretation is, however, plainly inconsistent with the language of section 17(b). If the drafters of the amendment had intended that a decline in revenues alone would trigger access, it would have been easy to formulate a test which compared current revenues to prior revenues. The formula in section 17(b), however, compares the "amount available for appropriation" to the amount previously appropriated. In order to accept the various secondary indications of the people's possible understanding as dispositive, it would be necessary to read "amount available for appropriations" as meaning only current revenue. Yet it is clear that in the

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

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

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

normal functioning of state government, other funds are routinely available including, at a minimum, the general fund balance carried forward. Nor is an understanding that the reserve fund could be reached by a simple majority when revenues decline necessarily inconsistent with requiring some standing funds to be considered available for appropriation. The State concedes that the statutory budget reserve and the general fund balance would have to be considered available. See 37.10.420(a)(1)(C)-(D). Eliminating even these funds from the calculation would allow majority access to the budget reserve whenever there was even the slightest decline from year to year in revenues, even if in the prior year a huge sum was left unappropriated or placed in the statutory budget reserve. The language of section 17 and the purposes behind the establishment of the fund do not support such easy access.

The flaw in Gov. Cowper's analysis of the text of section 17(b) is in his assumption that "available" can only mean "accessible by any means." The dictionary definitions of the word indicate narrower meanings which are more consistent with the purpose and intent of the provision and with the probable understanding of the voters. As quoted above, one of the definitions of "available" is "immediately utilizable," indicating that the ease with which funds may be accessible is a factor in determining their availability. This is in accord with a common sense understanding of section 17. As demonstrated above, the purpose and common understanding of the language in section 17(b) allows the budget reserve to be used by a simple majority as necessary to maintain

state appropriations at a constant level. Although all funds might be available by some means, counting funds already validly appropriated to a specific purpose as still "available" would disrupt existing state programs and would constitute an inflexible constitutional intrusion on the legislature's authority to evaluate the wisdom of particular appropriations. Although such a constitutional intrusion is conceivable, we are unwilling to read it into a provision with quite a different purpose.

It is far more reasonable to interpret "amount available for appropriation" in light of the relative consequences of and circumstances attendant in making appropriations from different sources. In this light, monies which already have been validly committed by the legislature to some purpose should not be counted as available.²⁰ In addition, illiquid assets owned by the state are not available so long as they remain illiquid. Given the "stabilizing" purpose of the amendment, it would make little sense to interpret section 17 as requiring the costly and time-consuming process of liquefying state assets before allowing majority access to the constitutional budget reserve fund. See supra note 14. The "amount available for appropriation" would include, however,

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

to another purpose, it is no longer necessary to exclude that money from the "amount available for appropriation" in order to protect the legislature's authority to make such decisions.

all monies from which the legislature can make an appropriation and which require a legislative appropriation before they can be expended, as well as any amount which would not otherwise be counted as "available" but from which the legislature does in fact appropriate. This interpretation is consistent with the stabilizing purpose of section 17 and with the extrinsic evidence of the voter's understanding of the amendment. Most importantly, it is consistent with the text of section 17(b), as it is based on a reasonable and practical interpretation of the words of that section, in accordance with common sense.²¹

This definition necessarily includes all amounts which are in fact appropriated for a fiscal year, including "trust receipts."²² There is nothing in the text or history of section 17

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

²² "Trust receipts" include all funds, whatever the source, which the State can only use for a specific stated purpose under applicable law. The largest "trust receipt" category is federal funding, which may only be appropriated by the State for the purposes prescribed by the federal government. Private entities may also grant the State money to use for specific purposes. State appropriations from trust accounts, such as the Public Employees Retirement Fund, for purposes relating to the trust, such as fund administration, are also properly characterized as trust receipts. Although the amount of the appropriation is apparently set by the legislature, it must be made in accordance with trust principles. Therefore, the amount which the legislature appropriates in accordance with trust principles is the amount available to the legislature for such appropriation. Finally, amounts appropriated by the legislature out of other funds within executive agencies for
(continued...)

which would justify classifying money actually appropriated as unavailable for appropriation.²³

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

Moreover, it is not clear that excluding these receipts would constitute a better policy. The appropriations made from these receipts represent a significant portion of state spending. The purposes to which these funds are restricted include many core state government functions, including education, health, social services, public safety, and transportation. See State of Alaska, Dep't of Revenue, Revenue Sources Book (Fall 1993) at 54 (listing

²²(...continued)
purposes of administering these funds, under explicit statutory authority, may also be treated as a type of trust receipt. See, e.g., AS 03.10.040(b) (agricultural revolving loan fund); AS 16.10.340 (commercial fishing revolving loan fund); AS 45.95.060(j) (small business revolving loan fund). Although these funds are not trust funds, the statutes do limit legislative authority to appropriate from them.

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

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

The key question in applying our interpretation of the term "amount available for appropriation" to particular funds²⁴ is

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

what constitutes a valid appropriation such that the funds involved are no longer available. "Appropriation" is defined as

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

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

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

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

. . . .

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

²⁴(...continued)

determination is necessary for constitutional interpretation or enforcement.

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

year for specified object or demand against the state.

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

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

An appropriation is the setting aside from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object, and no other.

569 P.2d 793, 796 (Alaska 1977) (quoting State ex rel. Finnegan v. Dammann, 264 N.W. 522, 624 (Wis. 1936)). Finally, in City of Fairbanks v. Fairbanks Convention and Visitors Bureau, in determining that a local initiative did not make an appropriation, we asked "whether the initiative would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that is executable, mandatory, and reasonably definite with no further legislative action." 818 P.2d 1153, 1157 (Alaska 1991).

Under these definitions, it is clear that one of the fundamental characteristics of an appropriation, in the public law context, is that it authorizes governmental expenditure without further legislative action. Therefore, funds established by the legislature which may be used to pay state expenditures without further legislative action are not available for appropriation, to the extent that expenditures are authorized. This is true

regardless of whether the fund is nominally established within the general fund or within a state agency. For example, the oil and hazardous substance release response fund is a restricted fund within the general fund. AS 46.08.010. The commissioner of environmental conservation is authorized to

use money from the fund to

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

AS 46.08.040(a). The entire balance of the fund could potentially be used by the commissioner of environmental conservation under this provision without any further authorization by the legislature.²⁵ In addition, AS 46.08.040(b) authorizes the governor to use money from the fund to respond to an oil or hazardous substance discharge emergency during the effective period of such an emergency declared under AS 26.23.020(c). Because the legislature has made the entire balance of this fund available for

²⁵ AS 46.08.040 lists eight other purposes for which the commissioner of environmental conservation may use money from the fund. See AS 46.08.040(a)(2)-(7) and (d)(1)-(2). Except as provided for in AS 46.08.040(d)(1), however, expenditures for these purposes are limited to amounts available from appropriations made specifically for the purposes listed. AS 46.08.040(c). AS 46.08.040(d)(1) provides that the commissioner of environmental conservation shall, upon request of the Alaska Legislative Council, "use money from the fund to reimburse the Alaska Legislative Council for expenditures that it makes for the operation of the Citizens' Oversight Council on Oil and Other Hazardous Substances."

expenditure, the amounts deposited into the fund are validly appropriated and therefore no longer available for appropriation.

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

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

A similar analysis applies to the permanent fund earnings reserve account (earnings reserve account), AS 37.13.145. This fund is established as a separate account within the permanent fund under the authority of the last sentence of Article IX, § 15 of the Alaska Constitution: "All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law." AS 37.13.145(a) provides otherwise: "The earnings reserve account is established as a separate account in the fund. Income from the fund shall be deposited by the corporation into the account as soon

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

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

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

as it is received." Therefore, money in the earnings reserve account never passes through the general fund, and is never appropriated as such by the legislature.

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

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

²⁸ In a May 1990 memorandum describing the budget reserve amendment, budget officer Mary Halloran states that the amount available for appropriation includes "all revenue sources, such as permanent fund earnings, federal funds and other restricted funds."

In addition, the language of section 17, and specifically the difference in language between sections 17(b) and (d), suggests that at least some funds outside the general fund may be available
(continued...)

The earnings reserve account is therefore available for appropriation.²⁹

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

In summary, the "amount available for appropriation" within the meaning of article IX, section 17 of the Alaska Constitution includes all monies over which the legislature has

²⁸(...continued)
for appropriation. Compare § 17(b) ("the amount available for appropriation for a fiscal year") with § 17(d) ("the amount of money in the general fund available for appropriation").

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

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

B. "Amount appropriated for the previous fiscal year"

The meaning of the term "amount appropriated for the previous fiscal year" in article IX, section 17(b) of the Alaska Constitution follows logically from the definitions of the word "appropriation" listed above. The "amount appropriated for the previous fiscal year" means all amounts set aside for the previous fiscal year by the legislature "for a specific purpose or object

in such a manner that is executable, mandatory, and reasonably definite with no further legislative action." Fairbanks Convention and Visitors Bureau, 813 P.2d at 1157. In short, the "amount appropriated" includes every dollar appropriated by the legislature, whatever its source.³⁰ Because our definition of the amount available for appropriation includes all amounts actually appropriated, it is unnecessary to exclude artificially any amount actually appropriated from the "amount appropriated" in order to achieve symmetry in the comparison. The State correctly argues that this symmetry is necessary in order to insure that the comparison required by section 17(b) fairly measures the need for access to the budget reserve fund. Contrary to the State's argument, however, symmetry can be obtained without abandoning the plain meaning of the words used in the constitution. Because AS 37.10.420(a)(2) does not include all actual appropriations made for the previous fiscal year in the "amount appropriated for the previous fiscal year," it does not accurately reflect the meaning of the constitutional term. We therefore affirm the superior court's decision declaring AS 37.10.420(a)(2) unconstitutional.

³⁰ This amount would include appropriations made from the constitutional budget reserve fund. It would not include "appropriations" made to funds from which additional appropriations are necessary before expenditures can be made. If the legislature both appropriates money into a fund which is not available for appropriation and removes money from the same fund to appropriate to a different purpose in the same year, the amounts should be offset so that the same amount of money is not counted twice in determining the total amount appropriated. *

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

Alaska Statute 37.10.420(a)(3) defines the "amount of appropriations made in the previous calendar year for the previous fiscal year" in terms of the unconstitutionally limited number of appropriation sources identified in subsection (a)(2) of the statute, which itself relies primarily on the sources identified in subsection (a)(1). It cannot be severed from these subsections and therefore is also unconstitutional, as the superior court properly held.

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

D. Constitutionality of AS 37.10.420(b)

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

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

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

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

If the amount appropriated from the budget reserve fund has not been repaid under art. IX, sec. 17(d), Constitution of the State of Alaska, the Department of Administration shall transfer to the budget reserve fund the amount of money comprising the unreserved, undesignated general fund balance to be carried forward as of June 30 of the fiscal year, or as much as necessary to complete the repayment. The transfer shall be made on or before December 16 of the following fiscal year.

This definition excludes restricted funds within the general fund from the calculation of the amount available to pay back appropriations from the budget reserve fund. As discussed above, some of these funds remain "available for appropriation" within the meaning of section 17.³² Although the constitution gives the legislature authority to implement subsection (d), the legislature's authority must be exercised within the constraints of subsection (d)'s own requirements. Because AS 37.10.420 fails

³² We see no reason to give "available for appropriation" a different meaning in subsection (d) than we did in subsection (b). We recognize, however, that the payback provision in section 17(d) is limited to only those funds which are "available for appropriation" and "in the general fund." Thus, available amounts outside the general fund, such as the earnings reserve account, need not be deposited in the budget reserve. This additional limitation has no effect on funds which exist within the general fund.

to consider all amounts which are "available for appropriation" within the meaning of section 17 in determining the state's repayment obligation, it is unconstitutional. The superior court's decision declaring AS 37.10.420(b) unconstitutional is therefore affirmed.

III. CONCLUSION

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