

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 86/2

9878 HOUSE JUDICIARY

HJR

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Conditional repeal of subsection (d). — Under § 28, ch. 134, SLA 1992, subsection (d) "is repealed on the day that the revisor of statutes certifies to the legislature that the Alaska Supreme Court has made a final determination that, in the absence of AS 43.23.045(e), repealed by sec. 29 of this Act, or AS 37.13.145(d), added by sec. 19 of this Act, no judge or juror is disqualified from serving as a judge or juror

solely because the judge or juror may qualify to receive a permanent fund dividend."

Cross references. — For transfer of certain income earned by the Alaska permanent fund prior to July 1, 1982, to the undistributed income account, see § 15, ch. 81, SLA 1982.

Effect of amendments. — The 1992 amendment, effective July 1, 1992, rewrote this section.

NOTES TO DECISIONS

Stated in *State, Dep't of Revenue v. Cosio*, 858 P.2d 621 (Alaska 1993); *Exxon Corp. v. Heinze*, 32 F.3d 1399 (9th Cir. 1994).

Sec. 37.13.150. Corporation budget. The revenue generated by the fund's investments must be identified as the source of the operating budget of the corporation in the state's operating budget under AS 37.07 (Executive Budget Act). The unexpended balance of the corporation's annual operating budget does not lapse at the end of the fiscal year but shall be treated as income under AS 37.13.140. (§ 5 ch 18 SLA 1980; am § 10 ch 81 SLA 1982; am § 20 ch 134 SLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, substituted "fund's investments" for "corporation's investments."

Sec. 37.13.160. Audits. The Legislative Budget and Audit Committee may provide for an annual post audit and annual operational and performance evaluations of the fund's investments and investment programs. (§ 5 ch 18 SLA 1980; am § 11 ch 81 SLA 1982; am § 21 ch 134 SLA 1992)

Cross references. — For the responsibilities of the Legislative Budget and Audit Committee, see AS 24.20.206.

Effect of amendments. — The 1992 amendment, effective July 1, 1992, substituted "funds investments" for "corporation's investments."

Sec. 37.13.170. Reports and publications. By September 30 of each year, the board shall publish a report of the fund for distribution to the governor and the public. The board shall notify the legislature that the report is available. The report shall be written in easily understandable language. The report must include financial statements audited by independent outside auditors, a statement of the amount of money received by the fund from each investment during the period covered, a statement of investments of the fund including an appraisal at market value, a description of fund investment activity during the period covered by the report, a comparison of the fund performance with the intended goals contained in AS 37.13.020, an examination of the effect of the investment criteria of this chapter on the fund portfolio with recommendations of any needed changes, and any other information the board believes would be of interest to the governor, the legislature, and the public. The annual income statement and balance sheet of the fund shall be published in at least one newspaper in each judicial district. The income statement and balance sheet for the two fiscal years preceding the publication of the election pamphlet under AS 15.58 shall be included in that pamphlet. (§ 5 ch 18 SLA 1980; am § 22 ch 134 SLA 1992; am § 62 ch 21 SLA 1995)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, substituted "fund" for "corporation" throughout the section.

The 1995 amendment, effective August 8, 1995,

deleted ", legislature," following "governor" in the first sentence, added the present second sentence, and substituted "impact" for "effect" in the fourth sentence.

Sec. 37.13.180. Tax exemption. The corporation and the fund are exempt from all taxes and assessments in the state. All security instruments issued by the corporation or

side of the United States" for "in a foreign country" and "capital, surplus, and retained earnings" for "capital and surplus" in paragraph (15), and added paragraphs (21) and (22); in subsection (h), inserted "or for the sale of nondomestic currencies" and substituted "investments" for "securities"; and in subsection (i), deleted the former first sentence, which was similar to the present last sentence, and added the present last sentence.

The 1992 amendment, effective July 1, 1992, rewrote this section.

The 1994 amendment, effective May 25, 1994, in paragraph (g)(16), inserted "the total value held by the fund in each investment does not exceed \$150,000,000, and, if the total value held by the fund

in each investment exceeds \$150,000,000," and made a related stylistic change in the introductory language, substituted "33 percent" for "60 percent" in subparagraphs (A) and (B), and substituted "67 percent" for "40 percent" in item (B)(i).

The 1996 amendment, effective June 26, 1996, substituted "investment grade" for "A or better" in paragraphs (g)(7) and (g)(19), rewrote paragraph (i)(4), repealed paragraph (i)(5), and added subsection (o).

Legislative history reports. — For Senate letter of intent related to the 1989 amendments to this section by ch. 4, SLA 1989 (CSHB 69(SA)), see 1989 Senate Journal 621.

Sec. 37.13.130. Gains and losses. [Repealed, § 13 ch 81 SLA 1982.]

Sec. 37.13.140. Income. Net income of the fund includes income of the earnings reserve account established under AS 37.13.145. Net income of the fund shall be computed annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses. Income available for distribution equals 21 percent of the net income of the fund for the last five fiscal years, including the fiscal year just ended, but may not exceed net income of the fund for the fiscal year just ended plus the balance in the earnings reserve account described in AS 37.13.145. (§ 5 ch 18 SLA 1980; am § 8 ch 81 SLA 1982; am § 1 ch 28 SLA 1986; am § 18 ch 134 SLA 1992)

Effect of amendments. — The 1992 amendment, effective July 1, 1992, inserted near the beginning "fund includes income of the earnings reserve account

established under AS 37.13.145. Net income of the" and substituted "fund" for "corporation" in three places.

Sec. 37.13.145. Disposition of income. (a) The earnings reserve account is established as a separate account in the fund. Income from the fund shall be deposited by the corporation into the account as soon as it is received. Money in the account shall be invested in investments authorized under AS 37.13.120.

(b) At the end of each fiscal year, the corporation shall transfer from the earnings reserve account to the dividend fund established under AS 43.22.045, 50 percent of the income available for distribution under AS 37.13.140.

(c) After the transfer under (b) of this section, the corporation shall transfer from the earnings reserve account to the principal of the fund an amount sufficient to offset the effect of inflation on principal of the fund during that fiscal year. The corporation shall calculate the amount to transfer to the principal under this subsection by

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

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

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

(d) Notwithstanding (b) of this section, income earned on money awarded in or received as a result of *State v. Amerada Hess, et al.*, 1JU-77-847 Civ. (Superior Court, First Judicial District), including settlement, summary judgment, or adjustment to a royalty-in-kind contract that is tied to the outcome of this case, or interest earned on the money, or on the earnings of the money shall be treated in the same manner as other income of the Alaska permanent fund, except that it is not available for distribution to the dividend fund, and shall be annually deposited into the principal of the Alaska permanent fund. (§ 9 ch 81 SLA 1982; am § 2 ch 28 SLA 1986; am § 19 ch 134 SLA 1992)

To: House Judiciary

April 13, 2000

I voted No last September. I am opposed to HJR49.

HJR49 is a poor idea from a policy perspective because it takes away the Legislature's authority to appropriate funds.

HJR49 is a poor idea from a financial perspective for all the reasons that changing to a percentage of market value distribution is a better idea. Although there are no performance guarantees with the market value approach, it does remove the dependence on volatile realized earnings and offers a more stable dividend distribution based on the real return of the Permanent Fund investments.

However, the most important consideration of HJR49 is a philosophical one: whether decreasing our Permanent Fund dividend should be an option to help bridge our growing fiscal gap. I support a healthy dividend distribution. I think a long range fiscal plan including better control of government spending and a combination of reasonable taxes should be developed before the dividend program or the fund's undistributed income is tapped. However, adjusting the dividend should remain a legislative option for balancing personal benefit and the common good for all Alaskans as other General Fund revenue sources are depleted. Shortchanging funding for essential public services or raising exorbitant taxes in order to sustain a large personal dividend does not serve our best interests or the purposes for which the Permanent Fund was established.

Many people who support HJR49 believe it will preserve the value of their dividend. There are no guarantees for a continued high dividend, no matter what formula is applied. Other people want the government to keep its hands off the dividend program, no matter how much essential public services must be cut. I hope that with continued discussion the public will come to understand the real fiscal picture and agree to a well-reasoned long-term financial plan that controls spending, taps additional sources of revenue including a combination of taxes, and then uses Permanent Fund earnings to balance personal and common good for the benefit of all Alaskans.

Thank you.

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April 7, 1998

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By Overnight Delivery

Mr. James L. Baldwin
Assistant Attorney General
Alaska Department of Law
Civil Division
P.O. Box 110300
Juneau, AK 99811-0300

Re: Alaska Permanent fund Corporation

Dear Jim:

You have requested an update of the Report ("Report") that we provided to the Alaska Permanent Fund Corporation ("APFC") approximately 10 years ago, regarding the question whether the Fund and APFC are subject to federal taxation. I have reviewed the cases and rulings that have been issued since 1988, as well as the statutory amendments made to Title 37, chapter 13 of the Alaska Statutes, Attorney General opinions, and the recent annual reports. This letter summarizes and discusses the legal developments relating to the central legal arguments addressed in our previous report. We assume for purposes of this letter that the factual description of the Alaska Permanent Fund ("Fund") and the APFC contained in the Report are still applicable, apart from the legislative amendments which substituted references to the fund for references to the APFC, and other changes discussed below at page 32.

I. Executive Summary

As before, we believe that there are three primary arguments supporting the position that the income of the Fund and the APFC are not subject to federal taxation.

First, it might be argued that the constitutional doctrine of implied immunity of state instrumentalities from federal taxation applies. As we concluded before, this doctrine has been so narrowly construed that it offers only questionable protection. The few legal developments under this doctrine have only reinforced our previous conclusion.

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Second, we relied on a history of IRS rulings, albeit without judicial authority, to argue that income earned by a State or an integral part of a State is not specifically subjected to State taxation. Since 1988, there has been quite a lot of ruling activity related to the integral part doctrine, as well as publication of the first judicial decisions to address it. We believe that these additional authorities strengthen the position that the Fund and the APFC are an integral part of the state and thus not subject to state taxation.

Third, we argued that, in the alternative, the income is excluded under section 115 of the Internal Revenue Code ("Code").¹ Section 115 excludes from gross income any income that is derived from the conduct of an essential governmental function and accrues to a State or political subdivision. At the time of the Report, there were a number of older authorities in this area, but there were no recent authorities. Since 1988, this has been an unusually active area for IRS rulings. Recent case law also has addressed this statute, and the IRS has published one ruling of precedential value. Although we believe that these developments continue to support also the position we took with respect to the Fund and the APFC, they do indicate that the IRS's analysis increasingly turns on the issue of private benefit.

In short, we believe that the legal developments in this area in the last 10 years reinforce the conclusions reached in our earlier Report.²

Finally, we note that a number of the recommendations we made to strengthen the Fund and the APFC's position were subsequently adopted. We felt at the time that the practical changes and proposed statutory amendments would substantially reinforce the State's legal position that the Fund and the APFC are integral parts of the State and that income earned on Fund assets is earned directly by the State. We believe that the factual analysis in the subsequent cases and rulings underscore the wisdom of such actions.

¹ All references to the Internal Revenue Code or the Code are to the Internal Revenue Code of 1986 as amended, 26 U.S.C. §1 *et seq*

² We have reason to believe that the IRS is currently considering several additional private rulings under the integral part doctrine and section 115, which may further elaborate on the factors that are essential to exemption under the integral part doctrine or exclusion from income under section 115. We understand that they have been controversial, in that they were previously submitted and rejected and have been resubmitted to the IRS. We do not have enough information at this time to determine if the rulings will add any meaningful discussion or elaboration to the prior rulings.

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II. Constitutional Immunity

The 1988 Report concluded that the constitutional doctrine of implied intergovernmental tax immunity had been so narrowly interpreted over the years that it was unlikely to provide a reliable basis for arguing that any income received by a state was immune from federal taxation should Congress choose to impose such taxation. At one time, the constitutional doctrine of intergovernmental tax immunity held that, as a matter of constitutional relationship between the federal government and the states, the federal government may not tax the sovereign states. This doctrine has been so eroded over the years that it is difficult to determine what its remaining scope might be.

During our previous consideration of this issue, the Supreme Court decided *South Carolina v. Baker*, 485 U.S. 505 (1988), which held (among other rulings) that the doctrine of intergovernmental immunity did not bar a nondiscriminatory federal tax on interest earned by holders of state government-issued bonds ("[T]he States have never enjoyed immunity from all federal taxes considered to be 'on' a State."). Although that case did not deal with a federal attempt to tax a state or state instrumentality, but rather a state attempt to deal with a tax on bondholders, the Court offered a sweeping analysis of the doctrine of intergovernmental tax immunity, a discussion which might be characterized as dicta. Although the Court never addressed the question of the "extent to which, if any, States are currently immune from direct federal taxation," 485 U.S. at 523 n. 14, the decision includes the often-quoted caveats that "at least some state activities have always been subject to direct federal taxation", 485 U.S. at 523 n.14, and "at least some nondiscriminatory federal taxes can be collected directly from the States even though a parallel state tax could not be collected directly from the Federal Government." 485 U.S. at 523.³

We concluded that *South Carolina*, read in conjunction with the Court's expansive reading of the commerce clause in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), suggested that the Court recognized few restraints on the federal commerce or taxing powers over state activities. Nevertheless, we believed that the Court was likely to conclude that there was a limited set of core powers of sovereignty that would remain immune from the federal taxing power, such as state tax revenues, but that there was less comfort that the Court would not approve a

³ The Court defined "directly" with respect to a state tax on the federal government as "when the levy falls on the United States itself, or on an agency or instrumentality so closely connected to the government that the two cannot realistically be viewed as separate entities ..." and indicated that the same definition applied to a federal tax on a state. 485 U.S. at 523.

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nondiscriminatory tax on other state income, such as investment income. Report at 69-76.

The South Carolina case, of course, had just been decided at the time of our prior Report, and the impact of the decision and dicta therein had not yet been determined. Since then, there have been approximately half a dozen federal cases regarding the intergovernmental tax immunity doctrine, and none have given us a reason to alter this conclusion.

Specifically, in a case concerning federal taxation of investment income of the state-created Michigan Educational Trust ("MET"), a federal district court rejected the intergovernmental tax immunity claim on the grounds that the MET was not so closely connected to the state that the two could be realistically be viewed as separate entities. Michigan v. United States, 802 F. Supp. 120, 126 (W.D. Mich. 1992). On appeal, the state dropped its intergovernmental immunities claim. The 6th Circuit eventually ruled that the Michigan Educational Trust was indeed an "integral part" of the state, and thus exempt from federal taxation. Michigan v. United States, 40 F. 3d 817 (6th Cir. 1994). The Court noted, however, that "it was an appropriate move" for the state to drop its intergovernmental immunities challenge because that doctrine had "been severely eroded with the passage of time, and several years ago the Supreme Court suggested that it is now an open question whether there is 'any' extent 'to which States are currently immune from direct non-discriminatory federal taxation.'" Michigan v. United States, 40 F.3d at 823 (quoting South Carolina v. Baker, 485 U.S. 505, 518 n.11 (1988)).

The 6th Circuit concluded that "we are confident that today's Supreme Court would say that Congress is free to impose a non-discriminatory tax on the investment income at issue here if it wants to."

40 F.3d at 823 (emphasis added). Since the Court had already concluded that the MET was an integral part of the state, this statement with respect to the intergovernmental immunities doctrine is disturbing, since it indicates that even a generally favorable Court would not conclude that a state's investment income is exempt from federal taxation.

Since then, no other case has addressed the question of the potential permissible constitutional scope of federal taxation of the states.⁴

⁴ Several cases have discussed the doctrine in the context of discriminatory indirect state taxation of persons or entities arguably associated with the federal government. These include: discriminatory state taxation of federal retirees, *see. e.g., Harper v. Virginia*, 509 U.S. 86 (1992); Davis v. Michigan, 489 U.S. 803 (1989); nondiscriminatory state taxation of oil and

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III. Federal Taxation Does Not Reach Income Earned by an Integral Part of a State

We previously contended that the strongest argument was that the Fund and the APFC were an "integral part" of the state, and thus wholly outside the federal tax code. That is, the IRS has consistently taken the position that the federal income tax law does not impose income tax on income earned directly by a State or an entity that is an "integral part" of a State absent a specific statutory provision.

This is a separate argument from the constitutional doctrine of intergovernmental immunities, which is premised on the constitutional relationship between the federal government and the states.

In contrast, the "integral part" argument assumes that, if Congress so chose, it might be empowered to tax the states directly, but that careful review of the income tax laws reveals that Congress has not attempted to do so. At its most developed, the "integral part" theory argues that any congressional imposition of tax must be clear and unequivocal. The Internal Revenue Code expressly taxes corporations, but does not expressly tax states or political subdivisions, and there is no evidence that Congress ever intended the code to apply to states. The IRS had developed this theory in several precedential published rulings as well as numerous nonprecedential administrative interpretations and internal memoranda. See Report, at 27-39.⁵

gas production on Indian reservations by non-Indian lessees, Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163 (1988) (describing the intergovernmental immunities doctrine as "thoroughly repudiated" by modern case law"); and whether state use taxes on bankruptcy sale proceeds unduly burden the processes of the federal bankruptcy court, California v. Sierra Summit, Inc., 490 U.S. 844 (1989).

⁵ See the Report, at footnotes 26 and 30, for a discussion of the varying forms of IRS interpretations and rulings, and their precedential weight. In this letter, we have included discussion of many Private Letter Rulings (PLR) which are written advice provided to taxpayers who submit written requests for rulings on specific legal issues based upon a specific set of facts. Under section 6110(j)(3), such private letter rulings are directed only at the taxpayer that requested the ruling and may not be used or cited as precedent. Since the IRS has substantially reduced its output of published guidance and no longer produces even general counsel memoranda (discussed at footnote 30 of the report), private rulings are a valuable window into the developing position of the IRS, particularly in areas such as this which are rarely the subject of published guidance and even more rarely litigated. Although nonprecedential, private letter rulings also can provide a basis for seeking a similar interpretation by the IRS with respect to similar fact patterns.

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At the time of the Report, there was no judicial authority to support the "integral part" theory. In our Report, we discussed the then-recent IRS private ruling issued to the Michigan Educational Trust ("MET"), which was the nation's first government-sponsored prepaid college tuition plan. In that ruling, the IRS determined that the fund was not an integral part of the state, and thus its income was not exempt from taxation. PLR 8825027. (March 29, 1988). Since our Report, the State of Michigan challenged the IRS in tax refund litigation. The trial and appellate decisions in Michigan v. United States are the only judicial decisions ever to consider the integral part theory. 802 F. Supp. 120 (W.D. Mich. 1992), *rev'd*, 40 F.3d 817 (6th Cir. 1994).

Since 1988, the IRS has been invited to rule on the "integral part" theory several times, due in large part to the interest on the part of the states in prepaid college tuition investment programs, disaster insurance funds, and self-insurance programs for local governments. The IRS has issued another precedential Revenue Ruling as well as numerous private rulings. These rulings, however, have further developed the theory in unexpected ways. The IRS has been inexplicably inconsistent in its approach, narrowly applying the theory in some cases (prepaid state tuition plans) yet expansively applying it in others (state disaster insurance programs).

A. Michigan Educational Trust

The Michigan Education Trust case is interesting because of the many structural parallels with APFC in terms of its creation and control by the State. Its facts diverge, however, in terms of the source and destination of the funds. It further highlights the IRS's concern with private benefit, although this typically is raised in the context of section 115 rather than the "integral part" doctrine.

The Michigan Education Trust was established as a public corporation. Its corporate purpose — higher education — was declared by the legislature to be a public purpose and an essential function of state government. It was "allocated by law" to the state treasury department, but acted independently of the department. It had an independent board appointed by the governor and confirmed by the senate; the board included the state treasurer. The board exercised its powers as authorized by the statute, including investing, paying out funds, determining the eligibility of participants, and contracting on behalf of the state. A separate state administrative board was made up of officers of the state, including the governor. The administrative board had to approve the form contracts used.

The state attorney general had advised the trust's board that it was an "agency" of the state. The employees of MET were subject to rules governing state employees, e.g., civil service and state laws governing liability of public officers, and the MET was

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subject to laws governing the conduct of state agencies, e.g., open records law, open meetings laws, and FOIA. The attorney general provided legal counsel.

An important factor was the source of funds — the entire assets of the MET consisted of actuarially-determined amounts paid by parents under pre-paid tuition contracts. MET was to invest the funds and guaranteed the college tuition of beneficiaries at some time in the future. The act expressly provided that the funds were to be used solely for the purposes of the trust and could not be used by the state for any other purposes. The assets of MET were not considered state money or state revenues, and were not subject to payment of full faith and credit obligations of the state (although the appellate court later determined that the reason for this may have been to give the trust broader investment powers than it otherwise would have). Another important factor was the destination of funds, which were to be paid out to beneficiaries. Moreover, upon dissolution, the assets would not go to the state but would be distributed pro rata to the investors, although state could claim any actuarially determined excess. The state was not legally obligated to make up any shortfall in funding, although it was authorized to do so.

The MET funds were segregated from state funds, although they could be pooled with state funds for investment purposes. Apparently, state treasury department employees actually handled the investments. The bank trust accounts were in the name of the state treasurer, with the state as agent for the trust. MET made an annual accounting to the state governor and legislature. Annual audits were conducted by the state auditor general. Fund payments were paid out through state warrants. Trust income was exempted from state taxes.

During our work on the 1988 Report, the IRS issued a private letter ruling rejecting the exempt status of the MET. PLR 8825027 (March 29, 1988). The IRS discussed the "integral part" theory only briefly, concluding that MET was not an integral part of the state. The key factors mentioned in the IRS ruling were that it was created as a corporation to operate independently from the state; the trustees' decisions could not be overridden by any state agency; the funds were not derived from the state, were not subject to the claims of the state's creditors, and were not considered state funds; the state could not loan, transfer, or use MET funds for any purpose; and the MET funds could be used only for the tuition payment or refunds to investors.

Michigan then filed returns and sued for a refund of the taxes paid. In the District Court, the parties stipulated the facts and filed cross motions for summary judgement. The District Court denied the refund claim, determining as a matter of law that the MET was subject to federal taxation. *Michigan v. United States*, 802 F. Supp. 120 (W.D. Mich. 1992). Michigan raised, and the court addressed, several possible

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bases for exemption —constitutional doctrine of intergovernmental immunities and the 10th Amendment, the integral part of the state doctrine, section 115, and section 501(which expressly exempts charities and certain other similar entities).

The District Court implicitly accepted the "integral part" theory as a matter of law that states are *de facto* exempt from federal internal revenue laws. MET was a corporation, however, and thus was subject to federal taxation unless it was an integral part of the state entitled to the state's immunity. The Court concluded that MET was not an integral part of the state because, although the state put up some seed money, the actual funds came from investors and could not be used by the state to pay state creditors or for any other purposes. Also, MET's obligations were not backed by the full faith and credit of the state.⁶ The Court concluded that these facts demonstrated that MET was an entity distinct from the state and not entitled to immunity as an integral part of the state.

Michigan appealed to the 6th Circuit, which reversed, holding that the MET was exempt from federal taxation, as an instrumentality or political subdivision, and as an integral part of the state. *Michigan v. United States*, 40 F. 3d 817 (6th Cir. 1994), rev'g 802 F. Supp. 120 (W. D. Mich. 1992). The 6th Circuit initially addressed the question whether Congress had imposed taxation on a government corporation such as MET. The Court observed that the Internal Revenue Code plainly imposes tax on corporations. Literally read, that section would tax all governmental corporations include municipalities organized as bodies corporate, public universities, and federal instrumentalities that are organized in corporate form (citing a list of federally owned corporations that are presumed to be exempt from taxation). The IRS conceded the legal premise that the Code did not impose taxation on a state, a political subdivision, or an "integral part of a state." 40 F.3d at 823.

The Court further cited a long line of Supreme Court authorities requiring Congress to express its intent unequivocally when it intends to alter the usual constitutional balance between the States and the federal government. The Court concluded that Congress knew how to make the kind of "plain statement" necessary to impose a tax on a state instrumentality but had not done so here.

⁶ The Court's opinion regarding the constitutional arguments and section 115 are discussed at pages 3-4 and 25-32, respectively. The court also rejected exemption under section 501 because MET's direct benefits impermissibly inured only to parents who purchased contracts, thus violating the private benefit and private inurement restrictions on section 501 charitable organizations. As we suggested in our prior Report, a similar concern would likely be raised with respect to the Fund, APFC, and the dividend program if exemption were sought under section 501.

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of the subdivision were for a public purpose. Responding to the District Court's rather summary dismissal of higher education as a governmental function, the 6th Circuit determined that education was a governmental purpose and public function, particularly given the history of Michigan as a land grant state and the emphasis in the state constitution of education as an essential government function. The Court noted that the act creating the trust included extensive legislative findings that it was an essential function of the state to support education, to encourage attendance to state institutions, and to provide educational assistance to students. The Court found that education was at least as much a state purpose as the bridges and tunnels that were the functions of the entities held to be exempt political subdivisions in the prior case law. The Court thus concluded that MET was a public agency authorized to exercise contracting powers on behalf of the state for a purpose declared by the legislature to be a public purpose.

The Court then added that MET would qualify as a political subdivision since it was a "public body corporate and politic", and thus was "in a broad sense" a municipal corporation. *Id.* at 825-26.⁹

For further support, the Court also borrowed a six-factor test used by the IRS and the courts for determining whether an entity is an agency or instrumentality for purposes of federal law governing governmental benefits plans. Those factors are (1) whether it is used for a governmental purpose and performs a governmental function; (2) whether it performs its function on behalf of a state or political subdivision; (3) whether there are private interests involved or whether the state or political subdivision has the powers and interests of an owner; (4) whether control and supervision is vested in public authorities; (5) whether express statutory authority is required for the instrumentality and whether such authority exists; and (6) the degree of financial autonomy and the source of operating expenses. 40 F.3d at 826-27 (citing *Rose v. Long Island Railroad Pension Plan*, 828 F.2d 910 (2d Cir. 1987), *cert. denied*, 485 U.S. 936 (1988), and Rev. Rul. 57-128, 1957-1 C.B. 311). The Court concluded that MET satisfied the first five factors (the sixth was not presently satisfied but the court

subdivision cases discussed by the 6th Circuit include *Commissioner v. White's Estate*, 144 F.2d 792 (2d Cir. 1944) (bridge authority was political subdivision with power to issue exempt bonds); *Philadelphia National Bank v. United States*, 666 F.2d 834 (3rd Cir. 1981) (Temple University was not a political subdivision eligible to issue tax-exempt debt); *Rose v. Long Island Railroad Pension Plan*, 828 F.2d 910 (2d Cir. 1987), *cert. denied*, 485 U.S. 936 (1988) (metropolitan transit authority (MTA) was political subdivision and pension plan was part of MTA).

⁹ The Court did not cite any authority for this conclusion, which not surprisingly, also has been criticized by commentators and the IRS.

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speculated that it could not be ruled out for the future), and concluded that, on balance, the presence of five factors led to the conclusion that it was a state instrumentality.¹⁰

The Court also distinguished *United States v. Maryland Savings-Share Insurance Corporation*, 308 F.Supp. 761 (D. Md.), *rev'd on other grounds*, 400 U.S. 4 (1970) ("*MSSIC*"), which was discussed in our Report at pages 85-90. In *MSSIC*, the Supreme Court upheld the lower court's conclusion that a nonprofit insurance corporation chartered to insure savings and loan accounts was not exempt from federal taxation as an instrumentality. The 6th Circuit pointed out that that *MSSIC* was a private corporation, organized by and for savings and loan members, with a Board largely comprised of elected directors. 40 F.3d at 827-828. In contrast, the MET was a public instrumentality, had a board appointed by the governor, and was delegated authority to contract on behalf of the state.

The court also rejected both of the government's arguments that the trust could not be an integral part of the state because its corporate form made it functionally independent and because the source and earmarking of funds made it fiscally independent. The Court determined that it was "immaterial" that the state chose to use a public corporation rather than to assign the functions to a traditional department. 40 F.3d at 828. The Court cited the example of the U.S. Postal Service as a corporate entity that did not become taxable by virtue of its corporate form. 40 F.3d at 828-29. Similarly, the Court rejected the argument that the source or earmarking of funds was determinative, again citing the example of the U.S. Postal Service, the TVA, and ports authority as examples of governmental instrumentalities that obtain funding from private sources and are earmarked for the performance of public functions that the agencies were created to perform. The Court was also critical of the government's focus

¹⁰ Critics argue that this six-factor test of "instrumentality" is irrelevant for two reasons. First, it was developed in a different context involving different law, legislative history and intent, and different requirements (ERISA and governmental plans). This argument was made by the IRS in criticizing the *MET* case in subsequent rulings. See, e.g., PLR 9809013 (Nov. 7, 1997); PLR 9706006 (Nov. 8, 1996); PLR 9627016 (April 5, 1996); PLR 9622019 (Feb. 28, 1996). The IRS's challenge is a bit disingenuous, however, since it was the IRS itself that issued a series of G.C.M.s and rulings relying on this six-factor test for purpose of section 115. See, e.g., G.C.M. 34704 (Dec. 2, 1972); G.C.M. 34502 (May 2, 1971); PLR 8820030 (Feb. 16, 1988); PLR 8740015 (July 2, 1987); PLR 8650017 (Sept. 10, 1986). Second, critics argue that "instrumentality" is not synonymous with "political subdivision" or "integral part of a state", and that instrumentalities are not even certain of exemption under section 115. See, e.g., Letter to Editor from Prof. Ellen P. April, 66 Tax Notes 121 (Jan. 2, 1995) (citing *Maryland Savings-Share Insurance Corp. v. United States*, 400 U.S. 4, 7 n.2 (1970) ("*MSSIC*") and Rev. Rul. 77-261, 1977-2 C.B. 34).

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on the form, rather than the substance of the entity, analogizing the trust to government student loan programs and state pension funds. *Id.* at 829.

Not surprisingly, the IRS has chosen to reject the 6th Circuit's decision, criticizing it in public appearances and statements, and taking the position that it is not authoritative anywhere outside the 6th Circuit. In rulings since *MET*, the IRS has repeatedly rejected the analysis of the Court as "internally inconsistent", arguing that its "reliance on the [six] factors listed in Rev. Rul. 67-128 ... to reach its conclusion is misplaced." *See, e.g.*, PLR 9809013 (Nov. 7, 1997); PLR 9706006 (Nov. 8, 1996); PLR 9627016 (April 5, 1996); PLR 9622019 (Feb. 28, 1996). Moreover, the IRS declared that it would no longer entertain state requests for rulings relating to the exemption of state prepaid tuition programs under the "integral part" theory or section 115, thus shutting the door on states that might want to adopt a variation on the Michigan plan that might be more acceptable to the IRS. Rev. Proc. 96-34, 96-1 C.B. 771.

Lacking access to guidance, the states began to lobby for Congressional grant of exemption to such programs. Finally, in 1996, the Small Business Job Protection Act added new section 529 to the Code, which expressly provides tax-exempt status for state tuition programs that meet the requirements of the statute. P.L. 104-188, §1806. Even after this statement of Congressional approval, the IRS continues to refuse to issue rulings under the "integral part" theory or section 115 to states relating to prepaid tuition programs, thus in effect taking the position that only plans organized pursuant to the statute may be exempt. Rev. Proc. 98-3, 1998-1 I.R.B. 100 (Jan. 5, 1998).

B. Disaster Insurance Programs

The IRS has issued a number of widely publicized "integral part" rulings to states in recent years that shed additional light on the IRS's concerns in this area, particularly regarding which characteristics of an entity qualify it as an integral part of the state. In contrast to the *MET* IRS ruling, the extent to which a proposed state entity's activities appear to be private rather than public in nature (*e.g.*, private funds, investors, beneficiaries) continues to be a significant consideration, yet apparently is not determinative once certain other indicia of state creation and control and financial commitment are satisfied.

The most significant rulings in recent years involve a series of proposed state disaster insurance programs, which typically create some sort of entity or fund which individuals or insurers would pay into or purchase insurance from, which entity would then pay claims or reimburse insurers in the event of a certain natural disaster.

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1. Florida Hurricane Catastrophe Fund

In 1995, Florida successfully obtained a private ruling which held that the Hurricane Catastrophe Fund ("CAT Fund"), a trust fund created by state law, would be considered an integral part of the state. PLR 9507037 (Nov. 4, 1994). It is described as a "trust fund under state law", i.e., a separate legal entity, but it does not appear from the ruling or the state statute that it was structured as an actual trust but rather as a state fund. Participating insurers were to pay premiums into the fund, and would be reimbursed for a percentage of losses resulting from certain events. The state also imposed an assessment on a broader class of insurers, including many nonparticipants, with the revenues to be earmarked for the fund.

It appears that the state was not liable if the fund proved to be insufficient, although if that occurred, local governments could issue revenue bonds for the benefit of the fund, and the bonds would be backed by the fund's future revenues. It appears that monies in the fund were not subject to the state's creditors. The ruling does not indicate whether the fund was treated as a state account for accounting purposes, or whether there was any duty to provide financial reports or to be audited by the state. The state legislature also could appropriate funds from the fund for grants to local governments and nonprofits for preparedness programs. All assets of the fund would revert to the state upon termination of the fund. It was governed by the State Board of Administration, a three-member board comprised entirely of state officials. Operations of the fund were conducted by fund employees and contract advisors. It appears that the board was not created for the purposes of governing the fund, but rather was a pre-existing body that had been created under the state constitution to administer certain special purpose tax revenues, and also could be delegated other powers under state law.

The ruling cryptically states that "[t]he method of accounting for moneys related to certain operations does not by itself determine whether the operation is an integral part of the state or an entity separate from the state." Nothing in the ruling discusses the method of accounting for funds. It is known that the fund was very controversial and was initially rejected by the IRS. This comment may be an observation that the fund was actually a state fund, rather than an independent fund, and that that distinction alone did not resolve the issue of integral part. Certainly, past IRS rulings have found that the existence of a separate legal entity or independent entity was a determinative factor in finding that an entity was not an integral part of the state.

The ruling does rely on the state's exercise of its taxing power and "significant contribution" of monies to the fund, the state's power to appropriate monies from the fund for certain specified purposes, and the state's receipt of the assets upon dissolution as significant factors in concluding that the state has a "financial interest" in the fund. Another factor cited by the ruling was that the monies could only be used for purposes

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authorized by state law, and no other purposes. The ruling also noted that the state exercised direct control over the fund through the board which consisted of state officials.

Curiously, there was no discussion of the issue which animated the debate over the MET ruling — the significant private benefit. Here the very purpose of the fund, as there, was to pay out virtually all of the income and assets to private parties, but that issue was not even discussed. Apart from the MET ruling, it would appear from a general review of IRS rulings that the private benefit analysis is limited to section 115 and plays little or no part in determining whether an entity is an integral part of a state. That may well be the wrong interpretation of the IRS's position, however. Contemporaneous public statements by Florida state officials during the ruling negotiations indicate that the IRS's chief concern was indeed the MET -type private benefit issue. The Florida CAT Fund was perceived by the IRS not as a state fund but rather as plan to help private insurers. Negotiations with the IRS dragged on for over a year — the IRS apparently demanded that the state have a significant investment of its own funds at risk in the fund before it would rule that it was an integral part of the state.

Subsequently, Florida apparently did not enact the plan in the form it was presented to the IRS, and the IRS threatened to withdraw the exemption ruling unless the state committed "significant" state funds to the fund. Several amendments to the plan were made, including additional annual appropriations from the general revenue fund and another state trust fund for the first two years, a broader base of nonparticipants who would be taxed to fund the program, and additional powers on the part of the state to appropriate monies from the fund. The IRS accepted these changes and issued a favorable supplemental ruling. PLR 9522039 (March 6, 1995).

2. Hawaii Hurricane Relief Fund

In the wake of Hurricane Iniki, Hawaii also developed a state sponsored disaster relief fund, which the IRS held was an integral part of the state. PLR 9627016 (April 5, 1996). Significantly, the fund was established as a public corporation. The fund was placed under the State Department of Commerce and Consumer Affairs for administrative purposes. The board was made up of the commissioner of insurance, *ex officio*, and six members chosen by legislative leadership and the governor. Departmental employees were assigned to the fund, and continued to be considered state and departmental employees.

The fund issued hurricane policies for properties covered by private property insurance, and the private insurance companies served as servicing agents for the fund hurricane policy as well as the property insurance. The fund's policy revenues were

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representing the insurance industry and general public, to be appointed by the board members. Meetings of the board and advisory panel were subject to state open meetings requirements. The fund was administered under the direction of the state insurance commissioner. The initial plan of operations had to be approved by the commissioner and legislature. Subsequent amendments had to be approved by the commissioner. Senior executives would be employed under contract. The fund's employees were subject to state civil service requirements, and subject to state laws governing post-government employment.

The state annually would contribute the equivalent of the state premium tax collections on the fund policies to the fund as part of the fund's capital. The state also contributed the remaining balance in a defunct previous earthquake trust fund. Participating private insurers would pay an initial assessment to the fund based upon market share. The primary source of revenue, however, would be premiums for fund policies sold. The fund would purchase reinsurance. The statute authorized that a certain percentage of investment income could be used for earthquake mitigation programs. If the fund were unable to cover claims, the fund could ask the state treasurer to issue debt obligations to be repaid through a policy surcharge, but the state would have no liability for those obligations. The statute expressly provided that the state would not be responsible for any of the liabilities of the fund. In the event of the fund's termination, all assets would be transferred to the state.

The ruling distinguished MSSIC on the grounds that: (1) only three of eleven MSSIC directors were selected by state officials; (2) the state made no financial contribution to MSSIC; and (3) the state had no present interest in the income of MSSIC. The ruling also mentions that MSSIC was a corporation, but does not discuss the significance of that fact. The ruling also mentions that under the MSSIC charter, the full faith and credit of the state was not pledged for MSSIC's obligations. Similarly, the California statute expressly declined to give the state's backing to the obligations or liabilities of the CEA.

The ruling also distinguished MET in a discussion, repeated in other rulings, that makes it clear that the IRS does not agree or acquiesce to that decision. The MET decision was distinguished as "internally inconsistent" because it found that the MET was both a political subdivision and an integral part of the state. The California ruling further rejected the decision's discussion of the factors listed in Rev. Rul. 57-128 as irrelevant because they apply only to entities that are separate from a state, and are not used to determine if it is a separate entity or an integral part of a state. This seems to misstate the Revenue Ruling, which admittedly is not an "integral part" or section 115 ruling, but in another context does spell out a list of factors to be considered in determining whether a entity is an instrumentality of a state or not.

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Other factors cited in the ruling were the significant government interest set forth by the state in providing assistance to its citizens and economy in the event of natural disasters of the magnitude of an earthquake. The state also had argued that this plan represented an exercise of the state's power to regulate an industry, and that the fund was as valid an exercise of state power as the regulatory alternatives.

Two months later, the IRS revoked the ruling letter for further review of the issue. Letter dated April 30, 1996, LEXIS, FEDTAX, TNT, 96 TNT 102-54. It appears that this revocation may have been prompted by the state legislature's consideration of further legislation that threatened to significantly revise the CEA.

The state then conducted an unusual high pressure campaign, seeking assistance from the White House and imposing pressure through its congressional delegation. Legislation was introduced in Congress to grant an express federal tax exemption to the CEA.

Then in June, 1996, the IRS reinstated the ruling granting exemption as an integral part of the state without discussion. PLR 9641010(June 25, 1996) (reinstating PLR 9622019). The ruling noted that the state legislature was considering legislation affecting the fund, and warned that the IRS was not giving any opinion as to the continuing exempt status of the fund if the legislation were to be enacted.¹¹

After the California legislature further amended the statutory scheme, the state again sought a reaffirmation of the IRS's ruling. Subsequently, the IRS again issued a ruling to California, concluding that after numerous statutory changes, the CEA was an integral part of the state. PLR 9706006(Nov. 8, 1996).

In general, the legislative amendments did not really address the issues of either state control or financial interest, which apparently were the chief concerns of the IRS. The chief purpose of the amendments appears to have been to forbid the CEA from declaring bankruptcy, to strengthen the capitalization of the fund, and to create additional "tiers" of remedy in the event that the assets of the fund proved inadequate to satisfy claims, including various additional surcharges on participating insurers. The

¹¹ Published accounts of the California Earthquake Authority tax negotiations, discussed below, and private discussions with Florida, Hawaii, and California state officials and IRS officials reveal that the IRS was very concerned about the overwhelmingly private benefit characteristics of these funds. The IRS required amendments, if necessary, to strengthen state control, to impose requirements that assets revert to the state upon dissolution (although given the nature of these funds, the possibility of remaining assets is so remote as to be meaningless), and most important, to require a significant state financial commitment.

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amendments also seemed to make it harder for participants to avoid sharing the burden of fund obligations by dropping out. The only amendments that seemed relevant enough to warrant mention in the IRS's discussion in the final ruling were: (1) the legislature "provided for" additional surcharges on policies, and probably more important, the state appropriated some monies to assist in the start-up of the fund, and loaned additional monies at a legal rate of interest; and (2) the board members and officers were made subject to the financial disclosure requirements for state officials. Otherwise, the ruling is almost verbatim identical to the earlier ruling (PLR 9622019).

The California ruling is somewhat surprising in that the state assumed no liability for the fund, unlike the Florida hurricane catastrophe fund. The California insurance commissioner publicly stated that lawmakers demanded that the state's general fund be immune from liability, and described the structure of the program as one of "building firewalls between the CEA and the General fund."

C. Other Integral Part Rulings

There have been a few other integral part rulings worth noting. Unfortunately, several rulings have made broad and disturbing statements that a corporation created by a state is not an integral part of a state because it is a corporation and is not within a branch of government. For example, in PLR 9549030 (Sept. 11, 1995), the IRS ruled that a corporation created by a county to manage a commercial district was not an integral part of the State or a political subdivision of the State "because it was created as an entity separate and distinct from the district and is not within the Executive or Legislative branches of County".¹²

Similarly, another ruling concerned a state-created public corporation which was organized to establish a university. PLR 8935012 (May 30, 1989). The governing board was appointed and confirmed by the state. It received state appropriations for capital outlays and operational expenses. Apparently the state itself argued that the corporation was an entity separate and apart from the state. The IRS concurred and concluded that it was not an integral part of the state, without further discussion.¹³

Similarly, the IRS has determined that a regional development authority was not an integral part of the state, apparently because it was formed as a separate corporation,

¹² The ruling did conclude that the corporation's income was excluded from taxation under section 115, and thus was required to file a federal corporate tax return.

¹³ The ruling did conclude that section 115 applied to exclude the corporation's income from federal taxation.

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had its own officers and employees, and was not under the control of any state agency or any one political subdivision. PLR 9009063 (Dec. 8, 1989).¹⁴

One distinction between these rulings and other favorable rulings is that these involve public corporations, while other favorable rulings involve trusts or other entities of more nebulous legal status. It is difficult, however, to determine the significance of corporate status, especially when the IRS does not elaborate on the issue, or when the IRS eventually finds the entity to be exempt under another provision. For example, while the IRS considered corporate status to be a negative factor for MET, it apparently was not the determinative factor in concluding that it was not an integral part of the state.

Certainly, there are other rulings that conclude that a corporation can be an integral part of the state. For example, the Hawaii hurricane fund was organized as a public corporation, yet the IRS did not raise that as an issue. It would appear generally that while corporate status is a significant factor for the IRS, it may be neutralized by sufficient evidence of state control and, in the words of the IRS, "domination." See, e.g., G.C.M. 39601 (Jan. 30, 1987) (lawyer trust fund); G.C.M. 38921 (Nov. 26, 1982) (housing authority).¹⁵ Yet it is extremely difficult to predict when separate organizational structure will be determinative or what level of government control renders a separately organized entity an integral part of the state.

Also, if a corporation cannot by definition qualify as an integral part of the state due to its separate legal existence, then the same rationale should apply to a trust. Yet there are several rulings that conclude that trusts can be integral parts of a state. See Rev. Rul. 87-2, 1987-2 I.R.B. 4 (1987).

In one recent ruling, the IRS held that a trust was an integral part of the state regardless of the fact that it was created as a separate and distinct entity apart from the political subdivision. The IRS reviewed a trust set up by a municipality to pay retiree medical benefits. PLR 9809013 (Nov. 7, 1997). Although the municipality asked for a ruling under section 115, the IRS concluded that section 115 did not apply because the

¹⁴ See also PLR 8934052 (May 21, 1989) (arts commission is "corporate and politic," therefore not integral part).

¹⁵ See also PLR 8920056 (Feb. 27, 1989) (An unincorporated city economic development board was not an integral part because the board could hire its own staff who were not considered city employees. The board was created under state statute and funded by taxes, board members were appointed by the city, the city budgeted expenses, the board submitted financial reports to city, city audited the board).

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trust was an integral part of the state. The trust was created by statute to hold and invest amounts contributed by the municipality to fund retiree medical benefits for former public safety officers. The trust was administered by a board, and six of the eight trustees were appointed by program participants (and at the time were active municipal employees although that was not a requirement), and only two were appointed by the municipality. However, the legislative body of the municipality confirmed all appointments. Day-to-day administration was performed by a municipal employee, who was paid by the municipality and participated in the employee benefit system. The municipality provided facilities, equipment, and legal services to the trust. The municipality could amend or terminate the trust at any time, and in the event the trust were terminated, all assets would revert to the municipality. The IRS stated:

If an enterprise is deemed to be an integral part of a state or political subdivision of a state, that enterprise will not be treated as a separate entity for federal tax purposes, regardless of the fact that the enterprise was created as a separate entity.

PLR 9809013.

The IRS determined that it must consider all the facts and circumstances, particularly the state's degree of control over the enterprise and the state's financial commitment to the enterprise. Key factors were that the municipality had made a substantial financial commitment by providing all of the start up money as well as portion of the annual costs. Other important factors included the significant influence exerted by the municipality, its power to amend or terminate the trust at any time, the control over day-to-day operations by a city employee, approval of the board by the city legislative body, and the requirement that the board act only as authorized by the statute. *Id.*

Yet in PLR 9217032 (Jan. 27, 1992), the IRS determined that a mine reclamation trust fund created under state law was not an integral part of the state because it was separately organized as a trust under state law, the trustees had total discretion over the funds, and the trust could accept funds from nongovernmental sources. It is difficult to square this ruling with the later disaster fund rulings, except that it was clearly a separately organized legal entity.

Whether the governing board is appointed by the state or independently elected was a deciding factor in PLR 8944031 (Aug. 7, 1989). That ruling held that a soil and water commission was an integral part of the state, but the soil and water districts were not an integral part because the governing bodies consisted of four independently elected members and only one government appointee.

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Yet another group of rulings echo the MET ruling in considering the source and/or destination of the assets and income of the entity. In 1994, the IRS held that a trust fund created by a state court to collect private contributions to pay for judges' portraits was an integral part of the state. PLR 9439008 (June 30, 1994). The funds were from private sources and there was no financial commitment on the part of the government. A key factor in the ruling, however, were that the court created the trust and controlled it through its ability to select and discharge the state employees who controlled the funds and the trust. Moreover, reflecting the IRS's interest (sometimes) in the destination of funds, the ruling was expressly made contingent on trust documents being amended to provide that any funds remaining after the purposes were met would be delivered to the government's general fund. The ruling concluded that the trust was an integral part of the state, since it was created by the court, controlled by the court officers, and upon termination, any remaining funds would go the state general fund.

In another ruling, the IRS considered a "lifeline" fund, created by the state to subsidize the utility rates of the poor, and concluded that it was an integral part of the state. The fund was created by statute, although it is unclear from the ruling what its legal status was. The funds came from a state-ordered surcharge on utility bills, and were invested until paid out to needy individuals. It was administered by a committee appointed by a state commission. No state officials served on the governing committee. The fund's budget was subject to state review, and annual reports were submitted to the legislature. If terminated, assets would be distributed as ordered by a state public utilities commission, but could not revert to private interests. The IRS concluded that the fund was an integral part of the state due to the state's control over the creation, operation, funding, and supervision of the fund. PLR 8931042 (May 8, 1989). The fact that the assets and income were paid out entirely to private individuals did not seem to merit discussion.

Another recent ruling addressed funds created by state officials from the proceeds of litigation judgments or settlements. The state created two funds to hold settlement payments received as a result of litigation by the attorney general. PLR 9733003 (May 9, 1997). A fund was created in the state treasury to hold litigation judgments or settlements, and was controlled by the treasury department. Distributions from the fund were made pursuant to court order. All income from investment of the fund was deposited in the fund. Fees were paid to the treasurer for investment and administrative services. The fund consisted of two litigation settlements, funds A and B. Settlement A was from state litigation against a trade school. The state court's order required the Attorney General to create a fund, fund A, to receive payments from the defendants for civil penalties, attorneys fees, and restitution to students of the school. In other words, the proceeds in the fund were to be paid as restitution to the individual claimants. The second fund, fund B, consisted of settlement proceeds of antitrust cases

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in federal court brought by the state as *parens patriae* for its residents. The plaintiff class members who were to receive the settlement proceeds in fund B were the state and municipalities.

The state argued that the funds were an integral part of the state.¹⁶ In discussing the "integral part" issue, the IRS noted that the state was involved in the administration of the funds, and state employees, acting in their governmental capacities conducted the funds' business. In both cases, a court controlled distributions and the state remained answerable to the court regarding its administration of the funds.

For fund A, the state controlled disbursement because of the jurisdiction of the state court. The state was not responsible for shortfalls in either fund and did not contribute state funds to either fund. The state did not have the authority to access the assets or income of the funds for the benefit of the state. The state's only financial interest was as a potential claimant. Regarding fund A, the IRS determined that the fund benefited private parties and lacked public benefit, and was not an integral part of the state.

Regarding fund B, the IRS determined that the state lacked the requisite level of control since disposition of the assets and income had to be determined by a federal court. The IRS concluded that the Fund was not an integral part of the state, but rather was a form of receivership imposed on the state by the court.

The litigation settlement ruling is instructive in that it focuses on two concerns of the IRS. The focus on creation and control by the state has long been an element of the "integral part" theory. The focus on "private benefit" however, is a recent development. At times, private benefit appears to be the determining factor, as in this ruling and the MET rulings. Yet just as often, programs such as the disaster insurance programs, that unquestionably have an almost exclusive private benefit are held to be "integral parts" of the state. *See also* PLR 8925010 (March 21, 1989) (city development district is integral part of city even though money reverts to private property owners upon dissolution).

Corporate status does not explain the distinction, since the Hawaii hurricane fund, for example, was a corporation. Curiously, this new destination of income analysis is borrowed from the section 115 analysis, discussed below, and the private benefit focus, which we see in both "integral part" and section 115 rulings, appears to be borrowed from section 501 charitable organization law, which forbids any nonincidental

¹⁶ The state also argued that the income of the funds would be excluded from income under section 115. See discussion below at page 25-32.

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private benefit. It is unclear why the IRS has adopted this analysis, but it is equally clear that not only is it now a key element under section 115, there is a not insignificant likelihood that the IRS may well import it into an "integral part of the state" determination as well.

D. Summary Regarding Integral Part Theory

Overall, we believe that these developments have helped to further elucidate the courts' and the IRS's rationale under the integral part theory in ways that generally are favorable to the fund and the APFC. The MET decision is particularly generous, as are the disaster fund rulings.

Ten years after the Report, the fact that APFC is structured as a corporation continues to give some cause for concern. Commentators have argued that the use of a separate entity, such as a corporation or a trust, must preclude integral part status, and must be analyzed under section 115. This does not seem to be the IRS position, however. Although the rulings of the last 10 years continue to be inconsistent on this point, it appears that, given sufficient indicia of control and financial commitment by the state, a corporation or trust is not automatically precluded from being an integral part of the state.

In this case, the assets and income are not those of the corporation, but rather belong to the State. As a matter of statute, APFC is simply the manager of the Fund assets. This has been reinforced through the 1992 amendment of section 37.13.030 which now plainly clarifies that the assets are managed and invested by APFC, rather than "allocated to" APFC. Similarly, the annual report clearly reports income and assets as those of the Fund, and not the corporation.

Certainly, it would appear that - apart from the corporate structure issue - state creation, control and domination, and declaration of state purpose are essential factors. Similarly, the MET and disaster fund rulings seem to teach that some not significant part of the assets must come from the state, and that it must have some financial risk in the enterprise. The IRS's MET ruling reflects the IRS's evolving but erratic interest in the destination of funds as well although this did not appear to concern the 6th Circuit.

→ A comparison of MET with the Alaska Permanent Fund and APFC is both instructive and reassuring. The key characteristic of the MET and similar prepaid tuition programs, which gives pause to the IRS and, we suspect to any court, is the source and destination of the program funds at issue. The MET may have had all the appearances of being a part of the state, but it was still wholly a private activity conducted by private investors for the benefit of private beneficiaries. The state

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contributed only minimal start-up administrative funds, all of the funds were entirely private funds, the MET's assets were not considered to be state assets, the income was not state income, and upon dissolution, the assets reverted to the investors rather than the state. The IRS-state negotiations over the disaster fund rulings, and subsequent rulings in other areas, discussed below, reveal that the source and destination of the assets and income, as well as private benefit, are becoming significant concerns of the IRS with respect to the integral part doctrine, as well as section 115.

In contrast, the assets and income of the Alaska Permanent Fund are unquestionably those of the state, and not the corporation or any private person. While the legislature has chosen to appropriate certain state funds to the dividend program, the recipients do not have an entitlement to the income of the Fund. If the corporation were dissolved, the assets would remain those of the State, and would not accrue to any individuals. This argument, of course, is premised on the legislature's ultimate control over any allocation, appropriation, or payment to private persons. If at any time, the legislature or government loses that power of appropriation, or private persons are granted an entitlement to the assets or income in the Fund, this argument is considerably weakened.

What plainly bothers the IRS about prepaid tuition programs, although it seemed to be unable to discuss it openly in the MET ruling, is the appropriateness of "lending" the state's tax-exempt status to private investors so they can earn a greater return on their investment than they might otherwise. IRS officials have frequently raised this objection in public discussions of prepaid tuition programs. Apart from tax-exempt bonds, the tax code is full of provisions designed to prevent taxable persons from benefiting from a charitable organization's exemption (e.g., UBIT). The IRS views such programs as opening the door to abuse.

On the other hand, the MET decision and disaster fund rulings indicate that private benefit does not, in all cases, undermine the integral part argument. It would appear from both MET and the disaster fund rulings that sufficient indicia of state control and public purpose can support integral part status, despite the existence of significant private benefit. Obviously, however, it is an open question whether dividend payments to individuals outside the context of a higher education purpose (or governmental pensions, or health insurance claims, or other "approved" governmental or public purpose) will suffice to satisfy the public purpose criterion.

Unfortunately, since the IRS continues to reject the holding and rationale of the 6th Circuit's MET decision, it is clear that it could not be relied on as a basis for obtaining a ruling. Similarly, it likely would provide cold comfort in an administrative proceeding, such as an audit or appeal. We suspect that other courts may well be

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skeptical of its reliance on the political subdivision cases in particular, or its apparent finding that "instrumentality" status is sufficient for exemption under the "integral part" theory.

Although it is difficult to reconcile the IRS's continuing hostility to prepaid tuition plans, which the IRS labels as private investment schemes that seek improperly benefit from the state's exemption, with its generous position on disaster insurance programs, a key distinguishing factor is the element of the state's financial commitment to the enterprise. The IRS insisted that the disaster programs include a significant level of state financial commitment as a source of funds, such as through contributions of funds, earmarking of certain tax or fee revenues, or allowing certain debt obligations to be backed by the state's full faith and credit. In the case of the Fund, it is an essential distinction that the assets clearly are those of the State.

IV. Section 115 Exclusion From Income

The previous Report concluded that the Fund might alternatively claim exclusion of income under section 115, although that position was not entirely free from doubt.¹⁷ Section 115 requires: (1) that the income of an instrumentality be derived from an essential governmental function, and (2) that the income accrue to the State. We noted that the few judicial authorities did not clearly support this argument, yet the IRS appeared to be more liberal than the courts in applying section 115 in the ruling context, particularly with respect to finding "accrual" of income by the State. Since 1988, section 115 has been discussed on only one reported case, *Michigan v. United States*, 802 F.Supp. at 120, described above, which was reversed by the appellate court without discussion of section 115. The IRS has issued one precedential ruling and approximately 170 nonprecedential rulings in this area.

A. Michigan Educational Trust

In *Michigan v. United States*, the state made the alternative argument that the MET's income was excluded from gross income under section 115. In the private ruling, the IRS did not discuss the essential governmental function prong of the statutory test, concluding rather that the accrual requirement was not met because the income served private interests that were more than incidental to the public interest. PLR 8825027 (March 29, 1988). The MET provided direct economic benefits only to

¹⁷ Section 115 and "integral part" theory are not merely alternative arguments. The distinction has important consequences — if the income were excludible under section 115, APFC would be required to file tax returns.

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provide participants who were the beneficiaries of a contract. The IRS stated "The basic principle underlying section 115 is that property (including any income thereon) must be devoted to purposes which are considered beneficial to the community in general, rather than particular individuals." PLR 8825027.

The District Court also did not discuss the "essential governmental function" requirement, although its discussion of the "integral part" claim and 501(c) exemption claim certainly suggest that the Court found that element wanting. *Michigan*, 802 F. Supp. at 123-125. Instead, it held that section 115 did not apply because MET did not satisfy the accrual requirement. 802 F. Supp. at 124. The opinion reaffirmed earlier cases which require an actual or bookkeeping transfer of income to the state, or require that the state have a vested right or enforceable claim to the income. *Id.* In contrast, the MET statute expressly provided that the state had no claim to either MET's assets or income. The possibility of excess assets passing to the state upon dissolution was too remote to constitute "accrual". *Id.* at 124.

The 6th Circuit, having ruled that the MET was an integral part of the state, found it unnecessary to reach the section 115 issue. *MET*, 40 F. 3d at 829. In its discussion of the "integral part" theory, the Court effectively made the case that financing higher education was an essential governmental function, distinguishing *Philadelphia National Bank v. United States*, 666 F. 2d 834 (3d Cir. 1981), *cert. denied*, 457 U.S. 1105 (1982) (which suggested that higher education was not an essential governmental function). We suspect that even the 6th Circuit, had it addressed the section 115 claim, also would have found the accrual element wanting. Under *MSSIC*, potential escheat to the state is not accrual, and the lack of a state financial obligation or risk of state funds is fatal. 308 F. Supp. at 765-766.

B. Rev. Rul. 90-74: Pooled Insurance Funds

The IRS has only issued one authoritative ruling under section 115 since 1988. Rev. Rul. 90-74, 1990-2 C.B. 34, although this ruling has prompted many dozens of private rulings under section 115 addressing pooled risk-sharing or self-insurance funds formed by political subdivisions. These follow Rev. Rul. 90-74, which held that the income of an organization formed, operated, and funded by political subdivisions to pool their casualty risks or other risks concerning public liability, workers compensation, or employee health benefits, is excluded from income under section 115. The key test is whether private interests participate in the organization or benefit more than incidentally from the organization. However, the fact that the purpose of the entity is to insure and reimburse payment of claims to individuals has been held to be an incidental private benefit. PLR 9741002 (June 26, 1997); PLR 9740005 (June 26, 1997); PLR 9646026 (Aug. 20, 1996).

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Rev. Rul. 90-74 illustrates the typical ruling. The political subdivisions agree to create a pooled self-insurance entity, which could be a corporation. *See, e.g.*, PLR 9646026 (Aug. 20, 1996); PLR 9101005 (Sept. 1, 1990).¹⁸ In some cases, the pooling entity was created or authorized by state statute. This did not appear to be a necessary factor, although it supported the finding of essential government function. Each participating body authorized participation in the entity. The board was elected by the member political subdivisions, and controlled the entity. Typically, the state treasurer managed the fund, although this was not the case in all the rulings. Each member contributed funds from general revenues based on actuarial risk determinations. The entity received investment income. The entity reimbursed members for casualty losses. In the event of dissolution, assets would be distributed to member political subdivisions. The rulings held that the investment of funds was a necessary incident of the power of governmental entities to raise revenue and meet expenses. The rulings also concluded that insuring political subdivisions against risk arising from governmental activities also was a governmental obligation. The rulings determined that risk pooling (rather than purchasing commercial insurance) fulfilled the obligations of the political subdivisions to protect their financial integrity. A universal requirement was that no private interests participated in or benefited from the operation of the entities. The IRS concluded that the entities performed an essential governmental function. Regarding the accrual requirement, the rulings observed that, since income was used to reimburse losses incurred by the participating political subdivisions or to reduce their annual fees, and did not benefit private interests, and since assets would be distributed to members upon dissolution, the income accrued to a political subdivision. Any private benefit to employees (*i.e.*, payment of claims) from insuring against these risks was incidental to the public benefit.

C. Section 115 Rulings

Since 1988, the IRS has issued over 170 private rulings under section 115, triple the number during the previous decade. These rulings generally look to *Maryland Savings Share Insurance Corp. v. United States*, 308 F. Supp. 761 (D. Md.), *rev'd on other grounds*, 400 U.S. 4 (1970) ("MSSIC") and Rev. Rul. 77-261, 1977-2 C.B. 45 for guidance.

¹⁸ Apparently, even if these self-insurance entities are not organized as separate corporations, they are treated as such by the IRS (absent exclusion under section 115) because unincorporated entities primarily involved in insurance activities are taxable as corporations. Rev. Rul. 83-132, 1983-2 C.B. 270.

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The key "essential governmental function" factors most often cited in the rulings include state control and domination, the importance of the activity to the state as evidenced by legislation declarations, and the extent of the state's own investment in the enterprise, which indicates whether the state viewed the function as sufficiently essential "to lay its money on the line." The rulings look at the state's investment in the enterprise, whether the state bears the operating costs, and whether the state has committed to meet the liabilities of the enterprise. The key accrual factors seem to be whether income is paid to or credited to the account of the state; whether, upon dissolution, the enterprise's assets will be transferred to the state; and the extent of private benefit.

1. State Investment Funds

In recent years, the IRS has considered investment pools established on behalf of political subdivisions, and has reaffirmed its position in Rev. Rul. 77-261, 1977-2 C.B. 45, that investment of public funds can be an essential governmental function. In PLR 9541030 (Oct. 13, 1995), the IRS ruled that the income of an unincorporated investment pool established by several political subdivisions was exempt from federal taxation under section 115. The purpose was to permit investment of idle funds. The investment objective was maximum current income consistent with the primary objectives of preservation of capital and maintenance of liquidity. The fund members were political subdivisions and their integral parts. A nonprofit corporation was organized solely to govern the fund. The board of the corporation managed and administered the fund; board members were elected by the member political subdivisions. The state treasurer served as president of the corporation and was a board member. The net assets or earnings did not inure to and were not distributed for the benefit of any private persons. Members could withdraw their funds with interest at any time. If the fund dissolved, the net assets would be distributed to the fund member political subdivisions. The IRS relied on Rev. Rul. 77-261, concluding that the fund performed an essential governmental function. The income was used solely to provide benefits to members, which were political subdivisions, and in the event of dissolution, all assets were to be distributed to members. Consequently, the IRS concluded that the income accrued to political subdivisions within the meaning of section 115. However, since the exemption from income was under section 115, the IRS ruled that the fund was required to file a tax return. The ruling did not address the tax status of the nonprofit corporation.

Similarly, in PLR 9435031 (Sept. 2, 1994), the IRS considered a pooled investment fund created for state school districts to invest surplus funds. Because the school districts had the power to tax, it was held that they were political subdivisions. The fund was a public corporation authorized by state statute. It was governed by a board. All but one board member were elected by the participating school districts, and

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were school district employees. The board held legal title to cash and other property contributed by the members. The board could enter into contracts for administrative and custodial services. The investment goals were safety, liquidity, and return on investment. The income could not accrue to a private party. Upon dissolution, assets would be distributed to the members.

The IRS concluded that "[t]he investment of positive cash balances by a state or political subdivision thereof in order to receive some yield on the funds until they are needed to meet expenses is a necessary incident of the power of the state or political subdivision to collect taxes and other revenues for use in meeting governmental expenses." Therefore the fund performed an essential government function. Since no part of it accrued to any private party, members could redeem their interest at any time except during emergency situations, and the dissolution clause provided that the assets returned to members. The IRS held that the income accrued to a state or political subdivision. The fund was a wholly-owned instrumentality of the political subdivisions, and its income was excluded under section 115.

This approval of governmental investment activities as essential governmental functions has been criticized by some commentators who favor restricting state exemption from federal taxation. It also potentially creates some tensions with the IRS position on programs like the prepaid tuition programs, where the IRS takes the position that it is not an essential governmental function for the government to lend its own exempt status to the investment activity of individual investors. The IRS faces this difficulty particularly in reviewing programs in which the state indirectly conducts investment activity on behalf of individual beneficiaries.

2. Litigation Settlement Funds

As discussed above, several rulings address funds created by state officials from the proceeds of litigation judgments or settlements. In one case, a state created two funds to hold settlement payments received as a result of litigation by the attorney general. PLR 9733003 (May 9, 1997). Settlement A was from state litigation against a trade school; the proceeds in fund A were paid as restitution to the individual claimants who were former students of the school. The second fund, fund B, consisted of settlement proceeds of antitrust cases in federal court brought by the state as *parens patriae* for its residents. The plaintiff class members who were to receive the settlement proceeds in fund B were the state and municipalities.

The IRS seemed to conclude without discussion that the funds were an essential governmental function. Applying the accrual test, however, the IRS determined that only the income of fund B was excluded from gross income under section 115, since

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that income eventually accrued to the state and municipalities, while private parties received more than an incidental private benefit from fund A.

3. Other Section 115 Rulings

Other rulings under section 115 continue to illustrate that the IRS is, inexplicably, more liberal than the courts in finding both essential governmental function and accrual.

For example, a decedent bequeathed property to a city in trust to be used exclusively to establish and support a library. The IRS recognized libraries as ordinary municipal functions, and concluded that section 115 was met without any analysis of the accrual requirement. PLR 9115016 (Jan. 10, 1991). Although there was no private benefit, there also was not accrual to the city, at least not as it has historically been understood. The city had no control over the library, its assets or income, and under the terms of the bequest, the assets and income could not be used by the city for any other purpose. Thus, the apparent lack of control did not seem to affect the determination of either essential governmental function or accrual.

A mine reclamation fund ruling provides another unusual ruling relating to accrual. PLR 9126027 (March 29, 1991). As part of a mine reclamation program, a state created an insurance program to pay private property owners for land subsidence due to mining. The program was funded by a federal grant. Homeowners paid a fee to participate. Upon termination, the remaining funds reverted to the federal government, not to the state. The ruling determined that such a program was an essential governmental function. It concludes that the accrual requirement was satisfied because all of the income "used to perform the public purpose," which was payments to private landholders. Curiously, there is no discussion of the fact that the entire purpose of the program was a substantial private benefit limited to participants in the program. This would appear to be inconsistent with the IRS's ruling with respect to the Michigan Educational Trust, although it is consistent with the IRS rulings under the "integral part" theory relating to disaster insurance programs.¹⁹

¹⁹ This ruling also is inconsistent with GCM 39006 (June 28, 1983), which reviewed a similar mine subsidence fund which was established by statute but run by insurers. The IRS ruled that the state had no long-term commitment (other than a start-up loan) and received no financial benefit. The beneficiaries were private landowners. The IRS denied exclusion under section 115. PLR 9126027 does not mention GCM 39006, which suggests that the accrual test requires a direct financial benefit to the state.

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D. Summary of Section 115

It is clear from the rulings that the IRS adopts a very broad view that an "essential governmental function" is whatever the state legislative says it is. Most rulings quote Rev. Rul. 77-261, which stated the premise that "it may be assumed that Congress did not desire it any way to restrict a state's participation in enterprises that might be useful in carrying out those projects desirable from the standpoint of the state government which, on a broad consideration of the question, may be the function of the sovereign to conduct." *See, e.g.*, PLR 9669634 (Dec. 1, 1995).

For purposes of the accrual test, the IRS has long looked to the destination of the funds and more particularly, looks for benefits to private individuals, which apparently is fatal under section 115 (although apparently not under the "integral part" theory, under the *MET* decision and disaster fund rulings). Certainly in the *MET* ruling, the IRS made its decision based on a private benefit analysis without any actual discussion of accrual. This seems to reflect a trend toward emphasizing a concern with benefits to private individuals over the historical understanding of the accrual test (which required that the income must accrue in a technical sense). *See* Rev. Rul. 90-74. To some extent the IRS appears to use the private beneficiary test as a separate requirement from the accrual test, rather than a part of it, *see, e.g.*, PLR 8825027 (*MET*). On the other hand, there are numerous rulings in which the IRS has granted section 115 exclusion to governmental pension plans, which exclusively pay benefits to individuals. *See, e.g.*, G.C.M. 34704 (Dec. 2, 1971); PLR 8825027 (July 2, 1988). The IRS has not explained how it distinguishes pension plans from prepaid tuition plans in terms of the applicable criteria. One possible explanation is that the rulings also appear to reflect a trend toward examining whether the activity benefits the government financially by relieving it of some present or future financial obligation, which can have the effect of permitting private benefit which is considered "incidental" to the public benefit, resulting in an even more generous application of section 115.

Although there is no authority for this argument, it may be possible to argue under section 115 that any income that does not benefit private parties (*i.e.*, is not transferred to the dividend fund) should be excluded under section 115. We find no rulings addressing whether income can be allocated in this fashion, although the *MET* ruling determined that the payments by the state and investors into the fund were excludible, presumably as some form of "capital" contribution. Section 115 does not purport to characterize all of the income of an entity as taxable or excluded from gross income. Rather it provides that "gross income does not include" income of a certain character. Arguable, income that in fact accrues to the state should be excludible, even if the income that ultimately benefits private persons might not be.

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V. Other Developments

We understand that there have been several factual developments which we believe enhance the Fund's position. These include legislative clarification of the Permanent Fund provisions and other statutory provisions, state court decisions, Attorney General opinions, and perhaps subtle changes in the way the APFC presents itself publicly and in publications such as its annual report. There may well be other developments that we have failed to note here that also serve to enhance the Fund's position in asserting these legal arguments.

For example, AS section 37.13.030, which formerly stated that the Fund's assets were "allocated to" the APFC, was amended in 1992 to state that the Fund's assets were to be managed "by" APFC, thus clarifying that the statute creating the APFC effected no change of ownership. See also AS 37.13.020, .140, .150, .160, .170, .180, .190 for similar changes in reference from APFC to the Fund. In particular, the statute no longer refers to the "net income of the corporation" but rather to the "net income of the Fund." AS 37.13.140.

We note that there have been, over the years, positive albeit subtle changes in the language used by APFC to describe its functions and role *vis a vis* the Fund and the State. The Annual Report plainly indicates that the assets and income are those of the Fund, and that APFC is a state instrumentality which is the investment manager and not the owner. We understand that APFC's accounting procedures record the assets and earnings as those of the Fund, and the earnings reserve account is reported on a public fund model rather than a corporate model.

The Alaska Supreme Court confirmed that the earnings reserve account is subject to legislative appropriation and cannot be spent absent a legislative appropriation. *Hickel v. Cowper*, 874 P.2d 922, 934-935 (Alaska 1994).

Since 1988, several Attorney General opinions have reinforced earlier opinions with respect to the Fund and APFC's relationship to the State and the applicability of certain state laws. For example, the Attorney General determined that all operating funds of the APFC are public funds subject to the constitutional requirement that they be used only for a public purpose, and could not be expended in a manner inconsistent with the government-approved budget. The opinion further concluded that the APFC was subject to the State's Open Meetings Act and the Ethics Act, both of which apply only to governmental agencies. OAG File No. 663-93-0397 (July 6, 1993). Similarly, the AAG determined that the APFC is subject to state contracting and procurement requirements applicable to state agencies. OAG File No. 663-93-0250 (Jan. 26, 1993).

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VI. Conclusion and Recommendations

We continue to recommend that the State take the position that the Fund and APFC are integral parts of the state, and thus not subject to federal taxation, relying on the authorities cited in our prior Report and the MET decision. We recommend that section 115 be presented as an alternative basis for exclusion of income from federal taxation, relying on the authorities cited previously and Rev. Rul. 90-74.

The many rulings issued by the IRS, while not authoritative, are nevertheless instructive. It is clear that many of the factors discussed in rulings relating to legislative purposes, governmental function, and state control are present in the Fund and APFC. See Report at 45-64, 104, 122-25. The recent rulings reinforce the importance of these indicia of state creation, control and domination. While we would reiterate our preference that the Fund be managed by an agency rather than a corporation, the statutory amendments and other changes in the APFC's mode of doing business have done much to relieve this concern. The several rulings granting integral part status to corporations also indicate that although this may be an important threshold consideration for the IRS, it does not appear to be determinative given sufficient evidence of state control and financial commitment.

We continue to be concerned about the potential perception of the dividend fund program as an improper private benefit, particularly in light of the wide-ranging discussion about the future of the Fund and the dividend program. While private benefit has always been an element of the accrual test under section 115, it increasingly appears to be an important criterion of independent significance. The rulings suggest that private benefit is simply impermissible under section 115, other than that incidental to the public purpose (e.g., payment of state employee insurance claims under a pooled insurance program). It is unclear to what extent the income of the Fund, although it clearly accrues to the State, might be considered to ultimately benefit private beneficiaries.

The developments of the last ten years also have revealed the surprising extent to which this concern with private benefit seems to be influencing the IRS' interpretation of the "integral part" theory. Since that theory has been developed in only one case, MET, which the IRS rejects, the IRS presently is to a great extent in a position to interpret "integral part of a state" as it chooses, constrained only by its own prior (and reversible) rulings. On the other hand, the disaster fund rulings seem clearly to suggest that private benefit is not a bar to an entity being characterized as an integral part of the state. In cases where there is significant private benefit, the IRS appears to be willing to overlook it if there is not only sufficient evidence of public purpose and state control, but also a significant state financial commitment such that the assets of the state are at risk in the enterprise. Although this focus on the state's financial commitment does not

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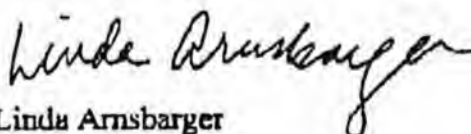
appear to be greatly emphasized in the rulings, it was clearly the guiding principle in the IRS's negotiations with the states regarding those rulings. And certainly that element is satisfied with respect to the Fund.

The private benefit arguably represented by the dividend program continues to fall into a gray area in terms of public purpose. At one end of the spectrum are the approved disaster insurance programs. The IRS found a sufficient governmental purpose to help its citizens protect themselves against natural disasters in the wake of significant disasters with profound economic consequences for the state. The IRS may have been particularly persuaded by the suggestion that, absent such programs, the financial consequences would be borne more directly by the state. At the other end of the spectrum are the prepaid tuition programs, which the IRS characterized as private investment schemes wrapped in the state's cloak of tax exemption. It may be difficult to argue that the dividend program is more like the former than the latter.

We believe that as long as the income from the Fund clearly accrues to the State and no individual has a vested interest in the income or assets of the Fund, the income and assets are those of the State alone, and thus not subject to federal taxation. How the State chooses to appropriate or spend its revenues should have no impact on this determination, except perhaps to further reinforce the argument that the investment activity is an integral part of the State and essential governmental function. And as long as the dividend program is implemented as a matter of legislative grace, we believe that it will be difficult for the IRS to argue that, having earned the income (investment being an appropriate public purpose and essential governmental function), it is not entirely within the discretion of the State to appropriate it: as it sees fit, whether through legislative allocation or annual budget appropriations.

Conversely, to the extent that the Fund, or some portion of it, becomes irreversibly dedicated to the benefit of private beneficiaries, or to the extent that the dividend program becomes an entitlement that is beyond the reach of the government, then it becomes more like the prepaid tuition programs and is subject to potential challenge by the IRS as a private, rather than public, investment activity.

Sincerely,



Linda Arnsbarger

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dc-111890

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FISCAL NOTE

Bill Version: CSHJR 49 (STA)

(H) Publish Date: 4/7/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Office of the Governor
 Title Constitutional Amendment relating to the BRU Elective Operations
permanent fund income distribution Component Elections
 Sponsor Representative Ogan
 Requester House State Affairs Committee Component No. 21

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: Gail Fenwick
 Division: Division of Elections
 Approved by: Lt. Governor Fran Ulmer
 Agency: Office of the Lieutenant Governor

Phone: 465-3935
 Date/Time: 3/31/00 2:46 PM
 Date: 03/31/2000

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HJR

52

HOUSE JOINT RESOLUTION NO. 52

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

2009

BY REPRESENTATIVE JAMES

Introduced: 2/2/00

Referred: State Affairs, Judiciary, Finance

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 certain public corporations.

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

4 * Section 1. Article III, sec. 26, Constitution of the State of Alaska, is amended to read:

5 Section 26. Boards and Commissions. When a board or commission is at the
6 head of a principal department or a regulatory or quasi-judicial agency, or at the head

7 of a public corporation that manages State assets, its members shall be appointed by

established by law

8 the governor, subject to confirmation by a majority of the members of the legislature in
9 joint session, and may be removed as provided by law. They shall be citizens of the
10 United States. The board or commission may appoint a principal executive officer when
11 authorized by law, but the appointment shall be subject to the approval of the governor.

is governing activity

12 With respect to public corporations, the legislature may by law exclude the
13 applicability of this section ~~based on the type or value, or both of the State assets~~

14 that are managed by the public corporations *to* public corporations *Comm. Subst.*

15 * Sec 2. The amendment proposed by this resolution shall be placed before the voters of the
16 state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State

Re: correct term since Stat. is unrelated

HJR052a

Also... ~~should~~ we should clarify to corp. heads. not employees & Bd members

HJR 52

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

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Juneau, Alaska 99801-2105

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

House Judiciary Standing Committee - February 28, 2000
1:25 p.m.
- March 1, 2000
1:40 p.m.

HJR

53

FISCAL NOTE

MAR 20 2000

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSHJR 53(RES)

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Constitutional Amendment: wild food</u>	BRU <u>Elective Operations</u>
resources _____	Component <u>Elections</u>
Sponsor <u>Representative Masek</u>	
Requester <u>House Judiciary Committee</u>	Component No. <u>21</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: <u>Gail Fenuimad</u>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date/Time <u>3/17/00 2:02 PM</u>
Approved by: <u>John Ulmer</u>	Date <u>03/17/2000</u>
Agency <u>Office of the Lieutenant Governor</u>	

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SPECIES AND BAG LIMITS

REQUIRED
TICKET OR OPEN SEASON
PERMIT TYPE

WOLF • *Wolf hides must be sealed within 30 days of kill.*

Unit 7: RESIDENTS & NONRESIDENTS: Five wolves total, of which only two may be taken within the Kenai National Wildlife Refuge Aug. 10—Apr. 30

WOLVERINE • *Wolverine hides must be sealed within 30 days of kill.*

Unit 7: RESIDENTS & NONRESIDENTS: One wolverine. Sept. 1—Mar. 31

Game Management Unit 8

Unit 8, Kodiak-Shellkof: all islands southeast of the centerline of Shelikof Strait, including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

STATE RESTRICTED AREAS IN UNIT 8:

(1) Critical Habitat Areas: Tugidak Island - has special restriction regarding the use of motorized vehicles. Offroad vehicle use of critical habitat lands requires a special area permit available from the ADF&G.

SPECIES AND BAG LIMITS

REQUIRED
TICKET OR OPEN SEASON
PERMIT TYPE

BEAR, BROWN/GRIZZLY • *See pages 20-21 for additional bear hunting information.*
• *Nonresident hunters must be accompanied by a guide.*
• *Evidence of sex must remain naturally attached to the hide.*

Unit 8, Kodiak Island east of a line from the mouth of Saltery Creek to Crag Point, and Spruce Island:

RESIDENTS & NONRESIDENTS: One bear every four regulatory years by permit Registration . Oct. 25—Nov. 30
OR Registration . Apr. 1—May 15

Remainder of Unit 8:

RESIDENTS & NONRESIDENTS: One bear every four regulatory years by permit Drawing Oct. 25—Nov. 30
OR Drawing Apr. 1—May 15

CARIBOU

Unit 8: RESIDENTS & NONRESIDENTS: No limit Harvest No closed season

DEER • *Same-day-airborne hunting of deer allowed*
• *In all hunts limited to one sex, evidence of sex must remain naturally attached to the meat.*

Unit 8: Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57°52' N., 152°58' W.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay:

RESIDENTS & NONRESIDENTS: One deer total

Buck Harvest Aug. 1—Oct. 24
OR Any deer Harvest Oct. 25—Oct. 31
OR One buck by bow and arrow or muzzleloader Harvest Nov. 1—Nov. 14

Unit 8, Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of south-westernmost arm of Ugak Bay and Shuyak, Afognak, Raspberry, and Whale islands and adjacent small islands north of Marmot Bay and Kupreanof Strait: RESIDENTS & NONRESIDENTS: Four deer total

Bucks Harvest Aug. 1—Sept. 30
Any deer Harvest Oct. 1—Dec. 31

Remainder of Unit 8: RESIDENTS & NONRESIDENTS: Four deer total

Bucks Harvest Aug. 1—Sept. 30
Any deer, however only one antlerless deer from Oct. 1-Nov. 30 Harvest Oct. 1—Dec. 31

SPECIES AND BAG LIMITS

**REQUIRED
TICKET OR OPEN SEASON
PERMIT TYPE**

BEAR, BROWN/GRIZZLY • See page 20-21 for additional bear hunting information.
 • Nonresident hunters must be accompanied by a guide.
 • Evidence of sex must remain naturally attached to the hide.

Unit 9A, north of McNeil State Game Refuge:
 RESIDENTS & NONRESIDENTS: One bear every four regulatory years No open season*
 OR No open season*

Remainder of Unit 9A: RESIDENTS & NONRESIDENTS: No open season

Unit 9B:
 RESIDENTS & NONRESIDENTS: One bear every four regulatory years No open season*
 OR No open season*

Unit 9C, Naknek River drainage:
 RESIDENTS & NONRESIDENTS: One bear every four regulatory years by permit Registration, Sept. 1—Oct. 31
 OR Registration, May 1—June 30

Unit 9D south and west of a line from Moffett Point to the eastern side of the eastern entrance of Kinzarof Lagoon, and north of a line from the base of Cape Glazenap to Frosty Peak to the mouth of Old Man's Lagoon:
 RESIDENTS & NONRESIDENTS: One bear every four regulatory years by permit Registration No open season*
 OR Registration No open season*

Unit 9E, remainder of 9D, and the remainder of 9C:
 RESIDENTS & NONRESIDENTS: One bear every four regulatory years No open season*
 OR No open season*

In addition the following subsistence regulations apply: (See requirements on page 21.)

Unit 9B, the Western Alaska Brown Bear Management Area:
 RESIDENTS: One bear every year by permit Registration, Sept. 1—May 31
 NONRESIDENTS: No open season

Unit 9E, the Chignik Brown Bear Management Area:
 RESIDENTS: One bear every year by permit Registration, Nov. 1—Dec. 31
 NONRESIDENTS: No open season

* These areas are open only in the fall of odd-numbered years and the spring of even numbered year.

- In bag limit "caribou" means an animal of either sex; "bull" means male caribou.
- Edible meat taken in 9B prior to October 1 must remain on the bones of the front quarters and hindquarters until removed from the field or is processed for human consumption.

CARIBOU • In all hunts limited to one sex, evidence of sex must remain naturally attached to the meat.
 • In areas indicated by → Federal restrictions exist see page 5.

Units 9A and 9C:

RESIDENTS: Four caribou total, of which no more than one may be a cow:
 Two caribou Harvest Aug. 10—Aug. 31
 One caribou only by a hunter who has taken no other caribou in the state from
 July 1-Aug. 31 Harvest Sept. 1—Nov. 30
 One caribou per calendar month (not to exceed the bag limit of four per year) Harvest Dec. 1—Mar. 31
 NONRESIDENTS: One bull Harvest Aug. 10—Oct. 31

Unit 9B: RESIDENTS: Five caribou total of which only two bulls may be taken during
 Oct. 1-Nov. 30 Harvest Aug. 1—Apr. 15
 NONRESIDENTS: Two caribou Harvest Aug. 1—Apr. 15

See page 13 for "Same day airborne" for 9B caribou

Unit 9D: No open season

Unit 9E, the Pacific drainages southwest of Seal Cape:

RESIDENTS: Four caribou total:
 Two bulls Harvest July 1—Aug 9
 Two caribou Harvest Aug. 10—Aug. 31
 One caribou only by a hunter who has taken no other caribou in the state from
 July 1-Aug. 31 (not to exceed the bag limit of four per year) Harvest Sept. 1—Nov. 30
 Four caribou, (not to exceed the bag limit of four per year) Harvest Dec. 1—Mar. 31
 Two caribou (not to exceed the bag limit of four per year) Harvest Apr. 1—Apr. 30
 NONRESIDENTS: One bull Harvest Aug. 10—Oct. 31



750 W. 2nd Ave. #109, Anchorage AK 99501 / Ph. 907-258-6171 / Fax 907-258-6177

P.O. Box 22151, Juneau AK 99802 / Ph. 907-463-3366 / Fax 907-463-3312 / unite@akvoice.org

HJR 53 ~ Constitutional Amendment: Wild Food Resources

TO: House Judiciary Committee Members
FROM: Susan Schrader, Conservation Advocate
DATE: March 20, 2000

Alaska Conservation Alliance and Alaska Conservation Voters are sister nonprofit organizations dedicated to protecting Alaska's environment through public education and advocacy. Our 40 Alaskan organizations and business members represent over 22,000 registered Alaskan voters. Our members can be found in all user groups of Alaska's fish and wildlife, including subsistence users, recreational hunters, commercial and sport fishermen, wildlife viewers, and photographers. We respect and appreciate the long, rich tradition held by Alaskans, Native and non-Native alike, that surrounds our state's wildlife resources. We also acknowledge that opportunities to use and appreciate our wildlife belong to all Americans and to visitors to our state from other countries.

Alaska Conservation Voters supports fish and wildlife management actions that are based on unbiased scientific studies and that reflect the values of most Alaskans. We are greatly concerned by the continued positions taken by the State Legislature that fail to recognize the legislators' responsibilities under the Alaska constitution and the public trust doctrine to care for our fish and wildlife for the benefit of *all* Alaskans.

We are opposed to HJR 53 for the following reasons:

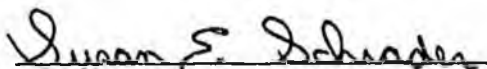
- In Section 1 of the CS of the resolution, the addition of the term "enhanced" appears to be an effort to enshrine the near-sighted principles of intensive game management into the Alaska constitution. Whereas the development of replenishable resources embodies a range of policies that address the long-term benefits of these resources for all user groups, the enhancement of them clearly mandates policies aimed, single-mindedly, at increasing the resources without consideration of other biologic principles. ACV questions whether including both directives, develop and enhance, does not create conflicting mandates.
- Section 2 creates a preferred use for fish and wildlife, and in turn, a preferred user group. Instead of facilitating a constructive public policy debate on the balanced use of our fish and wildlife resources, this language will only result in tremendous problems in its application in management decisions. The potential could exist that, as a result of this language, other groups would be essentially excluded from use of the resource, a situation that may run afoul of the "common use" safeguards of the constitution.

OVER

Conserve Alaska. It's Only Natural.

- If the Alaska Constitution is amended in the manner proposed by HJR 53, the definition of "human consumption" will await the adoption of enabling statutes. How will the definition be framed in respect to subsistence, commercial fishing or urban vs. rural issues? Should Alaskan Natives be concerned with more competition with urban, non-Native hunters for game? Should Alaskan commercial fishermen be concerned that their use of our fish resources "will take a back seat" to human consumption, an opinion expressed by Ted Popely to the House Resources Committee on February 28, 2000?

Clearly recognizing the volatile and divisive nature of issues surrounding fish and wildlife management, the members of Alaska Conservation Voters join with other Alaskans who are calling for balanced, fair and far-sighted policy decisions based upon the best, unbiased scientific data available and reflecting the values and interests of most Alaskans. The amendments to our constitution proposed in HJR 53 will do little to help resolve this difficult public policy debate.


Susan E. Schrader

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHJR 53(RES)

1 Page 1, lines 1 - 2:

2 Delete "a preference for taking of fish and wildlife for human consumption"

3 Insert "use of fish and wildlife"

4 Page 1, lines 11 - 12:

5 Delete all material and insert:

6 "(b) The right to fish, hunt, and trap, consistent with the sustained yield
7 principle, may not be diminished solely to provide for nonconsumptive use of fish or
8 wildlife."

Committees:

Transportation
Chair

Resources
Vice Chair

World Trade and
State & Federal Relations

Alaska State Legislature



Representative Beverly Masek

During Interim: (June-Dec.)
Mat-Su LIO
600 E. Railroad Avenue
Wasilla, AK 99654
(907) 376-2679
Fax: 373-4745

During Session: (Jan.-May)
State Capitol
Juneau, AK 99801-1182
(907) 465-2679
Fax: 465-4822
1-800-505-2678

Sponsor Statement for HJR 53 & HB 349

The Alaskan Way of Life Protection Act

HJR 53 and HB 349 were introduced to alleviate the problems many Alaskans face due to the inability of the State to provide adequate management and protection to those traditional uses of wildlife that have sustained many Alaskans, including Native Alaskans throughout time.

Since the mid-1970's, the imposition of "urban" values on those Alaskans who choose to remain in a culture that is tied closely to the land has escalated. Although little or no scientific evidence exists to discredit traditional management techniques of wildlife resources for human consumptive uses, the zealots in the environmental movement continue to try and force their belief system on the rest of society by denying access to proven remedies supportive of human consumptive values.

Although Alaskans who fish, hunt and trap may not be able to agree upon specific allocation remedies due to competition inherent among all consumptive users of the resource, including non-human predators, we should be able to agree on the necessity of protecting those cultural values from constant attack by those whose values differ. HJR 53 and HB 349 is part of the plan to move us back towards rules that require respect for differing values. I have never heard of a fisher, hunter, or trapper speak in front of the Board of Fish or Board of Game requesting non-consumptive uses be eliminated in any part of Alaska; however we constantly hear from the environmental community about how their beliefs are somehow superior to the beliefs of others and should therefore be imposed upon the rest of us.

Mankind has been competing with non-human predators for thousands of years and part of that competitive struggle has included a variety of measures intended to lesson the competition. With the advent of modern wildlife conservation sciences, we reached a stage where we could insure the health of all species and sustain meaningful levels of human harvests. That is until recently when animal rights activists essentially eliminated sustained yield management.

HJR 53 and HB 349 should mark the beginning of our attempt to correct "urban biases" by once again allowing for proven management techniques to take place. Sound scientific measures minus the emotional hysteria will insure that the important cultural values attendant to fishing, hunting and trapping are protected. It is also important to make sure that we continue the prohibition against using the government to impose personal values held by one segment of the population on others. And make no mistake about it, the use of government processes by environmentalists has only one intended goal, and that is to impose their values on the rest of society regardless of the facts.

Campaign for the Abolition of Angling

Welcome to the Campaign for the Abolition of Angling [CAA].

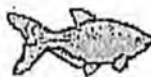
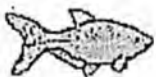
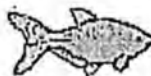
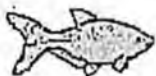
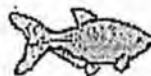
We are dedicated to banning angling. We were established in 1981 following the publishing of the Medway Report which concluded that fish can feel pain and have the ability to suffer.

Our work consists of publicity, education, and direct action.

NATIONAL ANTI-ANGLING WEEK JUNE 16th - 24th 2000

June 16th is the traditional start of the angling season and as usual we will be there to let them know how cruel fishing is. Over this week there will be stalls, leafletting, litter picks, talks, media interviews and direct actions to highlight the suffering fish endure at the hands of anglers. If you are interested in taking part or even in organizing an activity then please [contact us](#) at the address below. We have leaflets and factsheets (most are already on this website) and other materials available, as well as details of your area, if you are interested in taking part.

This website is in the process of being updated - for more up to date information, please check out our visitor website at [http://www.caa.org.uk](#)



Heds Up for Alaska's Wolves

The Alaska Board of Game approved two wolf control programs for McGrath and the Nelchina basin regions of Alaska to appease hunters backed by NRA propaganda.

Gov. Tony Knowles, who hasn't allowed official wolf killing programs since he took office in 1995, has said he won't implement a wolf control program without broad public support and good science -- which the Dept. of Fish & Game is attempting to manipulate by releasing dishonest reports that moose and caribou populations have declined from wolf predation.

In short, the schemes to reintroduce wolf control have nothing to do with so-called Native subsistence needs, sound science, or depleted moose and caribou herds. It's about hunters and trappers who want to manipulate the public to accept cruel, violent wolf killing programs under the guise of benefiting Native people and Nature.

As one fur buyer said to the Anchorage Daily News, "It's unstoppable. The animal rights people don't know how to deal with it."

" Here's how to deal with it: Write and call Gov. Tony Knowles today and press him to OPPOSE the wolf control proposals. Tell him you'll encourage others to boycott Alaska tourism if he approves the killing measures.

**Contact Gov. Knowles at :
Phone: (907) 465-3500
Fax: (907) 465-3532**

[Send an email to Governor Knowles](#)



HSUS PROGRAMS

HSUS Wildlife & Habitat Protection

Relevant Factsheets: Learn the Facts about Hunting

*Answers to Commonly Asked
Questions about Hunting
(Selected Portions)*

- [Introduction](#)
- [Wildlife Trade Program](#)
- [Marketplace](#)
- [Contact Us](#)
- [Animal Control Video](#)
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- [HSUS Programs](#)

While once Americans needed to hunt to put food on the table, today hunting in America is primarily a recreational pastime. Often, as in waterfowl, pheasant or dove hunting, it is no more than shooting at living targets. Some hunting is done solely to acquire trophies, and some, even, is no more than shooting tame, confined animals. Some hunters use brutally inhumane weapons such as the bow and arrow. Yet, in all cases, sport hunting inflicts needless and undeniable cruelty -- pain, suffering, trauma, wounding, and death -- on living, sentient creatures as a deliberate and willful act of an individual. The Humane Society of the United States (HSUS) believes that causing needless suffering and death is by definition inhumane, regardless of method.

More than one hundred million animals are reported killed by hunters each year. That number does not include the millions of animals for which kill figures are not maintained by wildlife agencies.

The vast majority of species that are hunted -- waterfowl, upland birds, mourning doves, squirrels, raccoons, rabbits, crows, coyotes, etc. -- provide minimal sustenance and do not require population control.

Hunters have strived for decades to convince the American public that hunting is good for wildlife and good for society, often with arguments that are based on obfuscation and half-truths. They have deliberately focused the debate on deer hunting, for which plausible, but not necessarily true arguments for subsistence and management can be made to the public. But the holes in their arguments are becoming increasingly apparent, as is the magnitude of their waste, cruelty and destruction. More than that, sport hunting -- the killing of wild animals as recreation -- is fundamentally at odds with the values of a humane, just and caring society.

The HSUS provides this information to help address the arguments used to justify the sport hunting of wildlife. Many of us have long opposed sport killing of wildlife. Yet without a lot of experience, we may be at a loss to counter the claims and assertions that hunters make in attempting to justify sport hunting. This information may help crystallize your thoughts, or help with composing letters to the editor or preparing for a public meeting.

NEXT



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C.A.S.H. Courier - Spring 1999

THE END OF TRAPPING IN THE UNITED STATES

By Peter Muller

That could be a headline you'll see in papers from sea to shining sea - if a bill introduced by New York Representative Nita Lowey passes the House of Representatives and the Senate and is signed into law by our beloved President William Jefferson Clinton. Representative Lowey introduced H.R. 1581 in the House on April 27, 1999. The bill is currently in committee and we'll be watching and reporting on its progress.

So far, 62 additional representatives have signed on as co-sponsors.

The Bill starts out:

SECTION 1. DECLARATION OF POLICY.

It is the policy of the United States to end the needless maiming and suffering inflicted upon animals through the use of steel-jawed leghold traps by prohibiting the import or export of, and the shipment in interstate commerce of, such traps and of articles of fur from animals that were trapped in such traps.

The penalty provided for in this bill is a fine and a prison term of not more than two years for each violation.

C.A.S.H, as well as many other organizations, has been struggling to encourage various legislative bodies to pass local or state laws outlawing or restricting trapping. In some states that have ballot initiatives, they have succeeded in banning trapping.

If H.R. 1581 passes, then trapping will be prohibited nationwide overnight. This may well be the most important animal protective legislation ever proposed.

Let's all urge our federal representatives to support this bill.

Incidentally, Representative Lowey is considered by many observers of the New York political scene to have the "inside track" as the Democratic Party nominee for senator if Hillary Clinton decides not to run for that position. Best news we've had in a long time.

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HJR

56

Tanana Tribal Council
PO Box 130
Tanana, AK 99777
Phone: (907) 366-7170
Fax: (907) 366-7195

MAR 03 2000

February 29, 2000

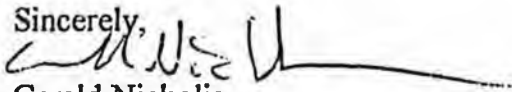
Representative Carl Morgan, District 36
State Capital, Room 409
Juneau, AK 99802-1182

Re: Supporting HJR 56

Dear Representative Morgan

On behalf of the Tanana Tribal Council and the tribal membership we express our support for HJR 56. Alaskans have already felt the adverse effects from ballot box initiatives twice and they are a ban on wolf snaring, which failed, and the English only initiative that was passed by Alaskan voters. The ballot box initiatives (Ballot Box Biology) is being used to exploit Alaska's laws for the Benefit of Righteous Groups, outside of Alaska, who have no other intention but to change the way Alaskan natives have been living for the last hundred thousand years. These animal rights groups have a lot of money and use emotional campaigns and political agendas to win by Alaska's vote. These animal rights groups have already express their desire to change the Alaskan native so that it would be easier to assimilate them into the Alaska mainstream society. They are doing this because they think that it would solve the urban and rural differences. I believe Alaskans should handle Alaska's problems and this State should not be influence from outside by using ballot box biology on wildlife to assimilate Alaska's natives into a place that is not natural to them. I also believe that Alaskan natives are not going to change the way righteous groups want them to change and that no outside interest groups should influence other peoples lives adversely. Any questions or concerns call or write. Thank you

Sincerely,



Gerald Nicholia
Realty/Wildlife and Parks

Rural Alaska Community Action Program, Inc.

March 8, 2000

Honorable Representative Carl Morgan
405 State Capital Bldg
Juneau, Alaska 99802-1182
VIA FAX MAIL (907)-465-2197

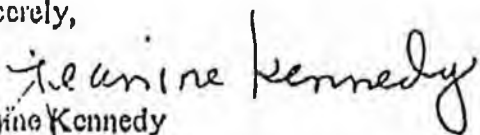
Reference: HJR 56

Dear Representative Morgan:

This is to advise you that Rural Alaska Community Action Program supports the passage of HJR 56 as the means to prevent wildlife management in Alaska through the ballot box. HJR 56 will enable the application of sound wildlife management functions to manage wildlife in Alaska rather than management through popular vote.

RurAL CAP was instrumental in the winter of 1998 in the formation of the Coalition for Alaska Way of Life as an organization to resist the effort of the outside animal rights groups to prohibit and make it illegal the use of wolf products caught by snares. Once organized CAWL successfully defended the rights of the trappers to continue their means to make a living in Alaska. Seventy percent (70%) of the trappers are Interior's Indigenous people and their way of life needs protection. HJR 56 will protect their customary and traditional lifestyle. There is bipartisan support on your bill and RurAL CAP is more than willing to be one of the supporters. Thank you and keep up the good works.

Sincerely,


Jeanine Kennedy
Executive Director
Rural Alaska Community Action Program

Cc: Donne Fleagle, Chair RurAL CAP
Jonathon Soloman, Chair, RurAL CAP Subsistence Committee
Carl Jack, Subsistence Director



750 W. 2nd Ave. #109, Anchorage AK 99501 / Ph. 907-258-6171 / Fax 907-258-6177

P.O. Box 22151, Juneau AK 99802 / Ph. 907-463-3366 / Fax 907-463-3312 / unite@akvoice.org

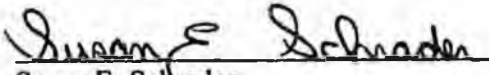
HJR 56 ~ Constitutional Amendment: Wildlife Initiatives

TO: House Judiciary Committee Members
FROM: Susan Schrader, Conservation Advocate
DATE: March 8, 2000

Alaska Conservation Voters, formerly Alaska Conservation Voice, is a not-for-profit organization dedicated to protecting Alaska's environment through public education and advocacy. Our 40 Alaskan organizations and business members represent over 22,000 registered Alaskan voters. We have consistently opposed efforts by the legislature to limit Alaskan's constitutional right to participate directly in the law-making process through the initiative process. HJR 56 is yet another attack on that right.

We are opposed to HJR 56 for the following reasons:

- ◆ While this proposed amendment to the constitution appears to be limited to initiatives dealing with wildlife, on a more fundamental level it represents an erosion of public access to government. We can debate the "ballot box biology" issue endlessly, but when one group of Alaskans are denied an opportunity to address an issue they strongly believe in by the initiative process, the freedom of all Alaskans to express their will through direct democracy is threatened. Public policy issues addressed by the initiative process receive far more discussion and debate than many of the hundreds of bills passed by the legislature every year. The process is out in the open as contrasted to the often clandestine route bills can take to become law.
- ◆ Supporters of this resolution endorse placing the scientific process of wildlife management back into the hands of the ADF&G and Board of Game. Yet ADF&G takes direction from the legislature and the legislature, through its confirmation process, essentially chooses the members of the Board of Game. Thus, the initiative process is an important check on the power of the legislature. Alaskans are being asked to relinquish their right to vote on wildlife management issues on the grounds that we are not competent enough to do so. Instead, we are being told to trust the decisions resulting from a unbalanced process that currently promotes the principles of intensive game management and the values of consumptive users to the near-exclusion of other users.
- ◆ Our constitution's sustained yield and multiple use provisions have served all Alaskans and our wildlife very well – it protects the interests of all beneficial users. Those same framers of our constitution who were wise enough to put Article VIII into it also included the initiative process. They had a faith in the ability of Alaskans to make informed decisions when voting - a faith that evidently is not shared by this legislature. As the passage of SB 74 last year exemplifies, the legislature has the power to amend or completely negate a citizen-passed initiative after two years. Thus, it is within the legislature's power to correct any legitimate problems that might result from the initiative process. Clearly, the Alaska Constitution will not benefit from this tinkering nor will the wildlife of Alaska be "safer" if the initiative process is taken away from the citizens of Alaska.


Susan E. Schrader

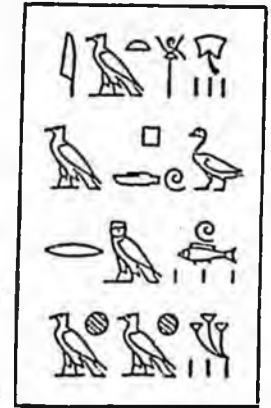
Conserve Alaska. It's Only Natural.

THE WILDLIFE SOCIETY

ALASKA CHAPTER

P. O. Box 72962
Fairbanks, AK 99707-2962
February 29, 2000

MAR 03 2000



Representative Bill Hudson
Co-Chair, House Resources Committee
State Capitol, Room 108
Juneau, AK 99801-1182

Dear Representative Hudson:

I am pleased to transmit the enclosed *Alaska Chapter of The Wildlife Society Position Statement on Wildlife Management by Ballot Initiative*. The Alaska Chapter of The Wildlife Society, a professional organization representing approximately 300 wildlife biologists in Alaska, developed the referenced document in fall 1998 in response to a ballot initiative to ban snaring of wolves. In general, the Alaska Chapter finds ballot initiatives to be very poor tools for managing wildlife. The Alaska Chapter distributed the enclosed Position Statement to various media outlets immediately prior to the 1998 election but failed to get significant coverage.

The Alaska Chapter believes that you and your committee may find the suggestions in our Position Statement useful during your deliberations on HJR 56. We encourage you to provide copies of our Position Statement to members of the Resources Committee so that they may give the issues discussed in the Position Statement full consideration. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger A. Post".

Roger A. Post
President

Enclosure

cc (w/ enclosure):

Representative Bev Masek, Co-Chair, House Resources Committee
Representative Carl Morgan, Sponsor, HJR 56

THE ALASKA CHAPTER OF THE WILDLIFE SOCIETY
POSITION STATEMENT
ON
WILDLIFE MANAGEMENT BY BALLOT INITIATIVE

INTRODUCTION

The Wildlife Society is an international professional organization of wildlife researchers, managers, and enforcement personnel dedicated to the sound stewardship of wildlife resources and the environments upon which wildlife and humans depend. The Alaska Chapter is an affiliate organization of over 300 wildlife professionals living and working in Alaska. Most Chapter members are wildlife biologists for state, federal, private, or academic institutions.

The Alaska Chapter adopts position statements on important wildlife management issues in the state. Our purpose in this resolution is to examine the use of ballot initiatives to manage wildlife in Alaska and to recommend an appropriate course of action for Alaskans to take in managing wildlife.

BACKGROUND

Alaska is fortunate in that there is an established democratic process by which the direction for wildlife management in the state is deliberated and decided. That process is the system of local advisory committees and the governor-appointed Board of Game, which has been statutorily delegated the responsibility by the Alaska Legislature. The public is involved at all stages of this regulatory process. In recent years, there has been an increasing tendency for wildlife management decision-making to be taken from the Board of Game and made by the Legislature or by ballot initiatives. Neither of these methods utilizes a deliberative process with both professional biological advice and public input. In 1996 the Alaska Chapter passed a resolution on legislating wildlife management in Alaska. In the following position statement, the Chapter discusses the use of ballot initiatives.

Ballot initiatives addressing wildlife management have become more frequent in Alaska and other states as various interest groups have been unsuccessful using the existing management structures to influence wildlife management decisions according to their own political agenda. The ballot initiative method was used in Alaska in 1996 when an initiative to eliminate same-day airborne hunting of wolves was passed. Now, an initiative to ban snaring of wolves is on the 1998 ballot.

FINDINGS

Wildlife in Alaska and the other 49 states enjoys a unique legal status with distinctive legal principles grounded in the common law of public trust doctrine. Under this concept, wildlife is not legal property and therefore cannot be owned by anyone so long as it remains in its natural condition. The state has a legal duty to manage wildlife for the benefit of its citizens. No state is permitted to abrogate this duty. The state must ensure that no single use interferes with the equality of opportunity for access to wildlife for public trust uses. Hunting, fishing, and trapping are recognized public trust uses of the wildlife resource. The state has primary responsibility for determining the means by which wildlife may be reduced to possession.

Under recent Alaska Supreme Court rulings (*Pullen vs. Ulmer* 1996, *McDowell vs. Alaska* 1989, *Owsichek vs. Alaska* 1988, and *CWC Fisheries vs. Bunker* 1988), the concept of public trust duty has come to be understood to lie with the Alaska Legislature. The Board of Game, with technical assistance from the Department of Fish and Game, has been delegated the duty, by the Legislature, to manage and allocate the wildlife resource under the strictures of public trust. There is reason to believe that, because the

Legislature cannot divest itself of its trust responsibility, allocation and management decisions cannot be delegated to a decision-making process where the Legislature retains no finality on approval; this is the case with ballot initiatives. The argument that wildlife management is exempted from ballot initiatives has yet to be determined by a higher court, but its potential should cause citizens to want clarification before casting their votes.

While we recognize that ballot initiatives are part of a participatory democratic process, it is clear they do not meet the needs of Alaskans to fully deliberate the complexities of harvest methods and means or allocations. Managing wildlife and its use in Alaska is a very complex process that must simultaneously consider biology, culture, and economics. Ballot initiatives bypass the checks and balances of deliberation and possible changes to regulations present in the existing public processes. In ballot initiatives, open debate is usually reduced to sound bites in the media by opposing sides and results in a good deal of misinformation. It is not possible to adequately prepare the voting public to make an informed decision in such a polarized atmosphere.

The current and usual process for dealing with wildlife management issues in Alaska consists of local advisory committees and the governor-appointed Board of Game. These organizations carry out knowledgeable deliberation of proposals submitted by the public, the Department of Fish and Game, and other organizations on a wide variety of issues. Their deliberations and decisions are based on their education from extensive public testimony, presentation from technical experts, and their own specific knowledge of wildlife issues. Although it may occasionally have been affected by politics or was sometimes less responsive to minority views than desirable, the Board of Game system has served Alaskans well and is regarded as a model of democratic wildlife management in the country.

Finally, the role federal subsistence management currently plays with regards to the initiative process must be considered. State statutes, whether passed by legislative action or ballot initiative, cannot countenance federal directives for subsistence management of wildlife on federal lands as provided in the Alaska National Interst Lands Conservation Act (ANILCA) of 1980. While state statutes apply to all lands in Alaska, they can be preempted by federal subsistence regulations on federal lands (approximately 60% of the land area in the state). The Federal Subsistence Board regulates subsistence harvest of fish and game on federal lands pursuant to ANILCA. Overtly restrictive measures, such as a proposed ban on the use of snares for wolves, would almost certainly have strong opposition from qualified subsistence users in rural Alaska, and the Federal Subsistence Board would likely reflect their wishes.

RECOMMENDATION

Therefore, The Alaska Chapter of The Wildlife Society recommends that:

- Wildlife management in Alaska should continue to be guided by the Board of Game system as the most appropriate mechanism to meet the needs of Alaskans and fulfill the requirements of public trust doctrine.
- The Attorney General of Alaska, under direction by the Governor and Legislature, should investigate the legality of ballot initiatives as applied to wildlife management in Alaska.
- The Board of Game, under direction by the Governor and Legislature and with assistance from an *ad hoc* citizen advisory panel, should explore ways of ensuring that the advisory committee and board processes continue to be open and responsive to minority opinion or alternative views of wildlife management and, if necessary, should suggest improvements to these processes.

Subject: Wolf Control

March 7, 2000

My family and I have farmed in the Copper River Basin for the past 16 years. Until the last 3 years we have not had any trouble with wolves. 3 winters ago, we saw wolves at 3 different occasions in our hay fields next to the barn. We ran them off into the woods. That winter a pack of 6 wolves came in about 4 in the morning and attempted to enter the corral. At that time we had 18 five month old steer calves we were raising in the corral. My wife and I stood guard outside the pens until it got light and they moved off toward the river. Last winter I dispatched a large male trying to enter the pens. This winter I shot and killed another big male trying to get into the corral. You could say that we are just trying to maintain our current cattle population. Several neighbors have lost dogs and small livestock to wolves.

Sincerely yours;

John Wenger
John Wenger

Alaska State Legislature

SESSION

State Capitol Building, Suite 409
Juneau, Alaska 99801-1182
Phone: 907-465-4527
Fax: 907-465-2197
Toll Free: 800 491-4527
E-mail: Representative_Carl_Morgan@legis.state.ak.us



MEMBER

Community & Regional Affairs Committee
Health, Education & Social Services Committee
House Resources Committee
Special Committee on Fisheries

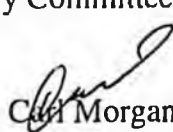
INTERIM

P.O. Box 243
Aniak, Alaska 99557
Phone: 907-675-4413

Representative Carl M. Morgan, Jr. District 36

MEMORANDUM

To: Representative Pete Kott, Chair
House Judiciary Committee

From: Representative  Morgan, Co-Chair

Date: March 1, 2000

Subject: House Joint Resolution 56

I respectfully request that you schedule HJR 56 for a hearing in your committee at your earliest convenience. The bill was heard in, and unanimously passed out of House Resources Committee on March 1. There were no amendments suggested, proposed or discussed.

Successful passage of this bill is of paramount importance to Alaska. My Sponsor Statement (enclosed) covers the rationale for the bill, but I want to further emphasize that this bill is our best opportunity to stop "ballot box biology." Alaska simply can not allow its wildlife to be managed by the political agendas of powerful Outside animal rights and anti-consumptive use groups.

I also want you to know that most public testimony in House Resources was supportive of this legislation. And, I have received over 800 messages of support to not use the initiative process in this way in Alaska.

In addition to my Sponsor Statement, I am attaching several recent letters of support and the fiscal note.

I thank you for your prompt consideration of this request. If you have questions on HJR 56, please call me at 465-4527.

Enclosures

Alaska State Legislature

SESSION

State Capitol Building, Suite 409

Juneau, Alaska 99801-1182

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Phone: 907-675-4413



MEMBER

Community & Regional Affairs Committee

Health, Education & Social Services Committee

House Resources Committee

Special Committee on Fisheries

Representative Carl M. Morgan, Jr. District 36

SPONSOR STATEMENT HOUSE JOINT RESOLUTION 56 Constitutional Amendment Wildlife Initiative Process

This legislation removes wildlife management from the ballot initiative process in Alaska. The framers of our Constitution restricted the ballot initiative process in Article XI, Section 7 of the Alaska Constitution. Section 7 exempts certain subjects from the ballot and referendum process. I believe wildlife management is an appropriate subject for exemption.

Our wildlife interests are best managed in Alaska by Alaskans. Removing wildlife from the ballot and referendum process will ensure that wildlife decisions are made in Alaska based on sound science, prudent management, and in an open and fair process. The alternative is a repeat of the last two elections where special interest groups from the Lower 48, using emotion and political agendas, attacked Alaska's outstanding wildlife management system.

Alaska is not alone in this fight. In 1998, the citizens of Utah and Minnesota passed constitutional amendments to protect wildlife management and hunting in their states. Presently, there are constitutional amendments to protect wildlife management and traditional wildlife uses working their way through the state legislatures of Arizona, Idaho and North Dakota.

Legislative counsel has advised that the Legislature possesses the power to amend the Alaska Constitution subject to a vote of the people, but does not have the power to make sweeping revisions that radically alter the powers of governmental branches. Counsel believes HJR 56 amounts to an amendment of the Constitution, not a revision, and within the power of the Legislature.

of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

SECTION 10. EXTENDED HOME RULE. The legislature may extend home rule to other boroughs and cities.

SECTION 11. HOME RULE POWERS. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

SECTION 12. BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

SECTION 13. AGREEMENTS; TRANSFER OF POWERS. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

SECTION 14. LOCAL GOVERNMENT AGENCY. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law.

SECTION 15. SPECIAL SERVICE DISTRICTS. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

ARTICLE XI. INITIATIVE, REFERENDUM, AND RECALL.

SECTION 1. INITIATIVE AND REFERENDUM. The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

SECTION 2. APPLICATION. An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred qualified voters as sponsors, and shall be filed with the lieutenant governor. If he finds it in proper form he shall so certify. Denial of certification shall be subject to judicial review.

SECTION 3. PETITION. After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters, equal in number to ten per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the State, it may be filed with the lieutenant governor.

SECTION 4. INITIATIVE ELECTION. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title

and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred-twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

SECTION 5. REFERENDUM ELECTION. A referendum petition may be filed only within ninety days after adjournment of the legislative session at which the act was passed. The lieutenant governor shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first statewide election held more than one hundred-eighty days after adjournment of that session.

SECTION 6. ENACTMENT. If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The lieutenant governor shall certify the election returns. An initiated law becomes effective ninety days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date. It may be amended at any time. An act rejected by referendum is void thirty days after certification. Additional procedures for the initiative and referendum may be prescribed by law.

SECTION 7. RESTRICTIONS. The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

SECTION 8. RECALL. All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political

subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

ARTICLE XII. GENERAL PROVISIONS.

SECTION 1. STATE BOUNDARIES. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, included in the Territory of Alaska upon the date of ratification of this constitution by the people of Alaska.

SECTION 2. INTERGOVERNMENTAL RELATIONS. The State and its political subdivisions may cooperate with the United States and its territories, and with other states and their political subdivisions on matters of common interest. The respective legislative bodies may make appropriations for this purpose.

SECTION 3. OFFICE OF PROFIT. Service in the armed forces of the United States or of the State is not an office or position of profit as the term is used in this constitution.

SECTION 4. DISQUALIFICATION FOR DISLOYALTY. No person who advocates, or who aids or belongs to any party or organization or association which advocates, the overthrow by force or violence of the government of the United States or of the State shall be qualified to hold any public office of trust or profit under this constitution.

SECTION 5. OATH OF OFFICE. All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as to the best

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HJR56

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Constitutional Amendment: Prohibiting certain</u>	BRU <u>Elective Operations</u>
<u>initiatives relating to wildlife</u>	Component <u>Elections</u>
Sponsor <u>Representative Morgan</u>	
Requester <u>House Resources Committee</u>	Component No. <u>21</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

POSITIONS	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by: <u>Gail Fenumal</u> <i>Gail Fenumal</i>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date/Time <u>2/23/00 12:04 PM</u>
Approved by: <u>Lt. Governor Fran Ulmer</u> <i>Fran Ulmer</i>	Date <u>02/23/2000</u>
Agency <u>Office of the Lieutenant Governor</u>	

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

Letters Received in Support of HJR 56

Alaska Native Harbor Seal Commission
Tanana Chiefs Conference,
Alaska Trappers Association,
Alaska Trappers Association, South Central Chpt.
Alaska Outdoor Council.
Coalition for the Alaskan Way of Life (CAWL)
Coalition for the Alaskan Way of Life (CAWL)
Foundation for North American Wild Sheep
Scientific Management of Alaska's
Resource Treasures (SMART)

Peter R. Buist,
Tom Lessard
Alex Whiting
Alan and Brenda Jones
Jim E. Gallagher
Carol Torsen
Joe & Candie Caraway
Mike and Donne Fleagle

Harold Martin, Chair
Steve Ginnis, President,
Joe Mattie, Board Member
Allen Dubord, Chair
Dick Bishop, Vice President
Gabriel Sam, Co-Chair
Ben Hopson, Jr. Co-Chair
Wayne Heimer

Patrick Wright, President
Fairbanks
Chugiak
Kotzebue
Fairbanks
Anchorage
Anchorage
Beluga
McGrath



ALASKA NATIVE HARBOR SEAL COMMISSION

February 28, 2000

**BOARD OF
DIRECTORS**

Harold Martin
Chair
Southeast Region

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Cook Inlet Region

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Norman Vlasoff
Chugach Region

Ricardo Lopez
Bristol Bay MMC

Daniel Alex
Cook Inlet MMC

Monica Riedel
Executive Director

Representative Carl Morgan
State Capitol
Juneau, AK 99801-1182

VIA FAX: 1-907-465-2197

**REFERENCE: IN SUPPORT OF HJR-56, CONSTITUTIONAL
AMENDMENT ON WILDLIFE INITIATIVES**

Dear Representative Morgan:

I feel that it's extremely important that we utilize all means to protect wildlife and wild areas from special interest groups outside Alaska in order to protect future generations' use of those wildlife resources. HJR-56 will protect those wildlife resources by preventing these special interest groups from using the initiative process to make wildlife policy in Alaska, policy that could be very detrimental to Alaska's subsistence users.

It has been proven over the years that Alaska's system of wildlife management has worked very well. ADF&G, along with the Board of Game and the state legislature, has ensured preservation of Alaska's wildlife for everyone to enjoy. ADF&G biologists have been trained in sound scientific methods and the professional management of Alaska's wildlife resources, which have served Alaska's people well. We do not need "Ballot Box Biology" as advocated by animal rights groups.

We should not have to spend hundreds of thousands of dollars to defend our traditional hunting and trapping rights at the ballot box every few years. HJR-56 would ensure that wildlife issues could no longer be a part of the initiative process, and therefore protected from the whims of animal rights groups.

Thank you for this opportunity to comment in favor of HJR-56.

Sincerely,
Monica Riedel for Hm
Harold Martin, Chairman, ANHSC

**TANANA CHIEFS CONFERENCE, INC.**

February 22, 2000
122 FIRST AVENUE, SUITE 600
FAIRBANKS, ALASKA 99701-4897
PHONE 907/452-8251 • FAX 907/459-3850

Representative Carl Morgan
State Capitol Building, Suite 409
Juneau, Alaska 99801-1182

Dear Representative Morgan:

The Tanana Chiefs Conference, Inc would like to express its support for HJR 56, which would remove wildlife management issues from the ballot initiative process.

When wolves enter into a village not because they are lost, but because they are hungry, there is a definite problem in how the wildlife is being managed. If there were enough moose and caribou out there the wolves would not come so close to a community. In January the children go to school in the dark and go home in the dark. This is also the time the wolves go out on their nightly hunt for food.

This is no longer an issue for just putting food on the table, it is now an issue for the children's welfare and safety. To manage fish and game resources by ballot initiative is not a sound method for wildlife management. The resources should be managed through the direction that the Board of Game assigns to the Alaska Department of Fish and Game.

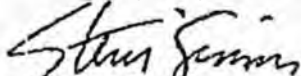
Through many of the public testimonies that were given by representatives from all over Alaska at the McGrath Rural Summit in McGrath, nobody spoke of totally eradicating the wolves. People spoke of how important the wolf is in their respective cultures. The problem is there are just too many wolves and not enough moose or caribou to feed them.

Because the terrain is so hilly and rough, it is difficult for the local trappers to successfully catch any wolves. The only way the wolf population can be controlled is by aerial hunts. An aggressive predator control program needs to be implemented.

Again, the Tanana Chiefs Conference, Inc supports HJR 56, because Alaska's resources should not be managed by outside special interest groups. Rather they should be managed based upon sound scientific principles. Thank you for your advocacy on this issue of importance to interior Alaskans.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.


Steve Ginnis
President

10-23-1995 3:00AM

FROM

FEB-26-00 SUN 04:33 PM

AK PUBLIC DEFENDER

FAX NO. 907 465 3247

P. 01

P. 1

**ALASKA TRAPPERS ASSOCIATION
POST OFFICE BOX 82177
FAIRBANKS, ALASKA 99708**

Feb. 23, 2000

Rep. Carl Morgan
Alaska State Legislature
State Capital
Juneau, AK 99801

Dear Rep. Morgan:

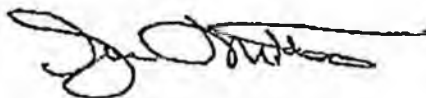
The Alaska Trappers Association has about 1200 members statewide. We are a group that supports humane and effective trapping and we stand up for trappers rights. Thus we are very happy that you have introduced House Joint Resolution 56 to finally stop the constant attacks by the Animal Rights groups that are trying to take over game management in Alaska.

As we saw in 1996, the well-funded groups like Friends of Animals can put a lot of money into an Alaskan campaign in a short period of time. And there is no truth in advertising. They ran ads on television that made people think that they were voting to outlaw AERIAL wolf hunting. It worked. The initiative to stop "same day airborne trapping was passed handily. They came back in 1998 to try to stop all wolf snaring and wearing wolf fur, but luckily trappers started the CAWL group and we were able to stop them.

But we do not have the money to keep fighting this battle every two years. That is why your bill is so important. We need to stop them. They can just use the BOG process like everyone else. They complain that this system does not work (for them) but I suggest that it DOES work. The fact that every goofy proposal they put in DOES NOT pass, is proof that our system works!

With your help, we will show them that you do not just circumvent the process and BUY Alaskan wildlife policy. Again, thank you very much.

Sincerely,



Joe Mattie, Board Member
Alaska Trappers Association



South Central Chapter
of
ALASKA TRAPPERS ASSOCIATION
P.O. Box 201175
Anchorage, AK 99520-1175

February 25, 2000

Dear Representative Morgan,

On behalf of the South Central Chapter of the Alaska Trappers Association (SCCATA) I want you to know that I support your efforts to put wildlife issues off - limits to the ballot initiative process. The initiative process has proven to be no friend of the trapper in many other states. We don't have the financial resources to confront these professional protesters every time we turn around. We believe in leaving these things to the professionals and that the Board of Game process allows for ample public participation.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Allen Dubord'.

Allen Dubord
Chair SCCATA