

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10298 HOUSE JUDICIARY

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"illegal and subversive of the freedom of parliament." 1 W. Townsend, *Memoirs of the House of Commons* 414 (2d ed. 1844).

Although the origins of the Speech or Debate Clause in [\*658] England can thus be traced to a case involving republication, the Court, citing *Stockdale v. Hansard*, 9 Ad. & E. 1, 112 Eng. Rep. 1112 (K. B. 1839), says that "English legislative privilege was not viewed as protecting republication of an otherwise immune libel on the floor of the House." *Ante*, at 622. That conclusion reflects an erroneous reading of precedent. *Stockdale* did state that "if the calumnious or inflammatory speeches should be reported and published, the law will attach responsibility on the publisher." *Id.*, at 114, 112 Eng. Rep., at 1156. But *Stockdale* concerned only the publisher's liability, not that of a member of Parliament; thus, it has little bearing on the instant case. Furthermore, contrary to the Court's assertion, *ante*, at 623-624, n. 14, even the narrow result of *Stockdale* was repudiated 30 years later in *Wason v. Walter*, L. R. 4 Q. B. 73 [\*\*2642] (1868), for reasons strikingly similar to those expressed by Jefferson [\*\*\*622] in his protest. n1 In [\*659] my view, therefore, the English precedent, if relevant at all, supports Senator Gravel's position here.

n1 In *Wason* the proprietor of the London Times was sued for printing an account of a libelous debate in the House of Lords. The court agreed with *Stockdale* that the House did not have final authority to determine the scope of its privileges and thus could not confer immunity on any publisher merely by ordering a document printed and then declaring it privileged. Indeed, the *Wason* court gave its "unhesitating and unqualified adhesion" to *Stockdale* on that point. *Id.*, at 86. The only issue for the court, therefore, was whether the publication "is, independently of such order or assertion of privilege, in itself privileged and lawful." *Id.*, at 87. On that issue the court severely criticized the reasoning of earlier cases, including *Stockdale*, stating that two of the Justices in that case had expressed a "very shortsighted view of the subject." *Id.*, at 91. The court held that so long as the republication was accurate and in good faith, it could not be the basis of a libel action; and the member himself was privileged to publish his speech "for the information of his constituents." *Id.*, at 95. Relying, not on the Parliamentary Papers Act of 1840, which was enacted in response to *Stockdale*, but on the analogy to judicial reports and the need for an informed public, the court stated:

"It seems to us impossible to doubt that it is of paramount public and national importance that the proceedings of the houses of parliament shall be communicated to the public, who have the deepest interest in knowing what passes within their walls, seeing that on what is there said and done, the welfare of the community depends. Where would be our confidence in the government of the country or in the legislature by which our laws are framed, and to whose charge the great interests of the country are committed, - where would be our attachment to the constitution under which we live, -- if the proceedings of the great council of the realm were shrouded in secrecy and concealed from the knowledge of the nation? How could the communications between the representatives of the people and their constituents, which are so essential to the working of the representative system, be usefully carried on, if the constituencies were kept in ignorance of what their representatives are doing? What would become of the right of petitioning on all measures pending in parliament, the undoubted right of the subject, if the people are to be kept in ignorance of what is passing in either house? Can any man bring himself to doubt that the publicity given in modern times to what passes in parliament is essential to the maintenance of the relations subsisting between the government, the legislature, and the country at large?" *Id.*, at 89.

The fact that the debate was published in violation of a standing order of Parliament was held to be irrelevant. "Independently of the orders of the houses, there is nothing unlawful in publishing reports of parliamentary proceedings. ... Any publication of its debates made in contravention of its orders would be a matter between the house and the publisher." *Id.*, at 95.

Whether *Wason* was based on parliamentary privilege or on an analogy to the publication of judicial proceedings is unimportant. What is important to the instant litigation is that *Wason* firmly rejected any implication in *Stockdale* that the informing function was not among the legislative activities that a member of Parliament was privileged to perform. Indeed, that same conclusion was reached by Sir Gilbert Campion, a noted scholar, in his memorandum to the House of Commons' Select Committee on the Official Secrets Acts. After reviewing the republication cases through *Wason*, the memorandum concluded:

408 U.S. 606, \*; 92 S. Ct. 2614, \*\*;  
33 L. Ed. 2d 583, \*\*\*; 1972 U.S. LEXIS 21

"If ... a member circulated among his constituents a speech made by him in Parliament in which he had disclosed information [otherwise subject to the Official Secrets Acts], it might be held on the analogy of the principles which have been said to apply to prosecutions for libel that he could not be proceeded against for disclosing it to his constituents, unless, of course, the speech had been made in a secret session. Even if the suggested analogy is not admitted, it would be repugnant to common sense to hold that though the original disclosure in the House was protected by parliamentary privilege, the circulation of the speech among the member's constituents was not." Minutes of Evidence Taken before the Select Committee on the Official Secrets Acts 29 (1939).

Thus, from the standpoint of function or history, it is plain that Senator Gravel's dissemination of material, [\*660] placed by him in the record of a congressional hearing, is itself legislative activity protected [\*\*2643] by the privilege of speech or debate. Whether or not that privilege protects the publisher from prosecution or the Senator from senatorial [\*\*\*623] discipline, it certainly shields the Senator from any grand jury inquiry about his part in the publication. As we held in *United States v. Johnson*, 383 U.S. 169 (1966), neither a Congressman, nor his aides, nor third parties may be made to testify concerning privileged acts or their motives. That immunity, which protects legislators "from deterrents to the uninhibited discharge of their legislative duty," *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951), is the essence of the Clause, designed not for the legislators' "private indulgence but for the public good." *Id.*, at 377.

That privilege, moreover, may not be defeated merely because a court finds that the publication was irregular or the material irrelevant to legislative business. Legislative immunity secures "to every member exemption from prosecution, for every thing said or done by him, as a representative, in the exercise of the functions of that office ... whether the exercise was regular according to the rules of the house, or irregular and against their rules." *Coffin v. Coffin*, 4 Mass. 1, 27 (1808). Thus, if the republication of this committee record was unauthorized or even prohibited by the Senate rules, it [\*661] is up to the Senate, not the Executive or Judiciary, to fashion the appropriate sanction to discipline Senator Gravel.

Similarly, the Government cannot strip Senator Gravel of the immunity by asserting that his conduct "did not relate to any pending Congressional business." Brief

for United States 41. The Senator has stated that his hearing on the Pentagon Papers had a direct bearing on the work of his Subcommittee on Buildings and Grounds, because of the effect of the Vietnam war on the domestic economy and the lack of sufficient federal funds to provide adequate public facilities. If in fact the Senator is wrong in this contention, and his conduct at the hearing exceeded the subcommittee's jurisdiction, then again it is the Senate that must call him to task. This Court has permitted congressional witnesses to defend their refusal to answer questions on the ground of nongermaneness. *Watkins v. United States*, 354 U.S. 178 (1957). Here, however, it is the Executive that seeks the aid of the judiciary, not to protect individual rights, but to extend its power of inquiry and interrogation into the privileged domain of the legislature. In my view the Court should refuse to turn the freedom of speech or debate on the Government's notions of legislative propriety and relevance. We would weaken the very structure of our constitutional system by becoming a partner in this assault on the separation of powers.

Whether the Speech or Debate Clause extends to the informing function is an issue whose importance goes beyond the fate of a single Senator or Congressman. What is at stake is the right of an elected representative to inform, and the public to be informed, about matters relating directly to the workings of our Government. The dialogue between Congress and people has been recognized, from the days of our founding, as one of the necessary elements of a representative system. [\*662] We should not retreat from that view merely because, in the course of that dialogue, information may be revealed that [\*\*\*624] is embarrassing to the other branches of government or violates their notions of necessary secrecy. A Member of Congress who exceeds the bounds of propriety in performing this official task may be called to answer by the other Members of his chamber. We do violence to the fundamental concepts of privilege, however, when we subject that same conduct to judicial scrutiny at [\*\*2644] the instance of the Executive. n2 The threat of "prosecution by an unfriendly executive and conviction by a hostile judiciary," *United States v. Johnson*, 383 U.S., at 179, that the Clause was designed to avoid, can only lead to timidity in the performance of this vital function. The Nation as a whole benefits from the congressional investigation and exposure of official corruption and deceit. It likewise suffers when that exposure is replaced by muted criticism, carefully hushed behind congressional walls.

n2 Different considerations may apply, of course, where the republication is attacked, not by the Executive, but by private persons seeking

408 U.S. 606, \*; 92 S. Ct. 2614, \*\*;  
33 L. Ed. 2d 583, \*\*\*; 1972 U.S. LEXIS 21

judicial redress for an alleged invasion of their constitutional rights.

## II

Equally troubling in today's decision is the Court's refusal to bar grand jury inquiry into the source of documents received by the Senator and placed by him in the hearing record. The receipt of materials for use in a congressional hearing is an integral part of the preparation for that legislative act. In *United States v. Johnson, supra*, the Court acknowledged the privileged nature of such preparatory steps, holding that they, like the act itself and its motives, must be shielded from scrutiny by the Executive and Judiciary. That holding merely recognized the obvious -- that speeches, [\*663] hearings, and the casting of votes require study and planning in advance. It would accomplish little toward the goal of legislative freedom to exempt an official act from intimidating scrutiny, if other conduct leading up to the act and intimately related to it could be deterred by a similar threat. The reasoning that guided that Court in *Johnson* is no less persuasive today, and I see no basis, nor does the Court offer any, for departing from it here. I would hold that Senator Gravel's receipt of the Pentagon Papers, including the name of the person from whom he received them, may not be the subject of inquiry by the grand jury.

I would go further, however, and also exclude from grand jury inquiry any knowledge that the Senator or his aides might have concerning how the source himself first came to possess the Papers. This immunity, it seems to me, is essential to the performance of the informing function. Corrupt and deceitful officers of government do not often post for public examination the evidence of their own misdeeds. That evidence must be ferreted out, and often is, by fellow employees and subordinates. Their willingness to reveal that information and spark congressional inquiry may well depend on assurances from their contact in Congress that their identities and means of obtaining the evidence will be held in strictest confidence. To permit the grand jury to frustrate that expectation through an inquiry of the Congressman and his aides can only dampen the flow of information to the Congress and thus to the American people. There is a similar risk, of course, when the Member's own House requires him to break the confidence. But the danger, it [\*\*\*625] seems to me, is far less if the Member's colleagues, and not an "unfriendly executive" or "hostile judiciary," are charged with evaluating the propriety of his conduct. In any event, assuming that a Congressman can be required to reveal the [\*664] sources of his information and the methods used to obtain that information, that power of inquiry, as required by the Clause, is that of the Congressman's House, and of that House only.

I respectfully dissent.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
AT FAIRBANKS, ALASKA

SUBPOENA TO APPEAR

To: RAVENA MOSS  
DOB:  
Home Phone:  
Home Address:

Other Info:  
SSN:  
Work Phone: 456-5081  
Work Address: Rep. Coghill's Office  
119 N. Cushman Ste. Ste. 211, Fbks, AK

You are commanded to appear at the State Courthouse to testify in the case of:

Case Name: In The Matter Of: D.M.  
Date: MARCH 4 and 5, 2002  
Time: 8:30 a.m.  
Case No: 4FA-01-230 CP  
Court Address: 101 Lacey Street, Fairbanks, Ak

If you fail to appear and testify as ordered, a warrant may be issued for your arrest. This subpoena shall remain in effect from the date you appear until you are granted leave to depart by the court or by an officer acting at the direction of the court.

You are ordered to bring with you:

You are entitled to witness fees and (if you live more than 30 miles from the court) travel and living expenses. You are not, however, entitled to advance payment of these fees if this subpoena is issued at the request of the state, Public Defender Agency or other court-appointed counsel. Contact the attorney's office listed below to arrange for payment of fees. You must contact the attorney's office before you travel if you want to be paid travel expenses.

This subpoena does not require you to appear anywhere except the court at the above address. However, please call the attorney's office listed below on the afternoon of the working day before your scheduled appearance to find out whether you are still required to appear, the time to appear and other instructions. Failure to call the attorney's office may make you ineligible for payment of witness fees and travel and living expenses.

2/22/02  
Date

sed

Sherry Sillcock  
Deputy Clerk of Court

Subpoena issued at the request of:

R. POKE HAFNER  
Attorney for: State of AK/Attorney General's Office  
Address: 100 Cushman, Ste 400, Fairbanks AK 99701  
Telephone: (907)451-2811  
If you have any questions, please contact the attorney listed above.

RETURN

I served the above subpoena on \_\_\_\_\_, the person to whom it is addressed, on \_\_\_\_\_, 2002, in \_\_\_\_\_, Alaska. I left a copy of the subpoena with the person named and also tendered mileage and witness fees for one day's court attendance, except as provided in Criminal Rule 17 and Civil Rule 45.

Signature	Title	Type or Print Name
CP-430 (12/87)(st.3)		Del.R. 1(e) & Crim.R. 17
SUBPOENA TO APPEAR		CINA R. 1(e) & Civ.R. 45
G:\CVFAG0\CVFHS\KINGN\mcese sub.doc		

**HB**

**510**



# Alaska State Legislature

House of Representatives



Transportation Committee

## **SPONSOR STATEMENT**

### **HB 510**

## **COMMERCIAL MOTOR VEHICLES: REGULATIONS**

This legislation completes the consolidation of the truck size, weight, safety and permitting regulatory programs that was started with Executive Order 98 effective at the beginning of Fiscal Year 98.

The authority to promulgate regulations for driver/vehicle safety requirements and hazardous materials transport currently resides in the Department of Public Safety. This legislation transfers that authority to the Department of Transportation and Public Facilities.

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 510  
 (H) Publish Date: 4/3/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title An Act relating to the regulation of BRU Measurement Standards and CVE  
commercial motor vehicles... Component Measurement Standards and CVE  
 Sponsor House Transportation  
 Requester House Transportation Component No. 2332

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	0.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost: 0.0

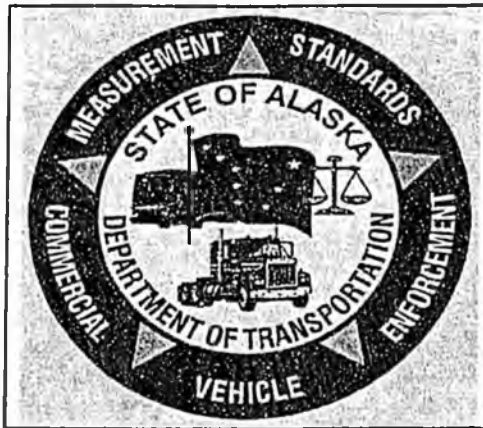
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Gannis R. Poshard, Assistant to Commissioner Phone 465-3904  
 Division Commissioner's Office Date/Time 4/1/02 1:42 PM  
 Approved by: Joseph L. Perkins, Commissioner Date 4/1/2002  
 Agency Alaska Department of Transportation and Public Facilities



## *Commercial Vehicle Statute Changes*

*Driver/Vehicle Safety Requirements  
Hazardous Material Transport Requirements  
House Bill  
March 22, 2001*

This legislation completes the consolidation of the truck size, weight, safety and permitting regulatory programs that was started with Executive Order 98 effective at the beginning of Fiscal Year 98. The authority to promulgate regulations for driver/vehicle safety requirements and hazardous materials transport currently resides in the Department of Public Safety. This legislation transfers that authority to the Department of Transportation and Public Facilities. The following bullets describe the effect of the legislative change.

- Alaska has not received any formal sanctions from the Federal Motor Carrier Safety Administration, US DOT on our currently outdated regulations. We have regulations prepared and ready to go through the adoption process as soon as this legislative change is effective.
- The proposed legislation will transfer the authority to adopt regulations related to commercial motor vehicle safety from the Department of Public Safety to the Department of Transportation and Public Facilities. The transport of hazardous material is not the only matter addressed in the state's commercial motor safety regulations. The other subjects also include equipment standards, working conditions for drivers, and vehicle inspection standards.
- This legislation continues the process that began with Executive Order 98. That executive order transferred the authority to run weigh stations and issue over weight and over size vehicle permits from the Department of Commerce and Economic Development to DOT&PF. It also transferred the authority to conduct commercial motor vehicle safety inspection programs from the Department of Public Safety to DOT&PF.
- With the changes that were made under Executive Order 98, the trucking industry has had one stop service, i.e. vehicles are weighed, over weight or over size permits are issued, commercial motor vehicles inspected.

*Commercial Vehicle Statute Changes*  
*March 22, 2002*

- The proposed legislation will complete the transfer of the regulatory authority over commercial motor vehicles to the DOT&PF. It will be in the best interests of the state and the trucking industry for this transfer to occur because the people responsible for the adoption of the commercial motor vehicle safety will also be enforcing the standards.
- Federal law requires that the state commercial motor vehicle safety inspections be no less stringent than federal law or regulations. Under 49 USC 31141 state commercial motor vehicle safety regulations are pre-empted if the Secretary of Transportation finds that state commercial motor vehicle regulations are less stringent than federal law or regulation. Alaska has avoided that result by incorporating by reference the federal commercial motor vehicle safety regulations which provide equipment standards, working conditions for drivers and vehicle inspection standards.
- At the present time Alaska's commercial motor vehicle safety standards incorporate by reference the federal regulations that existed in 1995. While there have not been any notices of non-compliance issued by the Federal Motor Carrier Safety Administration, operators in Alaska have not received the benefit of any advantages that newer regulations may provide.
- In order for Alaska to continue receiving federal grant money, our regulations need to be compatible with the Code of Federal Regulations

Aves D. Thompson, Director  
Measurement Standards and  
Commercial Vehicle Enforcement  
AK Dept of Transportation and Public Facilities  
907 345-7750 Phone

**Sec. 19.10.060. Size, weight, and load provisions; restriction on use of highways; commercial vehicle inspection program.**

(a) The department, with respect to highways under its jurisdiction, may

(1) establish limitations on weight, size, and load of vehicles, except as otherwise provided in AS 19.10.065;

(2) prohibit the operation or impose restrictions on vehicular use of highways during certain seasons of the year.

(b) The department shall operate motor vehicle weighing stations, issue special written permits authorizing the operation of overweight and oversize vehicles, establish fees for the overweight and oversize vehicle special permits, enforce the size, weight, and load limitations adopted under this section, and establish regulations relating to pilot car services and the enforcement of the size, weight, and load limitations adopted under this section.

(c) The department shall adopt regulations necessary to implement a commercial motor vehicle safety inspection program needed to avoid loss or withholding of federal highway money. (§ 5 art III title II ch 152 SLA 1957; am § 1 ch 55 SLA 1963; am § 25 ch 144 SLA 1977; am § 2 ch 77 SLA 1982; am § 1 ch 26 SLA 1987; am E.O. No. 98 § 3 (1997))

**Cross references.** For transitional provisions relating to the addition of subsections (b) and (c), see § 17, E.O. 98.

**Administrative Code.** - For operations, wheeled vehicles, see 17 AAC 25.

For buses, see 17 AAC 28.

For toll highways, see 17 AAC 35.

For Anton Anderson Memorial Tunnel, see 17 AAC 38.

**Effect of amendments.** The 1997 amendment, effective July 1, 1997, added subsections (b) and (c).

**Collateral references.** Validity, construction, and application of statute or other regulation affecting moving of buildings on highways. 83 ALR2d 464.

Liability for damage to highway or bridge caused by size or weight of motor vehicle or load. 53 ALR3d 1035.

For HB 510

**Sec. 28.05.011. Duty of commissioners to adopt regulations.**

(a) The commissioner of public safety shall, unless otherwise provided by statute, adopt regulations in compliance with AS 44.62 (Administrative Procedure Act) necessary to carry out the provisions of this title and other statutes whose administration is vested in the Department of Public Safety. The regulations must include, but are not limited to:

(1) rules of the road relating to the driving, stopping, standing, parking, and other conduct of vehicles, to pedestrians, and to official traffic control devices;

(2) minimum equipment for vehicles, including, but not limited to, minimum standards of compliance to be met by manufacturers and vehicle sales and repairs businesses;

(3) inspection of vehicles other than commercial motor vehicles, and the removal of vehicles from areas of public use when they are found to be in a defective or unsafe condition;

(4) abandonment of vehicles;

(5) management of records of the Department of Public Safety required for that department's administration of this title and its regulations adopted under this title, including provisions for ensuring the accuracy of information contained in automated and manual information retrieval systems;

(6) definitions of words and phrases used in this title and in regulations adopted under this title unless otherwise provided by statute;

(7) certification and regulation of junk yards;

(8) regulations necessary to implement requirements imposed by federal law or regulation that relate to commercial motor vehicles and that are needed to avoid loss or withholding of federal highway money, other than requirements relating to a commercial motor vehicle driver's licensing program or a commercial motor vehicle safety inspection program.

(b) The commissioner of administration shall, unless otherwise provided by statute, adopt regulations in compliance with AS 44.62 (Administrative Procedure Act) necessary to carry out the provisions of this title whose administration is vested in the Department of Administration. The regulations must include, but are not limited to:

(1) registration, titling, and transfer of vehicles;

(2) licensing of drivers of vehicles and procedures for obtaining limited license privileges;

(3) financial responsibility relating to vehicles other than commercial motor vehicles;

(4) management of records of the Department of Administration required for that

department's administration of this title and its regulations adopted under this title, including provisions for ensuring the accuracy of information contained in automated and manual information retrieval systems;

(5) definitions of words and phrases used in this title and in regulations adopted under this title unless otherwise provided by statute;

(6) registration of motor vehicle, trailer, and semi-trailer dealers;

(7) regulations necessary to implement a commercial motor vehicle driver's licensing program.

(§ 6 ch 178 SLA 1978; am § 3 ch 77 SLA 1982; am § 1 ch 119 SLA 1990; am § 1 ch 3 SLA 1992; am E.O. No. 98 § 5 (1997); am E.O. No. 99 §§ 24, 25 (1997))

**Revisor's notes.** Under § 18, E.O. 98, § 5 of E.O. 98 and §§ 24 and 25 of E.O. 99 were reconciled by deleting from subsection (a) duties concerning financial responsibility for commercial motor vehicles and a commercial motor vehicle safety inspection program and by, in paragraph (a)(3), inserting "other than commercial motor vehicles" after "inspection of vehicles."

**Cross references.** For provisions relating to commercial motor vehicles, see AS 19.10.060 and 19.10.300 - 19.10.399; for provisions relating to size, weight, and load limitations, see AS 19.10.060; for transitional provisions concerning the 1997 transfer of functions, see § 17, E.O. 98 and § 77, E.O. 99.

HJR

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Alaska State Legislature

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FAX (907) 465-4587

Toll free (800) 342-2199

## REPRESENTATIVE FRED DYSON

### HJR 12 Sponsor Statement

**"A Resolution proposing amendments to the Constitution relating to Hunting, trapping, and fishing.**

Updated: February 27, 2001

Contact: Representative Fred Dyson's office at (907) 465-2199

For the nearly 250 years of recorded history and for 8-11,000 years of known human habitation, Alaskans have hunted, fished, and trapped for their food, clothing, and material needs.

For Alaska's Native peoples, hunting, fishing, and trapping and gathering is a precious tie to a rich cultural heritage and to an intimate relationship with the land.

For Alaska's non-Native residents, hunting, fishing and trapping are major attractions and are among the primary reasons they came to Alaska. Non-native Alaskans often also rely on fish and game for sources of food and clothing. For many hunting, fishing, and trapping are long-held family traditions.

Hunting and fishing provide millions of pounds of food for Alaskans each year. This valuable renewable resource should not be under-rated. It is arguably healthier, depends almost solely on solar energy, does not require a large marketing and shipping overhead, reduces our dependency on the lower 48, and does not require tilled land, insecticides, and fertilizer. We are truly fortunate to be Alaskans.

Our State Constitution is a significant way for Alaskans to come to consensus and clearly state their collective values and priorities. The passage of this amendment will allow Alaskans to protect these valuable and historic activities for future generations.

This constitutional amendment is similar to one passed in North Dakota, Virginia, and Minnesota. The right of Alaskans to hunt, trap, and fish does not preclude all other uses of these natural resources.

- E-mail -  
Representative\_Fred\_Dyson  
@Legis.state.ak.us

- Internet -  
<http://www.akrepublicans.org>

# FISCAL NOTE

STATE OF ALASKA  
2001 LEGISLATIVE SESSION

Fiscal Note Numer: 1  
Bill Version: CSHJR 12(RES)  
(H) Publish Date: 3/12/01

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
Title: Constitutional Amendment relating to hunting, BRU: Elective Operations  
trapping, and fishing Component: Elections  
Sponsor: Representative Dyson  
Requester: House Resources Committee Component Number: 21

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

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
10u3 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Gail Fenumiai Phone 465-3935  
Division: Division of Elections Date/Time 3/7/01 11:00 AM  
Approved by: Lieutenant Governor Fran Ulmer Date 03/07/2001  
Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office



## ALASKA OUTDOOR COUNCIL

P.O. Box 2193

Palmer, Ak. 99645

(907) 745-3772

FAX 745-6944

March 7, 2000

Representative Fred Dyson  
Alaska State Capitol  
Juneau, AK 99801

Dear Representative Dyson:

The Alaska Outdoor Council (AOC) appreciates your efforts to sustain consumptive uses of wildlife as an important Alaskan heritage. Your legislation, HJR 12 HUNTING, TRAPPING AND FISHING, will provide Alaska's consumptive users a much needed level of protection.

We have ample historical evidence that consumptive uses have lost considerable ground over the past three decades here in Alaska. Actions like ANILCA, Sheep Mountain, Cooper Lake, Paint River, etc. have closed substantial areas to consumptive uses since statehood. Environmental groups continue to pressure the state for more closures and have effectively emasculated any attempts to manage wildlife for sustained yield. In fact very little has been done to reverse the dramatic declines in several ungulate populations over the past eight years. Declines that have resulted or will soon result in major new restrictions on consumptive uses.

It is clear for those of us who have been working to support wildlife conservation efforts over the past several decades that the environmental groups have every intention of stopping consumptive uses of wildlife. Although they consistently present themselves to be supportive of consumptive uses, their testimony before the Legislature and the Board of Game has always opposed increased opportunities, and has always supported increased restrictions. This is a matter of public record.

On behalf of our membership and the thousands of Alaskans who still cherish their natural relationship with the natural world and choose to participate in that world rather than just observe it, we would like to thank you for your courage and foresight in promoting legislation that will protect this important Alaskan heritage. Please feel free to contact us if we can be of any assistance in the passage of HJR 12.

Sincerely,

Carl Rosier  
President

## Environmental Sanity: -- Think Globally, Act Locally

A presentation by Dr. Samuel Harbo, Jr., Emeritus Professor of Wildlife Management & Biometrics University of Alaska, Fairbanks representing the Alaska Outdoor Council at the Wolf Summit Fairbanks, Alaska, January 16 - 18, 1993

At the core of many of our environmental problems is our profligate use of cheap energy, energy that allows us to utilize distant resources in far-flung economies. No longer is consumption constrained by the sustainable limits of local resources.

The distancing of consumption from the source seems to have made us myopic, diminishing our sense of stewardship. We seem unable to visualize the effects an action taken in one geographic area might have on the environmental health of more distant areas. The current controversy is a case in point. To fully assess the environmental impacts of the proposed management plans, one must look beyond the three Alaskan areas proposed for wolf management. I am going to do so, relating the finding to our Alaskan situation.

U.S. food production requires enormous amounts of energy, with nearly all from fossil fuels. As the slide shows, the food system uses nearly 17 percent of the total U.S. energy budget. Within the food system, food processing and distribution account for 40 percent of the energy use, reflecting the fact that no longer do we depend on local sources for our food. On average, a morsel of food travels 1300 miles from point of production to point of consumption.

Agriculture itself -- the on farm component -- is energy consumptive and energy dependent, with nearly all coming from fossil fuels. Most activities on the farm depend on energy consumptive machinery. As you can see from the slide, fertilizers and pesticides account for nearly one-third of the on farm energy use. We are using up nature's capital -- fossil fuels -- to produce and market agricultural products.

The relationship of energy used to production is mind boggling. For example, one gallon of gasoline is used per bushel of corn produced. On average, nearly 10 calories of energy are expended per calorie of food consumed. This dependence on fossil fuels to produce food cannot be sustained.

The dependence on nonrenewable energy has other serious consequences. Our farms have steadily increased in size to provide the capitalization needed for the large, expensive equipment now used in agribusiness. Individual fields have grown larger to accommodate the large, heavy equipment. In the process, we have lost the fencerows, marshes and small natural drainage systems that helped conserve soil and water and that provided wildlife habitat. Heavy equipment compacts soil and decreases soil friability. The most damaging consequence, however, has been the increase in land degradation.

The problem of land degradation is not restricted to the U.S. The amount of arable land surface suffering moderate or severe degradation in the late 1970's ranged from 27 per cent in South America to 52 per cent in Australia. And the situation has worsened.

Soil erosion in the U.S. is worse now than ever before. Current losses are 25 to 50 per cent greater than when the Soil Conservation Service was established in the 1930's. Currently, for every bushel of Iowa corn produced, 5 bushels of Iowa topsoil are lost. At current rates, by 2015 Iowa's topsoil will be no more. In Eastern Washington, 20 bushels of top soil are lost for every bushel of wheat harvested. Much of current agriculture is not sustainable; we are mining our soils.

Having larger farms and fewer farmers also causes social ramifications. No longer do we have cohesive rural communities with strong local economies based on local resources. The soybean futures on the Chicago Exchange in early September may be influenced less by the harvest prospects in the midwest than by the state of the seed bed preparation in Argentina. We have lost our sense of local economies, and with it our strong ties to the land and our sense of stewardship.

The connections between reliance on local resources, attitudes toward the environment, and energy conservation are being increasingly recognized in conservation and environmental thinking.

Cheap energy has also changed animal husbandry in the U.S. No longer do we have small operations using local resources with the objective of serving local needs. Rather, we have very large operations that cannot be supported only with local resources: operations that are designed to satisfy distant markets. The associated transportation, processing, storage and distribution are energy intensive.

An added environmental insult is that most of the large dairy and beef operations involve penned animals. No longer do we allow those plant eaters to be efficient solar energy converters. Rather we grow and harvest the hay and grains, using energy intensive and soil destroying methods, and then transport those feeds to the penned animals. And then comes the problem of concentrated animal wastes; a problem we attempt to solve using energy intensive methods.

Our reliance on energy intensive methodology is the root cause of many of our environmental problems. Air pollution, soil erosion, ozone problems and water pollution all relate to our demand for energy.

Some of our ground water pollution is directly related to agriculture, particularly our use of commercial fertilizers. My brother in the corn and soybean area of the midwest no longer drinks water directly from his 80-foot well, but distills the water first due to the dangerous levels of nitrates in solution.

What is the relevance of all this to our current topic? I will use a moose management example for Game Management Subunit 20A to show the relevance.

Subunit 20A lies immediately to the south of Fairbanks, and consists of between 16 and 17 thousand square kilometers of moose habitat. The moose population has varied greatly in size, with a high of about 23,000 animals in the early sixties and a current population of about 11,000 animals.

I will describe a plausible scenario showing the potential for Subunit 20A. A temporary reduction in wolf numbers would allow the moose population to increase. Naturally occurring wildfires and modest habitat manipulation consisting of small-scale prescription burning, could provide additional high quality habitat for moose habitat that could support a very productive moose population of 20,000 animals.

Let's suppose we decide to maintain a wolf population of 350 wolves in 20A. In a nearly pure moose-wolf system, a ratio of one wolf to 30 moose results in nearly stable moose numbers. Subunit 20A is not a pure system. Other predators of note are black and grizzly bears. However, 20A also has other large prey -- caribou and Dall sheep. For ease of presentation I am assuming that, so far as the effects on moose numbers are concerned, the additional predator species are offset by the additional prey species. A more sophisticated analytic approach indicates that this simplistic approach is warranted.

Using the 1 wolf to 30 moose ratio, the 350 wolves could be supported by 10,500 moose, leaving 9,500 moose to produce a surplus for take by humans. In a productive situation a harvest rate of 25 per cent is sustainable. Hence, the 9,500 moose could produce a harvestable surplus of 2,375 moose annually, more than 2,000 animals greater than the current average harvest of about 350 moose. Assuming an average of 500 pounds of meat per moose, the increased harvest is more than one million pounds greater than our current harvest. In addition, the wolf population would have increased by more than 20 per cent.

All of this could be done solely through predator management and modest habitat manipulation. Both are ecologically and environmentally safe.

Comparing the energy inputs of the 20A moose scenario with that of beef production in the Lower 48 is revealing. In the Managed Wildlife System, the integrity of the natural ecosystem and the efficiency of the system's solar energy converters -- the moose -- remain intact. The system runs almost entirely on solar energy, without significant inputs of fossil fuel energy, without tillage that leads to soil erosion, and without using fertilizers, herbicides, pesticides or growth hormones. In addition, most benefits accrue directly to the local residents, providing strong incentives to manage the system in a healthy, sustainable manner.

In contrast, the Managed Domestic Meat Production System is fossil fuels dependent. In most beef operations, energy intensive cropping and haying operations separate the primary producers from the primary consumers. The entire marketing effort, which includes processing, storage and distribution, also is energy intensive, since most

products from such systems are destined for distant markets. Without substantial inputs of fossil fuels, fertilizers, herbicides and pesticides, the Managed Domestic Meat Production System would collapse.

From an Alaskan conservationist's perspective, the choice of System is clear.

A closing comment about value systems is appropriate.

One of the most important and cherished attributes in our society is our cultural and value system diversity. I don't believe any single value system or viewpoint should be imposed on everyone, everywhere, at all times. It is doubly important that such not occur if elements of that value system fly in the face of environmental sanity, undermining the creed "think globally, act locally."

I also believe an ethical question is raised if individuals pursue a course of action that they know to be environmentally damaging.

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Kneeland Taylor

James J. Hanlon

April 9, 2001

Members House Judiciary Committee  
Alaska State Legislature  
Juneau, AK

Re: HJR 12

Dear Members:

I will be unable to attend the hearing on HJR 12 scheduled for Wednesday, April 11, 2001. I am an attorney and have a hearing in court at that time. Accordingly, I must provide in writing my views regarding HJR 12.

We have had wildlife issues on the ballot for the last three general elections. I have been involved in all three elections on the side of wildlife protection advocates. Despite our wins in three of four of the issues on the ballot, I think it would be a good idea to call a truce and have zero wildlife issues on the ballot in 2002. I say that because I believe it is time that Alaskans began working out compromises rather than battling again in another election dispute.

Putting HJR 12 on the ballot will mean another election battle. I cannot speak for anyone other than myself, but it appears to me that there will be at least one large block of voters and advocates opposing HJR 12. I speak of those Alaskans who support humane treatment of animals, in general.

HJR 12, if passed, will alter our constitution to enshrine trapping as a fundamental right. As a practical matter, this will enshrine the leghold trap and snare in our constitution. While the proposal does not say "leghold trap" or "snare", these are the

instruments by which a large part of trapping is accomplished, and thus the amendment by enshrining the "heritage" enshrines the methods by which the heritage has been practiced.

Many Alaskans would like to see less use of the leghold trap and snare, and would like to see trapping more closely regulated. For instance, I submitted a proposal to the Board of Game that would have (if passed) required trappers to return to their traps every four days in Southcentral Alaska. This is currently required in the Kenai National Wildlife Reserve, and causes no great difficulty, but nevertheless, the Board of Game rejected the proposal 7-0.

I think we need different rules for different parts of the State. In Anchorage and nearby areas, I would like to see sport trapping strictly limited, and wildlife viewing substituted. I believe it would be a better use of beavers, for instance, to have beaver ponds near roads such as the Hatcher Pass Road. There are thousands of visitors who would get better use of these beavers by watching them, than for one or two trappers to make a little money by trapping them. (Incidentally, the Board of Game in 1999 rejected by 7-0 a proposal to ban beaver trapping along the Hatcher Pass Road that was endorsed by the lodge owners and the Hatcher Pass Recreation Area Advisory Committee.)

Constitutional protection of the leghold trap and snare would make regulations similar to the proposals described above more difficult, and perhaps constitutionally impermissible. Perhaps you disagree with the proposals I described above, but it seems excessive to constitutionally limit regulations such as I have described. Instead, I urge you to allow future decision-makers to decide these and similar issues.

I also wish to point out that passage of HJR 12 may infringe on local government prerogatives. Voters in Anchorage, for instance, may wish to ban trapping entirely within the Municipality because of the problem of trapping dogs accompanying walkers, joggers, hikers, and skiers. A constitutional right to trap would provide ammunition for a successful court challenge by disgruntled trappers.

Furthermore, a constitutional right to trap (and hunt and fish) will adjust the focus of resource management away from the resource and toward the user. Currently, managers are directed to think first of the resource, and then to allocate to users. If HJR 12 passes, managers will need to consider resources and users on equal footing. This may not be good for our resources in the long run.

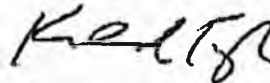
The equal footing of resources and users raises another issue: who will decide

when protection of the resource infringes on a user's right. The answer to that question is the court system. In other words, passage of HJR 12 will inevitably require that Alaska's courts play a greater role in decision-making. This will be a significant impact of passage.

In sum, my view is that HJR 12 should not receive legislative approval. If passed by the Legislature, another wildlife related election battle is certain. And if the voters pass HJR 12, I believe passage will unnecessarily restrict the choices of future decision-makers when presented with the need to enact responsible regulations regarding trapping, hunting and fishing. Thus, I urge you to vote no on HJR 12.

Thank you in advance for considering my comments. And please, believe me when I say I would really prefer to start talking about compromises.

Very truly yours,



Kneeland Taylor

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW  
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April 6, 2001

The Honorable Fred Dyson  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Re: HJR 12 – Proposing amendments to the  
Constitution of the State of Alaska relating to  
hunting, trapping and fishing

Dear Representative Dyson:

In testimony before the House Resources Committee last month, representatives of the Departments of Law and Fish and Game expressed concerns about HJR 12 – Proposing amendments to the Constitution of the State of Alaska relating to hunting, trapping, and fishing. Since that time, Wesley Keller of your staff has requested that the departments present their concerns in writing. This letter is in response to that request.

While we strongly support hunting, trapping, and fishing in Alaska, we do not agree that passing a new constitutional amendment such as that proposed in HJR 12 is the appropriate way to achieve protection of those activities. The Alaska Constitution was carefully written to protect our resources and ensure responsible, sustainable utilization and development of them. A well-established body of case law has been developed since statehood. If the amendment proposed in HJR 12 is adopted, that case law may be re-examined and reinterpreted by the courts.

Our main concern with the resolution is that introducing a new constitutional provision regarding fish and wildlife will cause significant uncertainty. Because courts believe that a change to the constitution is intended to have a distinct purpose and does not merely repeat existing provisions, they will struggle to interpret what, exactly, the amendment means and how existing management principles and practices are affected. Adoption of the amendment proposed by HJR 12 would, by its very existence, likely result in the reevaluation of past interpretations of existing constitutional provisions. We are particularly concerned that the amendment might give opponents of state fish and

wildlife management actions, from all quarters, an opportunity to challenge the state's management.

Constitutional amendments similar to that in HJR 12 have been proposed in several other states. In 1996, Paul Lenzini, legal counsel for the International Association of Fish and Wildlife Agencies, expressed concern regarding such "right to hunt" amendments in a March 26, 1996, letter to Roger Holmes of the Minnesota Department of Natural Resources:

... whether the subject constitutional provision were framed in terms of a right or a privilege, the mere presence in the constitution of a provision establishing safeguards for residents to engage in recreational hunting will inevitably shift decision-making authority from the legislature to the courts to elaborate the implications of the constitutional status bestowed on this particular use.

Lenzini continued with concerns about creating an independent conservation standard, about shifting the burden in litigation to the state, and about diminishing the legislature's power relative to the power of the judiciary:

And, the fact of constitutional recognition by itself will almost certainly open the way for argument that the right/privilege may not be restricted in the absence of a demonstration of conservation justification.

... Without the presumption of validity of agency action taken pursuant to authority delegated by the legislature, a vast drain on the time and resources of agencies, and of courts, would occur. And, of course, if the courts rendered unforeseen decisions with which the legislature were dissatisfied, legislative recourse would be limited.

The Alaska Constitution already provides for the two basic tenets of fish and wildlife management, which are conservation and allocation. Article VIII, section 4 requires that fish, wildlife, and other resources be "maintained on the sustained yield principle" and allows for fish and wildlife management that is "subject to preferences among beneficial use." That is, our constitution already allows for allocation as an integral and necessary part of state management.

The language in CS HJR 12 (Res) makes the preservation of hunting, fishing, and trapping subject to the "sustained yield principle," but does not refer to the other constitutional provisions regarding fish and game management, including the powers to allocate among uses and to limit entry into commercial fisheries. Among other

uncertainties, the courts could interpret these provisions in a way that would jeopardize the state's ability to allocate fish and wildlife among various uses. Or, it could interpret them as diminishing other provisions in Article VIII. For example, so long as sustained yield is maintained, a court could decide that a particular hunting, fishing, or trapping opportunity may not be diminished merely to allow for a different use of that resource. That would nullify the legislature's ability to statutorily provide for priority uses, such as it has done for subsistence in certain areas of the state and for other uses in non-subsistence areas.

The Alaska Supreme Court has consistently recognized a strong judicial deference to state decisions on management of fish and wildlife resources. The courts do not get involved in weighing policy considerations and reviewing alternative management measures, leaving those to the legislature, the Boards of Fish and Game, and resource managers. Right now, the state can defend a management decision by showing that it is needed for the conservation, development, and utilization of fish or game and by showing that the proper process was followed in adopting the decision. AS 16.05.251(a)(12); AS 16.05.255(a)(10).

Adoption of the constitutional amendment proposed in HJR 12 might compel the judicial branch to reduce its deference to the legislature and resource managers and to change its standard of review. At the very least, it would lead to an extended period of uncertainty.

The amendment proposed in HJR 12 might also bring into question the validity of some very basic precepts in our current laws. For example, a basic tenet of our fish and game management is spelled out in AS 16.05.920(a). That law states that no one may hunt or fish unless specifically permitted by statute or regulation. The proposed constitutional amendment could turn this upside down. It could be argued that unrestricted hunting, fishing, and trapping are allowed unless specifically curtailed by regulation, and then only for sustained yield purposes.

Many constraints that are integral to state management of fish and wildlife are not based solely on conservation purposes, but have the goals of making hunting, trapping, or fishing more widely available or contributing to public safety. These include restrictions on fishing gear, types of weapons, types and locations of traps, and vessel size. All might be subject to constitutional challenge if the provisions of HJR 12 were adopted.

Another area of fish and game management that would be susceptible to challenge is the limited entry program. Limited entry, by its very nature, restricts entry of individuals into commercial fisheries. In limiting a fishery, CFEC must determine that limitation is necessary to avoid economic distress among those most dependent upon the

fishery, as well as to conserve the resource. This economic, non-conservation purpose causes some individuals to be denied access, including many who have some history of participating in the fishery.

Fishermen have brought many legal challenges to limited entry decisions. Nearly 70 limited entry cases have been decided by the Alaska Supreme Court during the last 27 years. Case law has largely sorted out the constitutional issues relating to limited entry, including those involving the inherent tensions between sections of Article VIII. Because the amendment proposed in HJR 12 could be seen as disallowing non-conservation reasons for reducing fishing opportunities, their adoption could bring a whole new round of limited entry lawsuits. Until the Supreme Court resolved the meaning of the amendment, commercial fisheries could be subject to great uncertainty, disruption, and destabilization.

The amendment proposed by HJR 12 could also affect other governmental actions, ones that do not directly regulate fish and wildlife. For example, laws or regulations providing for resource development projects that affect fishing, hunting, and trapping opportunities might be subject to challenge. It is possible that a judge might interpret the new amendment as requiring limits on road building, hydropower projects, or timber, oil, gas, or mining development to ensure the preservation of hunting, trapping, or fishing opportunities. State park regulations or municipal ordinances banning shooting, hunting, trapping or fishing in populated areas would certainly be subject to challenge.

Other areas that might be affected by a constitutional amendment like that in HJR 12 are resident/nonresident distinctions and the prosecution of criminal defendants. Since the language of HJR 12 does not distinguish between residents and nonresidents, it might be used by nonresidents to argue that their decreased hunting, fishing, and trapping opportunities, relative to those of residents, are unconstitutional. In the criminal law context, the proposal in HJR 12 raises the question of whether, in every fish and game case, district attorneys would need to call on expert witnesses to show that the regulation thought to be violated is based on a conservation purpose.

There is a risk that courts could find that the constitutional protection provided by the amendment proposed in HJR 12 extended to private land as well as state land. Thus, it could raise questions about the ability of private property owners to prevent trespass. Also, there is a risk that disgruntled hunters, trappers, or fishers might sue for financial compensation whenever they believed that state or municipal action had unconstitutionally limited their access to hunting, trapping or fishing – compensation for the “taking” of that access.

As noted above, several states are considering or have adopted constitutional provisions regarding a "right to hunt." In 1998, the International Association of Wildlife Agencies' legal committee on the issue of "Right to Hunt Constitutional Amendments/Ballot Initiatives" issued a report that recommended against amendments such as those in HJR 12. This group, which represents states all across the country, concluded:

. . . creation of a constitutional right may create unanticipated consequences. As is the case with all other natural resources, the legal basis for the management of the wildlife resource and the regulation of its harvest lies in the fact that it is a common resource to be maintained for the benefit of the public. Its utilization by any individual is a privilege granted and regulated consistently with the collective public benefit. From the perspective of both the resource management agency as well as the hunter, making hunting a constitutional right may fundamentally alter and drastically interfere with wildlife management as currently practiced.

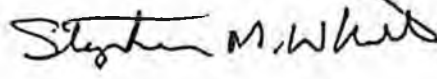
The complications and consequences of enacting such a constitutional amendment in Alaska may be even greater than in other states because our state has far greater numbers and types of user groups than others. Those groups include subsistence, sport, guided sport, personal use, and many separate and distinct commercial fisheries.

We urge a very cautious approach in this area. The Alaska Constitution vests the authority for management of fish and game in the Alaska Legislature, and the legislature has provided among the best hunting and fishing opportunities in the world. There is no legal reason why those opportunities cannot be preserved forever through the adoption of statutory rights and preferences. Adoption of the constitutional amendment proposed in HJR 12 would delegate additional, and as yet undetermined, authority to the courts and risk losing the opportunity to resolve some of these issues in the legislature.

Thank you for your consideration of our concerns.

Sincerely,  
PRUCE M. BOTELHO  
ATTORNEY GENERAL

By:

  
Stephen M. White  
Assistant Attorney General

cc: Co-sponsors, HJR 12

**HJR**

**15**



22-LS0568\C  
Cook  
1/31/02

*Adopted*

CS FOR HOUSE JOINT RESOLUTION NO. 15(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

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

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska requiring income of  
2 the permanent fund to be deposited into the permanent fund and limiting  
3 appropriations from the permanent fund to six percent of the year-end market values of  
4 the fund for the last five fiscal years.

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

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

7 Section 15. Alaska Permanent Fund. (a) At least twenty-five per cent of all  
8 mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing  
9 payments and bonuses received by the State shall be placed in a permanent fund, the  
10 principal of which shall be used only for those income-producing investments  
11 specifically designated by law as eligible for permanent fund investments. All income  
12 from the permanent fund shall be deposited in the permanent [GENERAL] fund  
13 [UNLESS OTHERWISE PROVIDED BY LAW].

14 (b) For any fiscal year, appropriations from the permanent fund shall be  
15 limited to six percent of the average of the year-end market values of the

1           permanent fund for the last five fiscal years, including the fiscal year just ended.

2           No other appropriations from the permanent fund may be made.

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



**Alaska Permanent Fund Corporation**

P.O. Box 25500 Juneau, AK 99802-5500

Telephone (907) 465-2047

Facsimile (907) 586-2057

**MEMORANDUM**

**DATE:** February 1, 2002

**TO:** Representative Norm Rokeberg  
Chair, House Judiciary Committee

**FROM:** Robert D. Storer   
Executive Director

**SUBJECT:** Presentation on HJR 15 for House Judiciary Committee

**What HJR 15 does.** HJR 15 is a proposed constitutional amendment to provide the Fund with complete and permanent protection against inflation by limiting the amount of annual appropriations of Fund income to no more than 5% of the total Fund's 5-year average market value. This provides full inflation-proofing because the Fund is expected to earn an approximate 8% long-term annual rate of return, and limiting the payout to 5% allows the Fund to retain the 3% necessary to offset the expected long-term annual rate of inflation.

**How it works.** The Fund's 5-year average market value equals approximately \$25 billion. Five percent of that is \$1.250 billion. That is how much can be appropriated from a fully inflation-proofed Fund each year on a sustainable basis for all public purposes including dividends. That amount will grow over time at the rate of inflation plus the amount of constitutionally or statutorily dedicated mineral revenues added to principal. If the current dividend formula is maintained, an additional \$175 - \$300 million would be available annually to help fill the fiscal gap.

**New money into the economy.** That \$175 - \$300 million of Fund income which would be made available annually under the 5% constitutional limit after the payment of dividends per existing statutes would actually represent new money into the economy. Unlike a broad-based tax, or a cut in government spending or a cap on Permanent Fund dividends - all of which would simply switch money from one economic sector to another, Permanent Fund income is new money imported into the state which, when distributed, adds to the overall health of all sectors of the economy.

**A paradox: HJR 15 limits spending of the state's largest future revenue source while simultaneously maximizing its long-term production.** Over the next 25 years, it is projected that the Fund will produce more than twice as much appropriable income under HJR 15 as will oil, which is projected to total less than \$20 billion over that period according to current forecasts. Paradoxically, by limiting the amount of Fund income which can be appropriated each year to 5% of the Fund's average 5-year market value, Alaskans would be assuring themselves of a sustainable future income stream twice as large as that of the state's second largest income source.

**The earnings reserve is an important cushion against investment volatility.** Eighteen months ago, on June 30, 2000, the Fund's earnings reserve totaled \$6.5 billion (after the 2000 dividend and inflation-proofing transfers.) As of December 31, 2001, it totaled \$3.7 billion. That \$2.8 billion drop in value reflects three events: payment of the 2001 dividend totaling \$1.1 billion; the transfer of approximately \$700 million to principal for 2001 inflation-proofing; and a \$1.0 billion decline in market value due to the Fund earning a -3.3 percent total return in 2001 and a -.02 percent return in the first six months of fiscal 2002.

It is projected that the earnings reserve will total \$3 billion as of June 30, 2002, after the payment of the 2002 dividends and inflation-proofing - and that assumes that the Fund earns an annualized 8.2% for the next six months. If, on the other hand, the financial markets produce the same kind of returns in the next 18 months as the past 18, the Fund would likely be unable to even pay full dividends and inflation-proofing, much less any money to help fill the fiscal gap.

The fact that the value of the earnings reserve account can shrink by as much as \$3.5 billion in just 24 months demonstrates the wisdom of former lawmakers and Boards of Trustees who created the earnings reserve to serve as a cushion to ensure a relatively smooth annual distribution of Fund income, for whatever public purposes.

**Volatility matters.** The preceding and following paragraphs make clear why the APFC thinks it is important to take volatility into consideration when analyzing the possible consequences of any proposed change to the Fund's investment or spending policy.

- Time greatly reduces - but does not eliminate - the volatility in annual returns. That is why from an **investment policy** perspective, asset allocation, diversification, disciplined rebalancing and long-term time horizon are all key elements of a successful investment program. In this regard, the important question to ask is, *"Does a particular proposal have a neutral, a positive or an adverse effect on the Board's investment strategy?"* HJR 15 has a positive effect.
- From a **spending policy** perspective, the best way to moderate the impact of volatility is averaging, and averaging market value is superior to averaging income. So, for example, in the case of the Alaska Permanent Fund, which - with its 53 percent target allocation to equities - has a one-in-four chance of a negative total Fund return in any given year, averaging returns over five years reduces the likelihood of a negative return to one-in-twenty. This moderation of the impact of volatility provides a valuable cushion to ensure stability of distributions. In this regard, the important question to ask is, *"Does a particular proposal enhance or diminish the Fund's ability to produce a sustainable and stable income stream (after inflation) to benefit current and future generations?"* HJR 15 represents an enhancement.

**Wide public support.** The public and many legislators have been receptive to the Board's proposal. To date, the proposal has garnered public support from:

- 1990 Commission on the Future of the Permanent Fund
- 1995 Long-Range Financial Planning Commission
- Governor Hammond
- Governor Knowles
- Commonwealth North
- Fiscal Policy Council
- State Chamber of Commerce
- Zonta Club of Anchorage
- Juneau Empire
- Anchorage Daily News
- Former State Senator Arliss Sturgulewski
- Scott Goldsmith, Director of the Institute for Social and Economic Research (ISER)

**An alternative way to deal with emergencies.** Some would argue that we should not tie the hands of future legislators by limiting the amount of Fund income which could be accessed in the event of some kind of public emergency. One alternative to compromising the Fund's 5% limit - which, if enacted, would assure protection of both the Fund's long-term purchasing power and a sustained, maximized income stream - would be to dedicate, in the case of an emergency, a portion of the Fund's annual income to the payment of debt service on tax-exempt bonds issued by the state. By taking such an action, if necessary, a future legislature could add significantly to the availability of state funds to deal with an emergency through the prudent use of leverage.

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HJR 15  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
Title Constitutional amendment relating BRU Elections  
inflation-proofing the permanent fund Component Elections  
Sponsor Rules  
Requester House Judiciary Component No. 21

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

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

Prepared by: Gail Fenumiai, Election Administrative Supervisor Phone 465-3935  
Division: Division of Elections Date/Time 1/31/02 3:22 PM  
Approved by: Lieutenant Governor Fran Ulmer Date 01/31/2002  
Agency: Office of the Lieutenant Governor

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HJR 15  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Constitutional Amendment BRU Permanent Fund Corporation  
for the Permanent Fund Component Permanent Fund Corporaiton  
 Sponsor House Rules Committee  
 Requester House Judiciary Committee Component No. 109

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

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

The proposed legislation would not increase the cost of operations for the Alaska Permanent Fund Corporation.

Prepared by: Robert D. Storer, Executive Director Phone 465-2047  
 Division Alaska Permanent Fund Corporation Date/Time 2/1/02 2:07 PM  
 Approved by: Larry Persily, Deputy Commissioner Date 02/01/2002  
 Agency Department of Revenue

# Bill History/Action Display



BILL: SJR 13

SHORT TITLE: CONST. AM: PERMANENT FUND

BILL VERSION:

SPONSOR(S): RLS BY REQUEST OF LEG BUDGET &amp; AUDIT

CURRENT STATUS: (S) STA

STATUS DATE: 02/14/01

THEN JUD, FIN

TITLE: Proposing amendments to the Constitution of the State of Alaska relating to inflation- proofing the permanent fund.

No Fiscal Notes Available

Jrn-Date	Jrn-Page	Action
02/14/01	<a href="#">0368</a>	(S) READ THE FIRST TIME - REFERRALS
02/14/01	<a href="#">0369</a>	(S) STA, JUD, FIN
02/14/01	<a href="#">0369</a>	(S) REFERRED TO STATE AFFAIRS

Similar Subject Match or Exact Subject MatchCONSTITUTIONAL AMENDMENTSPERMANENT FUNDPUBLIC FINANCEBill Root: 

BASIS HAS BEEN RE-PROGRAMMED THIS YEAR

TO REPORT PROBLEMS WITH BASIS INQUIRYLIVE KTOO STREAMS[Return to Basis Main Menu \(22 Legislature\)](#)[Return to Legislature Home Page](#)



**Alaska Permanent Fund Corporation**  
P.O. Box 25500 Juneau, Alaska 99802-5500  
(907) 465-2047

## MEMORANDUM

**DATE:** October 8, 2001

**TO:** Representative Norm Rokeberg, Chair  
House Judiciary Committee

**FROM:** Robert D. Storer, *JK fa RDS*  
Executive Director

**SUBJECT:** House Joint Resolution 15 - Permanent Fund  
Constitutional Inflation-Proofing Amendment

Thank you for providing a hearing on House Joint Resolution 15, "Proposing amendments to the Constitution of the State of Alaska relating to inflation-proofing the permanent fund."

Please find attached some materials prepared by the Alaska Permanent Fund Corporation (APFC) for you and the Committee members to review in advance of the October 19 meeting.

The Board is unanimous in its support for this proposal. The Trustees believe its benefits are compelling:

1. Provides constitutional protection against inflation for the total Permanent Fund, thereby more effectively safeguarding the Fund and increasing the amount protected.
2. Establishes a limit on annual distributions which helps ensure that the Fund will continue to grow in perpetuity in both nominal and real, inflation-adjusted dollars.

House Joint Resolution 15

October 8, 2001

Page 2

3. Maximizes the total amount of Fund income which can be paid out in the future, at least as compared to higher payout rates, and provides for intergenerational equity by striking a fine balance between short-term and long-term distributions.
4. Beginning in 2003, makes available \$175-\$300 million per year, depending on the Fund's market value, for purposes other than inflation-proofing and dividends. This amount will grow over time as the Fund grows.
5. Lets lawmakers know in advance, within a relatively narrow range, how much Fund income will be available for appropriation each year.

In short, the Trustees believe HJR 15 would be an improvement over existing law in terms of serving the best interests of the Fund and the people of Alaska in the years ahead. I look forward to testifying, along with Trustee Clark Gruening, on October 19.

Attachments

# HJR 15 -- Complete and protected inflation-proofing

**Alaska Permanent Fund Corporation**  
Clark S. Gruening, Member, Board of Trustees  
Robert D. Storer, Executive Director

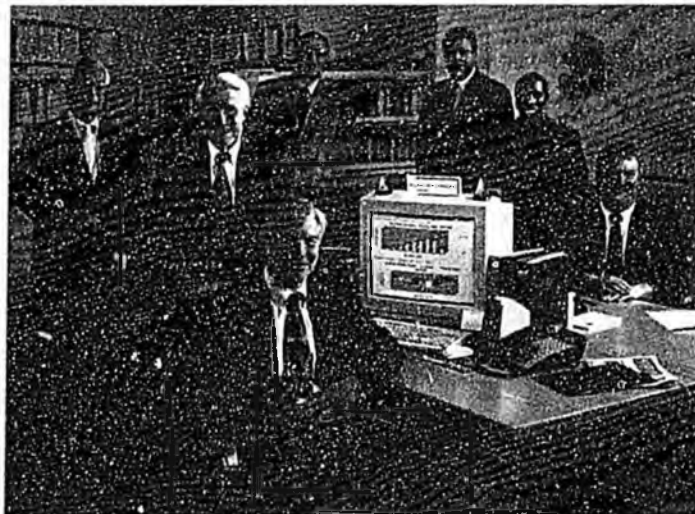
**House Judiciary Committee**  
October 19, 2001

[www.apfc.org](http://www.apfc.org)

Alaska Permanent Fund



Board of Trustees unanimously supports HJR 15



**Why is it important and  
why should Alaskans support it?**

Alaska Permanent Fund



## **Reasons to support the Trustees' proposal**

(SJR 13/HJR 15)

- 1. Preserves the Fund's purchasing power**
- 2. Limits spending to "real" Fund income**
- 3. Maximizes distributions over the long-term**

**Alaska voters get to decide**

Alaska Permanent Fund



## **Past performance is no guarantee of future performance**

- The Board's purpose in offering this proposal is to open discussion among all Alaskans that now, for the first time in 25 years, we believe it makes sense to consider a different constitutional approach to managing the Fund.
- The goals are the same: protect the Fund, grow it for the future and maximize income to benefit current and future generations, but...

Alaska Permanent Fund



## Past performance is no guarantee of future performance

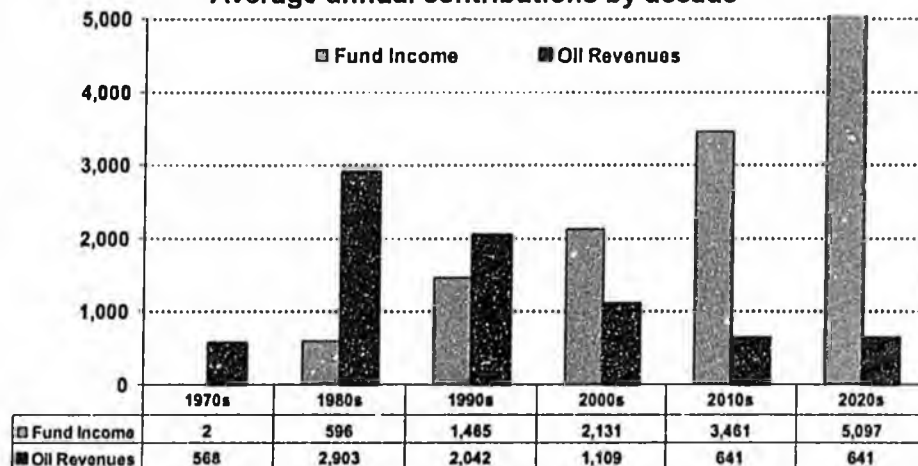
- The past bull market has masked many of the problems inherent in the existing statutes. POMV is a better way. It is how most funds are managed in today's modern world. It is simpler, offers greater inflation protection and enhances the permanence of the Permanent Fund...
- It is also the best way to assure that the Fund will be able to produce the most amount of money in the future for payment of dividends or other public purposes.

Alaska Permanent Fund



## A new look at Permanent Fund income vs. state oil revenues

Average annual contributions by decade



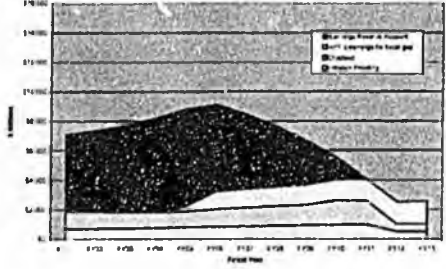
In millions of dollars per year.  
on average per decade

Alaska Permanent Fund

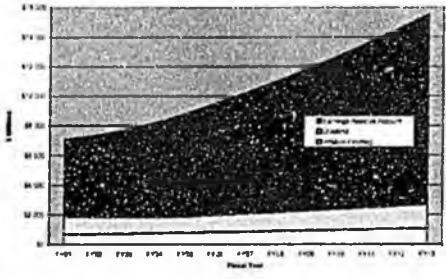


Scenario  
planning:  
three futures

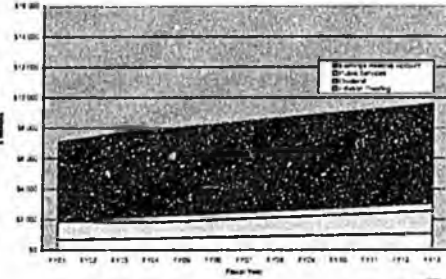
ERA funds fiscal gap



The status quo



HJR 15 - 5% POMV



Alaska Permanent Fund



**Trustees' proposed  
constitutional amendment  
for the General Election**  
November 5, 2002

Section 15. Alaska Permanent Fund. (a) At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the permanent [GENERAL] fund [UNLESS OTHERWISE PROVIDED BY LAW].

(b) For any fiscal year, appropriations from the permanent fund shall be limited to five percent of the average of the year-end market values of the permanent fund for the last five fiscal years, including the fiscal year just ended. No other appropriations from the permanent fund may be made.

Note: new language underlined in blue  
language to be removed [CAPS IN BRACKETS.]

Yes [  ] No [  ]

Alaska Permanent Fund

## How does the Trustees' proposal differ from the status quo?

- Inflation-proofing set in Constitution vs. statutes
- Inflation-proofs total Fund, not just the principal
- Constitutional amendment limits withdrawals from the Fund to no more than 5% of the five-year average market value vs.

the entire earnings reserve account being available for appropriation under existing law

Alaska Permanent Fund



### Concerns...

## Constitutional or statutory?

- Constitutional and statutory both allow legislators to allocate the payout as they deem fit each year
- Statutory less restrictive than constitutional
- Constitutional more permanent than statutory

Alaska Permanent Fund



Concerns...

## Why limit payout to 5%?

- 5% real rate of return is at the high end of what is achievable for the Permanent Fund
- 5% is the maximum sustainable payout rate that still maintains the Fund's real value
- 5% allows greater distributions over time than a higher payout
- 5% is what the majority of endowments pay out

Alaska Permanent Fund



Concerns...

## Would the 5% POMV work in good markets and bad?

- Since 1926, through the best and worst U.S. markets in history, inflation has averaged 3.3%
- During that same period, a fund invested 60% in stocks and 40% in bonds (like the APF) would have been able to pay out 5% of its average 5-year market value per year and still (barely) maintain its real value
- Result: POMV provides full protection against inflation and highest possible sustainable payouts year in and year out – and works better in bad times than existing statutes

Alaska Permanent Fund



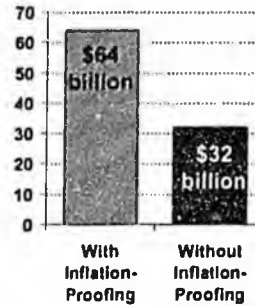
The Trustees' biggest concern is not that the markets won't come back, they will. Our biggest concern is the same it has always been: protecting the Fund against the ravages of inflation.

Inflation will cut the value of the Fund in half within the next twenty years...



2001

2021



Fund in 2021

Alaska Permanent Fund



## How inflation-proofing would work in the Trustees' proposal

8.25% Projected average annual return

- 3.25% Projected average annual inflation

5.00% Maximum sustainable payout from *total* Fund



*Remains* in Fund: **inflation-proofing**

Alaska Permanent Fund

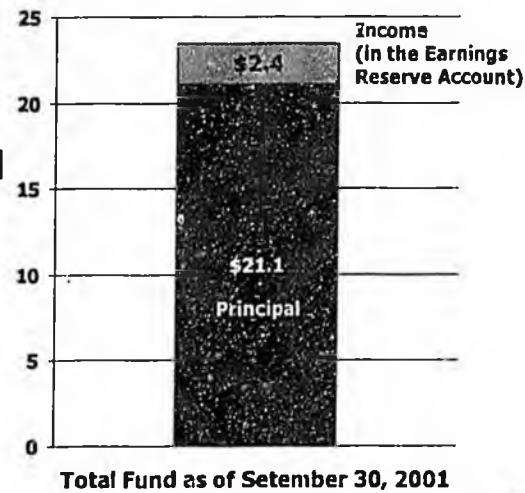


## Keeps the whole Fund permanent

"complete and protected inflation-proofing"

The market value of the Permanent Fund is \$23.5 billion

It consists of two parts: principal and income



Total Fund as of September 30, 2001

Alaska Permanent Fund



## Trustees' proposal has garnered significant public support

- 1990 Commission on the Future of the Permanent Fund
- 1995 Long-Range Financial Planning Commission
- Governor Jay Hammond
- Commonwealth North
- Fiscal Policy Council
- Juneau Empire editorial
- Anchorage Daily News editorial
- Former State Senator Arliss Sturgulewski



Alaska Permanent Fund



## Five myths about how the Permanent Fund works

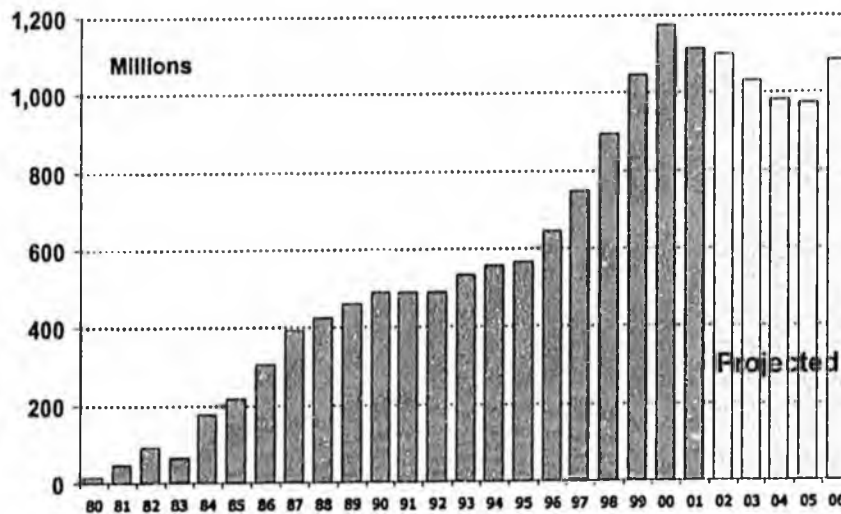
1. It is possible to be precise about how much total investment return the Fund will produce in the future
2. The distribution policy which has worked well for the last 20 years will work well for the next 20 years
3. Any change can be made to the current use of Fund income without affecting the PFD
4. The Permanent Fund is big enough to be all things for all people
5. Permanent Fund dividends always go up

Alaska Permanent Fund



## Income paid out for dividends

\$10.9 billion in last 20 years



Alaska Permanent Fund





## APFC ANALYSIS OF SJR 13/HJR 15

May 5, 2001

### The proposal

The Board of Trustees of the Alaska Permanent Fund Corporation (APFC) unanimously recommends that the legislature approve Senate Joint Resolution 13 or House Joint Resolution 15 which would place before the voters a constitutional amendment to permanently inflation-proof the Fund.

SJR 13/HJR 15 (hereinafter referred to as SJR 13) accomplishes inflation-proofing by limiting the annual payout of Fund income to no more than 5 percent of the Fund's five-year average market value. This methodology protects the purchasing power of the entire Fund and provides the maximum amount of sustainable income to benefit current and future generations.

### The benefits

1. Provides constitutional protection against inflation for the total Permanent Fund, thereby more effectively safeguarding the Fund and increasing the amount protected.
2. Maximizes the total amount of Fund income which can be paid out in the future, at least as compared to higher payout rates, and does so in a way that balances the Fund's benefits fairly between the current generation and future generations.
3. Increases the likelihood that both the Fund's principal and its income will continue to grow in perpetuity in both nominal and real, inflation-adjusted dollars.
4. Makes available, beginning in 2003, \$175-\$300 million per year, depending on the Fund's market value, for purposes other than inflation-proofing and dividends. This amount will grow over time as the Fund grows.
5. Uses the percent of market value (POMV) payout methodology which smoothes volatility, treats realized and unrealized income equally as investment return, and is consistent with generally accepted accounting principles and modern endowment practice.



### General Election November 5, 2002

**Section 15. Alaska Permanent Fund.** (a) At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the permanent [GENERAL] fund [UNLESS OTHERWISE PROVIDED BY LAW].

(b) For any fiscal year, appropriations from the permanent fund shall be limited to five percent of the average of the year-end market values of the permanent fund for the last five fiscal years, including the fiscal year just ended. No other appropriations from the permanent fund may be made.

Yes [  ] No [  ]



6. Lets lawmakers know in advance, within a relatively narrow range, how much Fund income will be available for appropriation each year.

### **The analysis**

**Principal and inflation-proofing.** Under SJR 13, both the Fund's principal and the earnings reserve account would be inflation-proofed by constitutional mandate. In addition, there would be two constitutional limits on Permanent Fund spending: (1) principal would continue to be unavailable for appropriation; and (2) appropriations from the earnings reserve account in the future would be limited to no more than 5 percent of the Fund's average market value for the past five years. This would provide full inflation-proofing averaged over long periods of time. Accordingly, statutory inflation-proofing transfers to principal would no longer be necessary.

**Earnings reserve.** All income not appropriated under the 5 percent payout limit would be retained in the earnings reserve account to offset inflation over the long term and to provide a cushion for future payouts in periods of extended down markets. In 2003, the Fund's five-year average market value is projected at \$28 billion, which would limit the maximum payout that year to no more than \$1.4 billion.

**5 percent payout.** The 5 percent limit is chosen for three reasons: (1) 5 percent is on the high end of sustainable payout rate that still maintains the Fund's real value; (2) 5 percent allows greater distributions over time than a higher payout; and (3) 5 percent is what the majority of endowments pay out; e.g., 85 percent of all public endowment funds pay out 5 percent or less, and the median payout of endowments, according to a 1999 Greenwich Associates study, is 4.9 percent.

**Five-year averaging.** Under SJR 13, the annual payout may not exceed 5 percent of the Fund's market value averaged over the prior five years, including the fiscal year just ended. This methodology is chosen to dampen volatility and is consistent with the existing statutory five-year averaging provision for computation of the annual dividend.

**20-year perspective.** Under SJR 13, *if the full 5 percent of the Fund's five-year average market value were paid out*, the Fund would earn \$57 billion of total investment return over the next 20 years, of which \$28 billion would be earmarked for dividends and \$20 billion to inflation-proofing, leaving \$9 billion in residual income available for appropriation. The ending market value of the Fund in 2020 would be \$51 billion.

**Dividends.** This proposal does not affect the existing dividend program. It should be noted, however, that any future public policy decision to use an additional portion of Fund income for any purpose will affect the dividend, as will market volatility, but under SJR 13, these impacts would either be equal or diminished compared to the status quo.

**Residual income available for appropriation.** Except in the case of extraordinarily good financial markets, the 5 percent limit set by SJR 13 is above what is required to pay dividends per current law, leaving a residual amount available for appropriation. If the entire 5 percent were paid out, the residual amount is expected to range from \$175-\$300 million per year in a median case, growing over time as the Fund grows. Because of the mechanics of the existing

statutory dividend formula, however, if the dividend in any year is extraordinarily high, the amount of the residual could be reduced to zero.

## Why limit the payout to 5%?

- 5% real rate of return is at the high end of what is achievable for the Permanent Fund
- 5% is the maximum sustainable payout rate that still maintains the Fund's real value
- 5% allows greater distributions over time than a higher payout
- 5% is what the majority of endowments pay out



## **Reasons to support SJR 13**

- 1. Preserves** the Fund's purchasing power
- 2. Maximizes** distributions over the long-term
- 3. Minimizes** fluctuations in annual payouts
- 4. Limits** spending to "real" Fund income



**Trustees Request Your Support  
for  
Constitutional Inflation-Proofing  
of the  
Alaska Permanent Fund**

**Clark Gruening, Chair, Board of Trustee  
Robert D. Storer, Executive Director  
Alaska Permanent Fund Corporation**

**Fairbanks Chamber of Commerce  
August 21, 2001**

[www.apfc.org](http://www.apfc.org)

Alaska Permanent Fund Corporation





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Alaskans Speak Out

## Alaska Permanent Fund

professionalism • performance • permanence

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### Top stories

July 24, 2001

#### Trustees support constitutional inflation-proofing

MAY 7 - The Board of Trustees of the Alaska Permanent Fund Corporation (APFC) unanimously recommends that the legislature approve Senate Joint Resolution 13 or House Joint Resolution 15 which would place before the voters a constitutional amendment to permanently inflation-proof the Fund.

[\(Related information\)](#)

#### Boardroom is named for Hugh Malone

MAY 4 - The Trustees of the Alaska Permanent Fund Corporation have officially named their Goldbelt Place office boardroom the "Hugh Malone Board Room" in honor of Hugh Malone. Malone, who passed away in March, is often called the "father of the Permanent Fund" for the vital role he played in creating the Fund and shepherding it through its early, formative years. Hugh Malone is on the cover of and featured in the APFC's third quarter report.

#### Daily unaudited position

as of July 20, 2001

U.S. Fixed Income	38%	\$9,941,700,000
Non-U.S. Fixed Income	2%	\$601,000,000
U.S. Equities	33%	\$8,561,700,000
Non-U.S. Equities	15%	\$3,876,600,000
Real Estate	11%	\$2,749,700,000
Alaska CDs	1%	\$149,100,000
<b>TOTAL</b>	<b>100%</b>	<b>\$25,879,800,000</b>

#### Quarterly report



With double-digit stock losses offset by positive bond and real estate returns, the Alaska Permanent Fund weathered one of the worst equity quarters in recent years, ending the period down less than 5 percent.

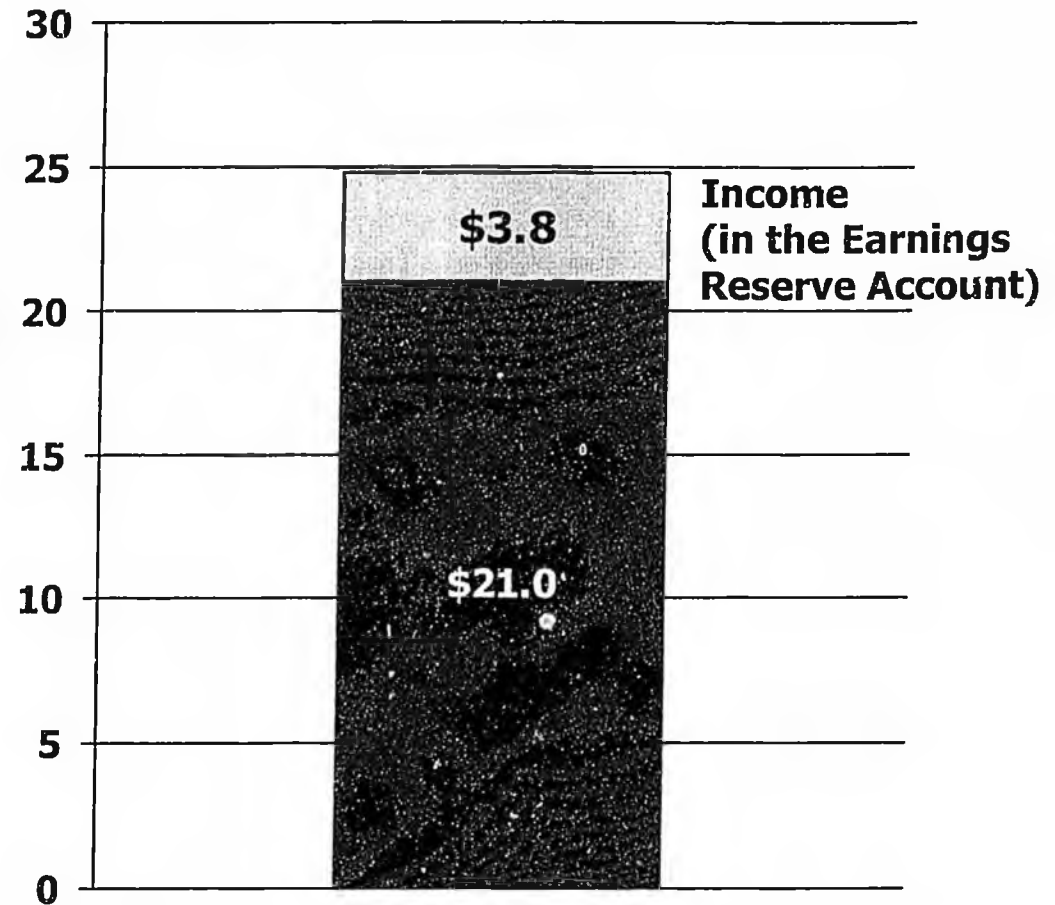
#### Chart of the day



# How is the Fund doing lately?

**The market value of the Permanent Fund is \$24.8 billion**

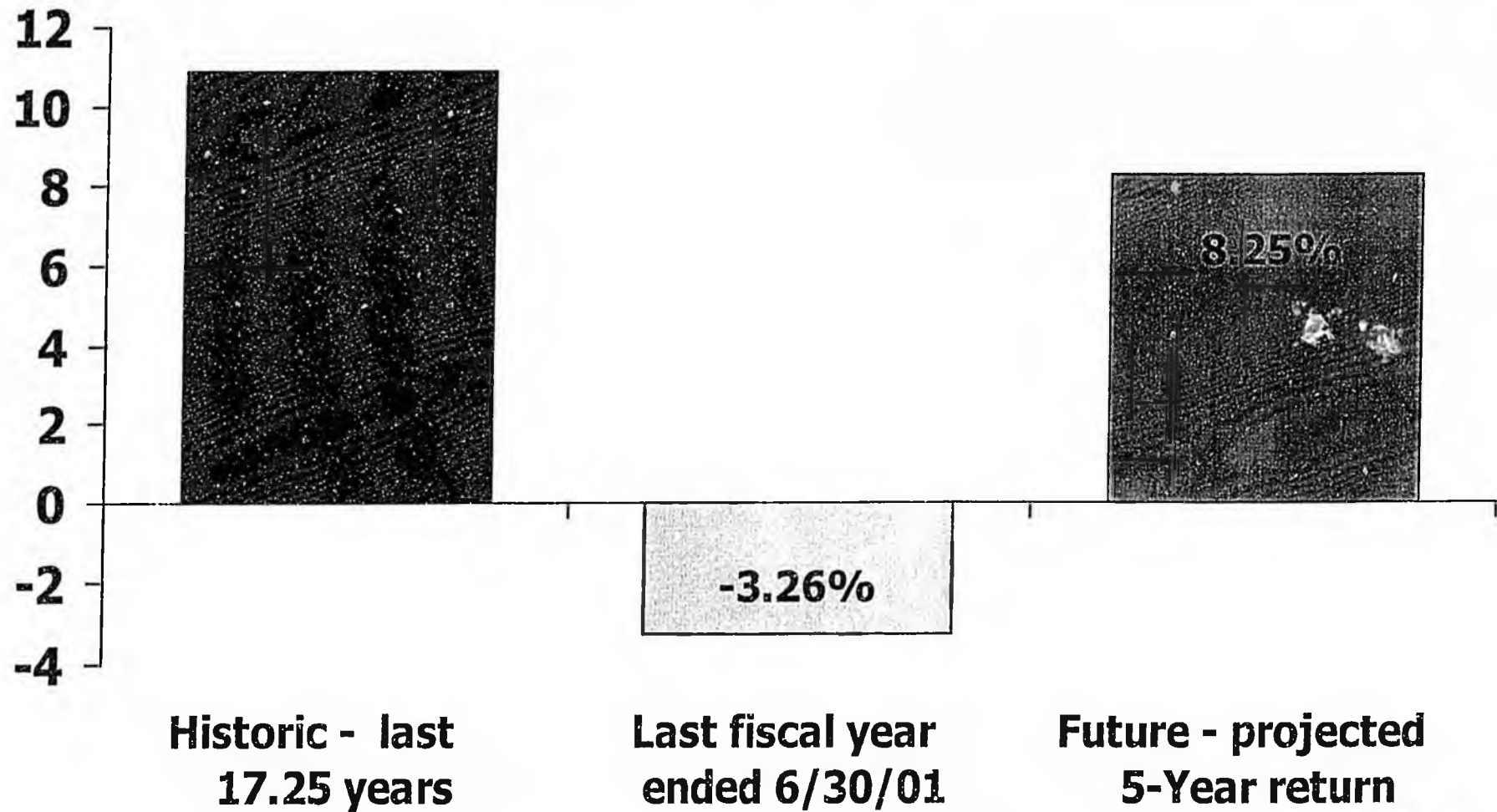
**It consists of two parts: principal and income**



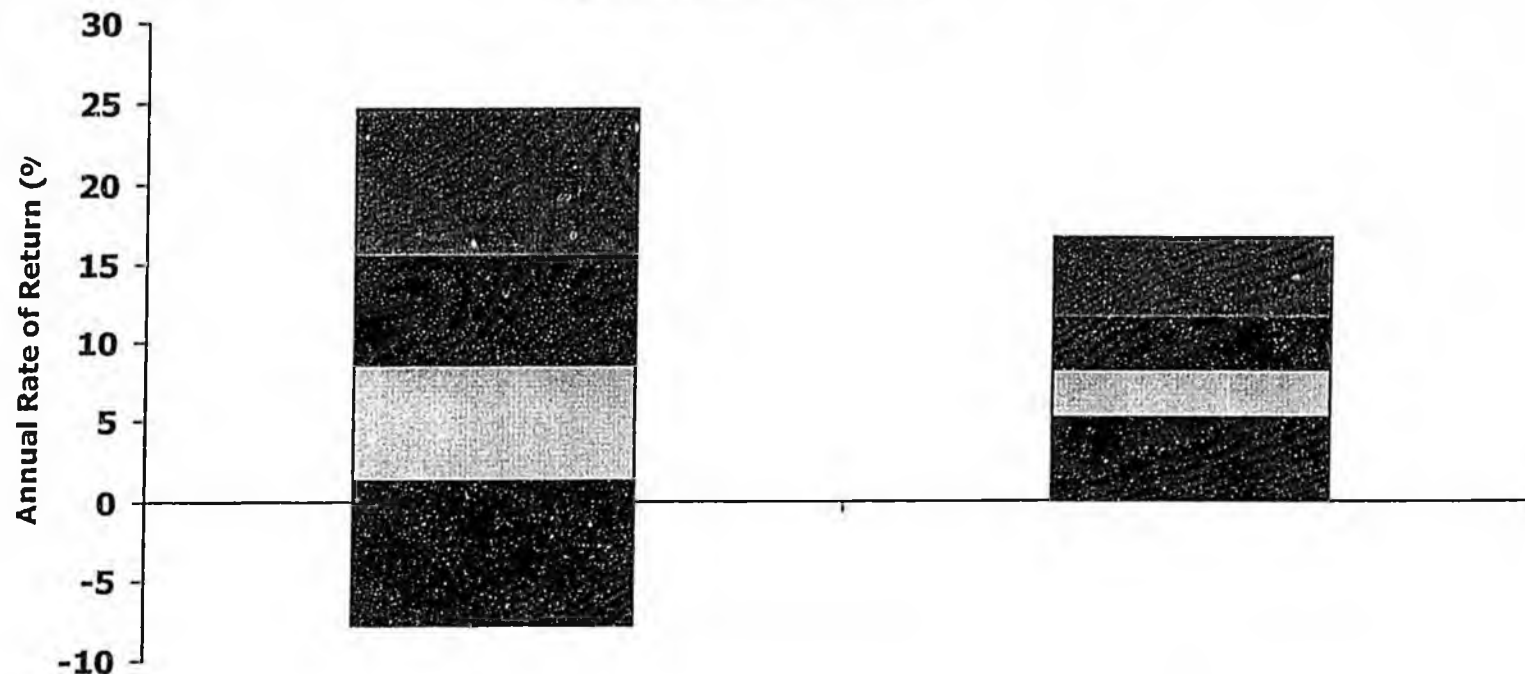
**Total Fund as of June 30, 2001**



# Permanent Fund's total return



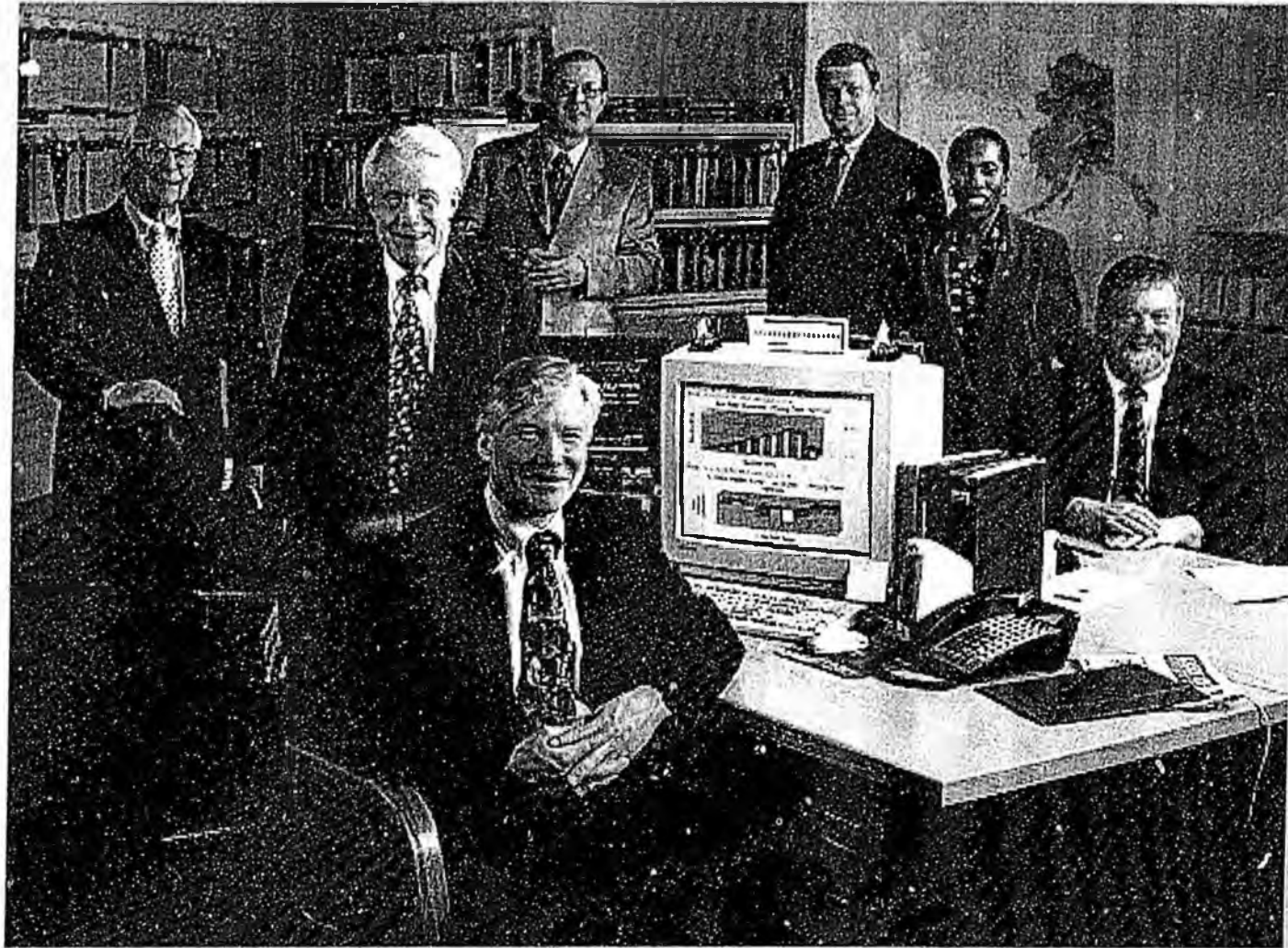
# Permanent Fund's projected range of returns



	1-Year Returns	5-Year Returns
5th	27.00	16.2
25th	15.50	11.4
50th	8.25	8.2
75th	1.30	5.1
95th	-7.80	0.7



# Permanent Fund Trustees support HJR 15/SJR 13



**Why should Alaskans support it?**





# General Election

November 5, 2002

**Section 15. Alaska Permanent Fund.** (a) At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the permanent [GENERAL] fund [UNLESS OTHERWISE PROVIDED BY LAW].

(b) For any fiscal year, appropriations from the permanent fund shall be limited to five percent of the average of the year-end market values of the permanent fund for the last five fiscal years, including the fiscal year just ended. No other appropriations from the permanent fund may be made.

*Note: new language underlined in blue,  
language to be removed [CAPS IN BRACKETS.]*

Yes [ v ] No [ ]



**"Inflation is like a thief in the night!"**



**Elmer Rasmuson**

**First Chair, APFC Board of Trustees**



**Inflation has eroded the purchasing power of \$1.00 in 1982 to 48 cents in 2001...**



**1982**

**2001**

# How inflation-proofing would work in the Trustees' proposal

**8.25%** Projected average annual return

- **3.25%** Projected average annual inflation

**5.00%** Maximum sustainable payout from *total* Fund

*Remains* in Fund: **inflation-proofing**



# Why limit payout to 5%?

- 5% real rate of return is at the **high end** of what is achievable for the Permanent Fund
- 5% is the **maximum sustainable** payout rate that still maintains the Fund's real value
- 5% allows **greater distributions** over time than a higher payout
- 5% is what the **majority** of endowments pay out



# How does the Trustees' proposal differ from the status quo?

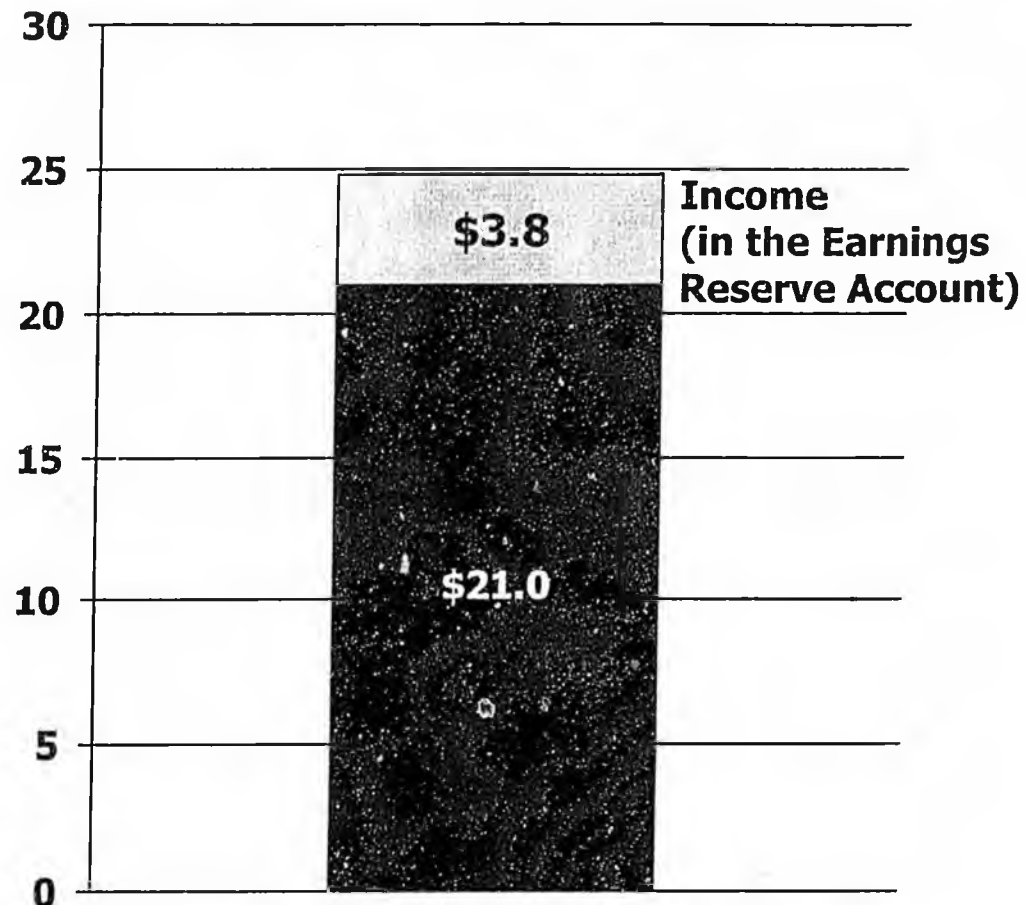
- Constitution vs. statutes
- Total Fund vs. principal only
- Limits withdrawals from the Fund vs. the entire Earnings Reserve Account being available for appropriation



# Keeps the whole Fund permanent "complete and protected inflation-proofing"

The market value of the Permanent Fund is \$24.8 billion

It consists of two parts: principal and income



Total Fund as of June 30, 2001



# **Reasons to support the Trustees' proposal (SJR 13/HJR 15)**

- **Preserves** the Fund's purchasing power
- **Limits** spending to "real" Fund income
- **Maximizes** distributions over the long-term

**Alaska voters will decide.**



## Learn about the constitutional amendment to inflation-proof the Fund

16-Feb-2001

### 11 QUESTIONS AND ANSWERS ABOUT THE CONSTITUTIONAL AMENDMENT (SJR 13/HJR 15) TO INFLATION-PROOF THE PERMANENT FUND

March 6, 2001

#### **#1. What is the purpose of the proposed constitutional amendment?**

The Board is supporting an amendment to the Alaska Constitution to provide constitutional – not just statutory – assurance that a portion of Fund income will always be retained each year to offset the effects of inflation. As Board Chair Clark Gruening points out, this proposal puts emphasis on the word 'permanent.' The amendment would accomplish this by providing that annual payouts from the Fund can be up to but no more than 5 percent of the five-year average market value of the Fund.

#### **#2. How does a payout of no more than 5 percent inflation-proof the Fund?**

The Board's best estimate is that, over the long term, the Fund will earn an inflation-adjusted, "real" rate of return of 5 percent. For example, the Board's current 5-year target asset allocation is designed to earn an average, annual rate of return of 8.25 percent with an expected inflation rate of 3.25 percent. This proposal sets the maximum payout at 5 percent – the difference between what the Fund earns and what it loses to inflation – to ensure that the Fund's growth will at least keep up with inflation.

#### **#3. Why is the Board taking this action now?**

After four years of study and analysis, the Board is convinced that a constitutional amendment is the best way to protect the Fund against the effects of inflation. By recommending SJR 13 now, almost two years before the 2002 general election, Alaskans will have plenty of time to become familiar (and, hopefully, comfortable) with this major public policy proposal. All Alaskans are encouraged to carefully study SJR 13, debate its merits and express their views. It is also fitting that this debate should take place during the time while Alaskans will be celebrating the 25th anniversary of the Alaska Permanent Fund's creation in 1976.

#### **#4. Does the legislature have to approve this?**

Yes. Before any constitutional amendment can be voted on by the people, it first has to win the support of a super majority, that is, two-thirds of the legislature.

#### **#5. Do the people get to vote on this issue?**

Yes. Once the legislature gives its two-thirds approval, the proposed constitutional amendment would be placed before the voters at the next general election, November 5, 2002. If a simple majority of the voters approve it, it will go into effect 90 days later.

#### **#6. Why 5 percent?**

The Board has been studying percent of market value (POMV) payout limits diligently since 1996 and has found that the majority of large foundations and endowments set payouts of no more than 5 percent of their funds' market value. The Board also reached two important and related conclusions. First, 5 percent is roughly the maximum that a fund can pay out and still maximize its long-term distributions; and second, 5 percent is the maximum sustainable payout rate, beyond which the real value of the Fund would begin to erode.

#### **#7. Why five-year averaging?**

Applying the 5 percent payout to the Fund's market value averaged over five years, rather than just the value at the most recent year-end, dampens volatility (that is, the ups and downs) of annual income available for distribution. Five-year averaging also corresponds with the existing statutory formula for dividends which is based on a five-year average of realized earnings.

#### **#8. How does SJR 13 differ from the status quo?**

The major difference is that this amendment provides constitutional inflation protection for the entire Fund whereas the status quo provides statutory inflation protection only for the principal. It also limits withdrawals from the Fund by the

legislature – currently all of the earnings reserve is available for appropriation. (Note: as of June 30, 2001, and after the payment of dividends and inflation-proofing, the Fund is projected to total \$25.7 billion – \$20.2 billion in principal and \$5.5 billion in earnings reserve.)

**#9. Does SJR 13 change the way principal is treated?**

No. Principal cannot be spent under existing constitutional and statutory law. It would continue to be unavailable for appropriation under SJR 13. In addition, a portion of the earnings reserve account would also become unavailable for appropriation: that amount in any given year which is in excess of that required under the 5 percent of average market value limit. So, for example, if the principal in the future were \$22 billion and the earnings reserve were \$10 billion, and the five-year average market value of the Fund were \$30 billion, only \$1.5 billion of the money in the earnings reserve account would be available for appropriation that year (5 percent x \$30 billion = \$1.5 billion.)

**#10. How does SJR 13 affect the dividend program?**

It doesn't. The Board has modeled this proposal and come to two fundamental conclusions: (1) the constitutional amendment will have no impact on the dividend program vis-à-vis the status quo; and (2) volatility in the financial markets may impact the dividend program, but the impact will be the same under either the status quo or SJR 13.

**#11. Is the Board sure that 5 percent is the right number?**

The Board's best estimate is that, over the long term, the Fund will earn an inflation-adjusted, "real" rate of return of 5 percent – which can be safely paid out without the Fund losing ground to inflation. There will be short-term periods when earnings are too low and inflation too high and the Fund will not be protected against inflation. However, over the long term, such periods should be offset by periods of strong asset growth.

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ALASKA STATE CHAMBER OF COMMERCE

Priority 2001 - 1

Long Range Fiscal Planning

The Alaska State Chamber of Commerce urges the Administration and Legislature to adopt and bring state spending in line with revenues, encourage and promote economic investment and business development, maintain the state's infrastructure and implement a deferred maintenance plan for all state-owned facilities, and further establish performance measures for state services in concert with results-based government.

The plan should implement a biennial state budget; privatize state services which could be competitively provided by the private sector; promote development of new businesses that could competitively provide goods or services currently provided by the state; and utilize a systematic funding mechanism, such as general obligation bonds, to meet the state's capital needs. The budget shall disclose all revenue and expense items.

ADOPTED

December 1, 2000

BY Pamela La Bolle  
Pamela La Bolle  
President

BY Rob Shoaf  
Rob Shoaf  
Chairman

**Subject: HJR15**

**Date:** Wed, 10 Oct 2001 15:04:42 -0900

**From:** Mary Griswold <mgrt@xyz.net>

**To:** "Rokeberg, Norman" <Representative\_Norman\_Rokeberg@legis.state.ak.us>

October 10, 2001

I enthusiastically support HJR 15/SJR 13.

The main reason I support this constitutional amendment is that it provides a better money management framework. POMV payout reduces the pressure to manage the permanent fund for return over value. Managing for value is generally considered a better fiscal approach. A 5% payout is generally recognized by large endowments as the highest sustainable payout, beyond which the real value of the fund would diminish over time.

A secondary benefit is that this methodology will provide a reasonable money stream for government if the legislature chooses to use it. Right now the money sitting in the earnings reserve account is available for legislative appropriation for purposes other than dividends, although the legislature has never spent it. There will be more pressure in the future for the legislature to use this money. HJR15 will limit the amount the legislature can use to a predictable and modest amount.

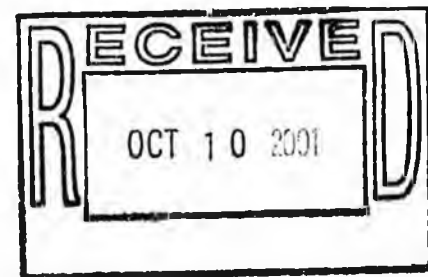
It is important to recognize that our dividends are as much as they are because the legislature made special appropriations from the earnings reserve account to the principal and because it did not spend the earnings available to it. Any use of permanent fund earnings for purposes other than dividends will decrease the value of our checks because whatever is spent will not be available to earn more money. However, our dividends could be cut by much more under the current payout system than under POMV.

5 POMV payout combined with allocating 80% for dividends and 20% for government would preserve the status quo dividend formula with the understanding that the 20% transfer from the fund will reduce the fund's future income producing potential.

I believe it is time to allocate some permanent fund earnings to government and see 5 POMV payout as the best way to do that. But more importantly, I see 5 POMV payout as a better money management tool which will keep the permanent fund permanent for future generations.

Thank you for your consideration.

Mary Griswold P.O. Box 1417 Homer, AK 99603



**Subject: RE: Another Permanent Fund story for your newsletter**

**Date:** Wed, 16 May 2001 16:47:26 -0800

**From:** jkelly@alaskapermfund.com

**To:** Representative\_Norman\_Rokeberg@Legis.state.ak.us

**CC:** Heather\_Nobrega@Legis.state.ak.us

Dear Rep. Rokeberg - The e-mail I sent you yesterday was cut off at the end. Here is the full article:

Trustees support Permanent Fund bill

The Permanent Fund Board of Trustees had legislation introduced this session to better protect Fund principal and maximize future Fund income. The legislation, SJR 13/HJR 15, does not change the dividend formula, but does provide constitutional inflation-proofing.

This amendment limits the amount of earnings that can be paid out in any given year to 5 percent of the Fund's market value, averaged over five years. Since the Trustees expect the Fund to earn, on average, approximately 8 percent, the 5 percent payout limit means over the long term, that 3 percent of Fund earnings will be permanently retained in the Fund. The Trustees say that under this proposal, the Fund - and its income -- will double in size over the next 20 years.

This amendment deserves your consideration. It requires legislative-, then voter-approval to take effect. I encourage you to learn more about it at the Fund's web site, [www.apfc.org](http://www.apfc.org).

> -----Original Message-----

> From: Kelly, Jim

> Sent: Tuesday, May 15, 2001 02:19 PM

> To: 'Representative\_Norman\_Rokeberg@Legis.state.ak.us'

> Cc: 'Heather\_Nobrega@legis.state.ak.us'

> Subject: Another Permanent Fund story for your newsletter

>

> Dear Rep. Rokeberg -

>

> This November, Alaska will celebrate the 25th anniversary of the historic  
> vote that created the Alaska Permanent Fund. The constitutional protection  
> of principal has served Alaska and the Fund well, but now the Board of  
> Trustees, as you know, believes we need to go further and better position  
> the Fund for the next 25 years.

>

> We believe SJR 13/HJR 15 does this by modifying the Fund's constitutional  
> structure to protect its purchasing power, maximize its sustainable income  
> to benefit current and future generations and minimize fluctuations in  
> annual payouts.

>

> We have developed a short article on this legislation (150 words -- see  
> below), which we hope you will consider including in your end-of-session  
> newsletter.

>

> Please let me know if you have any questions or need additional  
> information.

> Thank you,

>

> Jim Kelly

> Director of Communications

> Alaska Permanent Fund Corporation

> 801 W. 10th St.

> Suite 302

> Juneau, AK 99801

- > 907-465-2059
- > fax 907-586-2057
- > website: [www.apfc.org](http://www.apfc.org)
- >
- >
- >
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