

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10751 HOUSE HEALTH EDUCATION & SOCIAL SERVICES

**HB**

**306**

# **REPRESENTATIVE RALPH SAMUELS**

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HOUSE DISTRICT 29

## **Sponsor Statement for House Bill 306**

**“An Act relating to the use of pharmaceutical agents by optometrists.”**

House Bill 306 would allow optometrists to prescribe oral or injectible medications to treat a patient's eyes or for an allergic shock reaction. Currently Alaskan optometrists are limited to prescribing only topical medications, while optometrists in 40 states, the District of Columbia and Guam are able to prescribe systemic medications.

The course of study that optometrists undergo is comparable or exceeds that required of their peers in the health care professions who are already granted the ability to prescribe medications. Optometry programs include several semesters of pharmacology, in addition to studies in human anatomy, physiology and biochemistry. Optometrists, like dentists and podiatrists, attend four years of graduate school after receiving their undergraduate degree, while nurse practitioners and physician assistants only complete two years of graduate school. Yet of these professions, only optometrists are limited to prescribing topical agents.

Regulations are already in place to ensure that only qualified optometrists may prescribe systemic medications. Optometrists must pass an exam, such as the “Treatment and Management of Ocular Disease” from the National Board of Examiners in Optometry, and must show that they have completed the necessary continuing education in pharmacology each year in order to prescribe any medications authorized under statute.

Increasing optometrists' prescribing authority will be of benefit to Alaskan patients, preventing those who require oral or injectible prescriptions from having to visit a general practitioner in addition to their regular optometrist. This will save patients time and money, and allow optometrists greater participation in their patients' care.

Email: [Representative\\_Ralph\\_Samuels@legis.state.ak.us](mailto:Representative_Ralph_Samuels@legis.state.ak.us)

Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-2095 Fax: (907) 465-3810  
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0240 Fax: (907) 269-0242



## Statement for Optometric Practice Under this Legislation

As optometric physicians, our intent for expanding our statutes to include oral pharmaceuticals is to provide better and more complete eye care to Alaskans.

Currently, we are limited in the treatment of eye diseases we see on a routine basis. Diseases such as acute allergic reactions, ocular Herpes and ocular Herpes Zoster, chronic lid diseases, and infectious conjunctivitis and lid diseases, would benefit from the help of oral medications.

**98 optometric physicians in 17 different locations** currently serve the Alaskan population spanning from Barrow to Juneau. This is compared to **27 ophthalmologist in 6 different locations** ranging from Fairbanks to Juneau.

Optometric physicians are often the only eye care physicians available in rural areas throughout Alaska. **Our specialty is in primary and preventative eye care. We are educated and trained in the use of oral therapeutics.** This legislation is not adding to the profession but enabling optometric physicians to practice at the level they are trained and needed.

# Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

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02/02/2004

Honorable Peggy Wilson  
State of Alaska  
House of Representatives  
Chair, House Health Education and Social Services Committee  
State Capitol, Room 104  
Juneau, AK 99801

Transmitted by Fax:  
907-465-3175

Re: HB 306 – Use of Pharmaceutical Agents by Optometrists

Dear Representative Wilson:


The Alaska State Medical Association (ASMA) represents physicians statewide and is primarily concerned with the health of all Alaskans.

ASMA opposes the expansion of the types of drugs allowed to be prescribed by optometrists. Optometrists simply lack the education and training to appropriately prescribe those drugs that would be allowed under HB 306. Drugs used in the treatments of the eye can have serious impacts on other body systems. Sufficient numbers of physicians exist to whom referrals can and should be made by optometrists for treatment that goes beyond drugs topically applied to the eye.

Keep in mind this would allow the prescription of all drugs with the exception of controlled substances (schedule IA) such as opium or heroin based drugs.

ASMA opposes HB 306. It is just not good medicine and patient care.

Sincerely,



By: Alex Malter, MD  
President  
For: Alaska State Medical Association

Cc: Members, House Health Education and Social Services Committee

**Subject: Non Constituent POMS Re:HB 306**

**Date:** Fri, 30 Jan 2004 15:47:57 -0900

**From:** <POMS@legis.state.ak.us>

**To:** <Rep.Peggy.Wilson@legis.state.ak.us>

**CC:** <Jean\_Ellis@legis.state.ak.us>

Gwendolyn A Norton  
Po Box 141796  
Po Box 141796  
Anchorage AK, 99514-1796

Email:

Non Constituent

BILL#: HB 306 OPTOMETRISTS' USE OF PHARMACEUTICALS

SUBJECT:

MESSAGE: Please consider voting to stop HB 306. Optometrists are not medical doctors.

DISTRIBUTION: Rep. Cissna, Rep. Coghill, Rep. Gatto, Rep. Kapsner, Rep. Seaton, <BR>Rep. Wilson, Rep. Wolf

**Subject: Non Constituent POMS Re:HB 306**

**Date: Mon, 2 Feb 2004 10:06:39 -0900**

**From: <POMS@legis.state.ak.us>**

**To: <Rep.Peggy.Wilson@legis.state.ak.us>**

**CC: <Jean\_Ellis@legis.state.ak.us>**

Harry D Urich  
3705 Arctic Blvd # 2683  
3705 Arctic Blvd # 2683  
Anchorage AK, 99503-5774

Email:

Non Constituent

BILL#: HB 306 OPTOMETRISTS' USE OF PHARMACEUTICALS

SUBJECT:

MESSAGE: I oppose HB 306.

DISTRIBUTION: Rep. Cissna, Rep. Coghill, Rep. Gatto, Rep. Kapsner, Rep.  
Seaton,<BR>Rep. Wilson, Rep. Wolf

**Subject:** [Fwd: HB 306: The Optometry Oral Pharmaceuticals Bill]

**Date:** Mon, 02 Feb 2004 08:06:13 -0900

**From:** Peggy Wilson <Representative\_Peggy\_Wilson@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Linda Miller <Linda\_Miller@legis.state.ak.us>

---

**Subject:** HB 306: The Optometry Oral Pharmaceuticals Bill

**Date:** Sat, 31 Jan 2004 09:59:44 -0900

**From:** jcfjr@alaskaeyecare.com

**To:** Representative\_Peggy\_Wilson@legis.state.ak.us

Dear Peggy,

It was nice meeting you in Anchorage a few weeks ago. I'm sorry we didn't get to see you again at our office.

I want to reiterate how important I feel this bill is to the quality of eye care in this state. About 40 states have similar bills passed already, and as a rural state we need it much more than most! Our patients deserve the best care available, and it also makes it difficult to attract good doctors here if we can't practice full scope optometry.

Feel free to contact me if you have any questions.  
272-2557 in Anchorage.

Thanks,

Jim Falconer, Jr.

**Subject:** [Fwd: HB 306 & SB 197]

**Date:** Mon, 02 Feb 2004 08:07:19 -0900

**From:** Peggy Wilson <Representative\_Peggy\_Wilson@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Linda Miller <Linda\_Miller@legis.state.ak.us>

---

**Subject:** HB 306 & SB 197

**Date:** Sat, 31 Jan 2004 12:38:57 -0900

**From:** Stacie Martin Graham <ancheve@gci.net>

**To:** Representative\_Peggy\_Wilson@legis.state.ak.us, Representative\_Carl\_Gatto@legis.state.ak.us,  
Representative\_John\_Coghill@legis.state.ak.us, Representative\_Paul\_Seaton@legis.state.ak.us,  
Representative\_Kelly\_Wolf@legis.state.ak.us,  
Representative\_Sharon\_Cissna@legis.state.ak.us,  
Representative\_Mary\_Kapsner@legis.state.ak.us

Dear Representative,

As a lifetime Alaskan and an Optometric Physician for over 30 years, I have witnessed optometry continually making strides to improve our patient's eyecare, diagnosis and treatment of disease.

House Bill 306 and SB 197 are necessary steps for Alaskan Optometric Physicians so that we can continue to provide the highest level of care for all of our patients. With this in mind, I respectfully ask for your support and timely passage of HB306.

If you have any questions concerning this legislation, please contact me at (907)563-1918 or at <tbmclaughlin@yahoo.com>.

Thank you for your support.

Timothy McLaughlin, O.D.



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January 30, 2004

Members of the HESS Committee  
 The Capital  
 Juneau, AK 99801

JAN 30 2004

House Bill 306  
 Optometry - Systemic Medications Authority

Dear Representatives: Peggy Wilson  
 Carl Gatto  
 John Coghill  
 Paul Seaton  
 Kelly Wolf  
 Sharon Cissna  
 Mary Kapsher

As you well know, the continuing battle between the Optometrists and the Ophthalmologists has  
 raged for at least 25 years.

From my stationary you can see that I'm practicing with six Ophthalmologists and as a matter of fact  
 I have been here the longest since Dr. Ken Richardson invited me to join the practice in 1976.

I'm also serving as the Chairman of the Alaska State Board of Examiners in Optometry and have  
 been on the Board the last eight years.

From my experience, both locally and nationally, the issue of permitting Optometrists to prescribe  
 Systemic Medications has been a conflicting issue between M.D.s and the O.D.s for a long time and the  
 results are that most states (37) allow Optometrists to prescribe such medication.

Without going into pharmacological discussion, I would like to point out that in all the states that  
 allow Systemic drugs, no problems have been reported. This is just an emotional and economical fight  
 where each professional is trying to keep the others out.

Almost weekly we read about a Medical Board action reprimanding M.D., D.O., and Podiatrists as a  
 result of drug abuse or other problems. I'm sure that in the future, there will be occasions that an  
 Optometrist could "stray" and will have to be dealt with, but as the Chair of the Optometry Board I can  
 promise you that the Board will take serious actions against the offender.

It is time to leave emotions behind and let the Optometrists practice to the fullest of their capabilities  
 and allow Systemic drug prescription authority.

My hope is that Alaska can join the 37 states and improve the quality of Optometric practice without  
 risking citizen's health.

I hope for a YES vote on HB 306. Thank you for your consideration.

Sincerely,

A. Sternburg FAAO  
 Chair, Alaska Board of Examiners in Optometry

EDWARD E. CROUCH, M.D., F.A.C.S.  
 CATARACT SURGERY  
 GENERAL OPHTHALMOLOGY

ROBERT W. ARICLD, M.D.  
 PEDIATRIC OPHTHALMOLOGY  
 PEDIATRIC / ADULT STRABISMUS

AHARON STERNBERG, O.D., F.A.A.O.  
 CONTACT LENSES  
 VISION EXAMINATIONS

CARL E. ROSEN, M.D.  
 OCULOPLASTICS / ORBITAL SURGERY  
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 GLAUCOMA / CATARACT SURGERY  
 DIABETES / GENERAL OPHTHALMOLOGY



VIA FACSIMILE	Total Pages 2
Fax Number:	907.465.3175

January 29, 2004

The Honorable Peggy Wilson  
Chair, Health, Education, and Social Services Committee  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Dear Chair Wilson,

I am writing to ask you to oppose HB 306. If this bill were enacted, optometrists in this state would have one of the most expansive scopes of practice in the country. Simply put, although optometrists are an important component of the eyecare team, they do not have sufficient education, training, or experience to use systemic drugs.

One cannot treat serious eye disease separate from understanding the whole body. Medical schools uniquely provide this knowledge base. Here are just a few examples of the many side-effects that systemic drugs can cause:

- Extended use of steroids can lead to permanent bone damage that could require joint replacement, induce cataracts that require removal, induce glaucoma and affect other parts of the body.
- The over prescribing of antibiotics has already contributed to the significant problem of resistant micro-organisms, resulting in infectious diseases that are more difficult to treat. Antibiotics can interfere with other medications such as blood thinners resulting in potentially lethal consequences.
- Controlled substances can be subject to abuse. Narcotics are only rarely needed for routine eyecare and are primarily used following eye surgery.

Moreover, since seniors often have serious eye medical conditions as well as chronic illnesses and less tolerance to drug side effects, careful evaluation and close coordination by an Eye M.D. with other medical treatment is essential.

Four years of optometry school do not equate to the eight years of ophthalmology training and education. Not only do optometrists not possess a medical degree, they are not required to complete clinical rounds, internships and residencies that focus on management of patients with serious eye disease and systemic illness. Let me contrast this with the typical training and experience of an ophthalmologist. Ophthalmologists must complete four years of medical school. Afterwards, the medical school graduate must also complete an intensive one-year hospital residency, consolidating and honing knowledge and skills in the art of medicine. Only then does the physician begin a three-year ophthalmology residency in order to concentrate on the treatment of eye disease. As a result of this training, ophthalmologists graduate confident prescribing systemic drugs to

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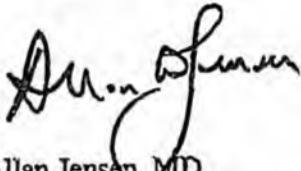
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patients who seek their help. Just as importantly, because of this education and training, their patients trust them to prescribe drugs safely and appropriately.

Limiting optometrists to the tasks for which they are competent is in the best interest of patients. Therefore, I ask you to oppose HB 306.

Sincerely,



Allan Jensen, MD  
President



Cynthia Bradford, MD  
Secretary for State Affairs

/ks



**Alaska Optometric Association**

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 Web page: [www.akoa.org](http://www.akoa.org)

JAN 27 2004

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*Deputy Director*

January 27, 2004

As most of you know our bill to increase optometric scope of practice to include systemic drugs was introduced last year in both the Senate (SB 197) and the House (HB 306). Representative Ralph Samuels who is the sponsor of HB 306 has been able to get a hearing in the House of Representatives Health, Education and Social Services committee (HES) for Feb 3rd. Dr. Michael Bennett and Dr. Sheryl Lentfer will be meeting with legislators on Feb 2nd and 3rd to encourage support for the bill. They **cannot** do it alone!! **PLEASE** take a moment to call, e-mail or fax the legislative members of the HES committee and ask for their support of HB 306:

- Peggy Wilson [Representative Peggy Wilson@legis.state.ak.us](mailto:Representative_Peggy_Wilson@legis.state.ak.us)  
Phone: 800-686-3824 Fax: 907-465-3175
- Carl Gatto [Representative Carl Gatto@legis.state.ak.us](mailto:Representative_Carl_Gatto@legis.state.ak.us)  
Phone: 800-565-3743 Fax: 907-465-2381
- John Coghill [Representative John Coghill@legis.state.ak.us](mailto:Representative_John_Coghill@legis.state.ak.us)  
Phone: 877-465-3719 Fax: 907-465-3258
- Paul Seaton [Representative Paul Seaton@legis.state.ak.us](mailto:Representative_Paul_Seaton@legis.state.ak.us)  
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- Sharon Cissna [Representative Sharon Cissna@legis.state.ak.us](mailto:Representative_Sharon_Cissna@legis.state.ak.us)  
Phone: 800-922-3875 Fax: 907-465-4588
- Mary Kapsner [Representative Mary Kapsner@legis.state.ak.us](mailto:Representative_Mary_Kapsner@legis.state.ak.us)  
Phone: 800-323-4942 Fax: 907-465-4589

**Thank you for your continued support!!**

JAN 23 2004

Oliver M. Korshin, M. D.  
Diseases and Surgery of the Eye

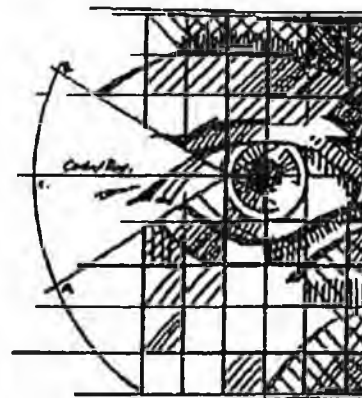
ALASKA MEDICAL PLAZA  
1200 AIRPORT HEIGHTS DRIVE, SUITE 310  
ANCHORAGE, ALASKA 99508  
(907) 276-8838  
FAX (907) 258-0735

January 23, 2004

House Health, Education & Social Services Committee  
Juneau, Alaska 99801

Dear Representative

*Chairman Peggy Wilson*



Like the proverbial bad penny, the optometric scope of practice expansion bill keeps returning to Juneau. All that changes each session is the bill's number, while its content remains unchanged. This session's effort, HB 306, seeks, as did its predecessors, to grant optometrists authority to prescribe essentially any and all drugs — including powerful systemic agents — and to inject medications into the eye.

Also unchanged is the education and training of optometrists in the United States, which leaves them as unqualified as ever to prescribe oral drugs and controlled substances, to perform injection procedures in and around the human eye, and to recognize (much less treat) the potential adverse reactions of these powerful pharmacologic agents, nor their effects on co-existing systemic illness.

Optometrists have essentially no clinical training or experience with systemic disease, and only limited experience even with serious or acute eye disease. As for their training in pharmacology, no amount of "book learning" can substitute for the rigorous clinical training all medical doctors undergo, training which includes the assumption of life-and-death responsibility on a daily basis.

When the optometrists testify for HB 306, you will no doubt hear that their training curricula in pharmacology are "equivalent" to those of U.S. medical schools in terms of classroom hours. But citing classroom hours in pharmacology as the basis for being qualified to prescribe and administer potent systemic medications is like the FAA's granting pilots' licenses on the basis of ground school alone — without flight training.

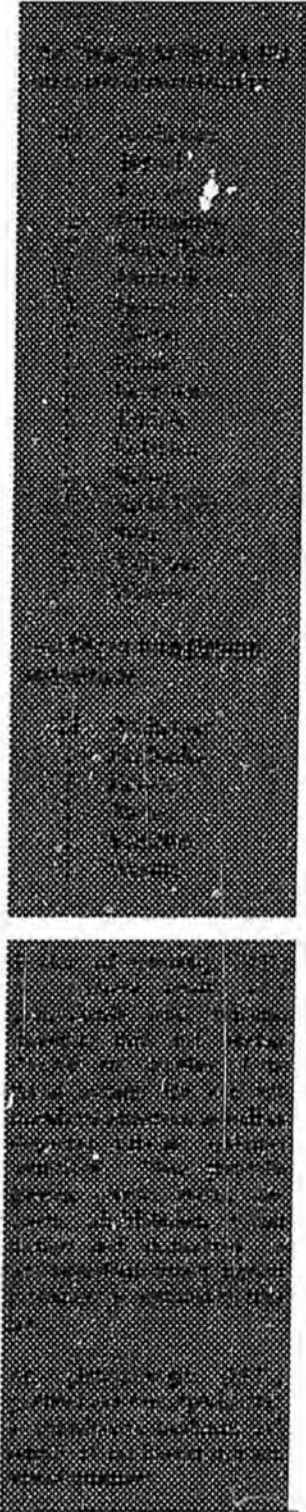
Passing HB 306 into law will pose a direct threat to the safety of Alaskans. I urge you to vote against it.

Sincerely,

*Oliver Korshin MD*

Oliver Korshin, M. D.

cc: Alaska Legislature



Eve Opener:  
 Optometrists provide more than 70% of the  
 primary eye care services in the U.S.

RECEIVED  
 JAN 23 AM.

**Who are Doctors of Optometry?**

Doctors of Optometry are independent primary health care providers who examine, diagnose, treat, and manage diseases and disorders of the visual system, the eye, and associated structures as well as diagnose related systemic conditions.

Optometrists provide more than 2/3 of the primary eye care services in the U.S. They are more widely distributed geographically than other eye care providers and are readily accessible for the delivery of eye and vision care services.

There are approximately 29,500 doctors of optometry currently in practice in the U.S. Optometrists practice in more than 7,000 communities across the U.S., serving as the sole primary eye care providers in more than 4,300 communities.

Optometrists have extensive training, having completed pre-professional undergraduate education in a college or university and an additional four years of professional education at a college of optometry, leading to the doctor of optometry (O.D.) degree. Some optometrists complete a one-year clinically based residency on graduation.

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Representative Wilson, if you would like more information on optometry please contact the Alaska Optometric Association or an optometric physician in your area:

- Alaska Optometric Association..... (877) 693-2562
- Michael Bennett, OD ..... (907) 789-3175
- Erik Christianson, OD ..... (907) 225-2020
- Jill Geering, OD ..... (907) 586-9864
- Pamela Steffes, OD ..... (907) 966-8415
- Rick Swearingen, OD ..... (907) 225-2020



*Optometry: Your primary eye care provider.*

**Alaska Academy of Ophthalmology  
542 West 2<sup>nd</sup> Ave  
Anchorage, Ak 99501  
907-563-8526  
Dr. Carl Rosen, President**

1/20/94

**Attention: Alaska State House Health, Education & Social Services Committee  
Re: HB 306  
From: Carl Rosen, MD**

Dear Committee Members:

The issue regarding expanded optometric scope of practice has consistently revolved around whether optometrists have adequate education and training to prescribe oral drugs and perform injection procedures. The optometry lobby has consistently failed to introduce legislation to address this public health concern. In 2000, it was SB 78; in 2001, it was HB 215; now, it's HB 306. In 2000, the Alaska State Medical Board commented on SB 78, a bill virtually identical to HB 306, that the board unanimously opposed. The board stated: "Optometrists do not have the clinical experience to safely administer eye injections, intravenous and intra-muscular injections, and oral medications, including some narcotics. Reading about the effect and side effects of medications, or attending seminars, does not prepare an optometrist for complications related to patients' other medical problems and chronic medications." HB 306 does not address this fundamental concern and in fact is a step backwards from these previous bills. The optometry lobby is determined to get a "blank check" to use all oral and injection procedures.

SB 78 and HB 215 left important questions regarding education unanswered. There was no indication as to the length of any education requirement. There was no indication as to whether the education would include ANY clinical training. There was no indication as to how comprehensive the education would be. Would it include just some systemic drugs or all systemic drugs? Would it include a study of just some diseases for which systemic drugs are used, or all diseases for which systemic drugs are used? Would the education and training include sufficient information about other drugs and other diseases that may have an impact on the therapy and the patient that may or may not be directly related to the eye? How thorough would the education and training be? Would the optometrist just get a smattering of knowledge inadequate to safely treat patients? Would the optometrist know how to handle all or just some of the side effects of these drugs in a real world situation, including in some cases cardiac arrest? There was no indication as to whether even a passing grade would be required. HB 306 does not address these concerns at all.

SB 78 and HB 215 did not require new testing of its licensees before granting expanded license endorsement. HB 306 does not either. HB 306 would allow a licensee with a current endorsement to administer topical drugs to automatically be licensed to prescribe oral drugs and administer injected drugs.

SB 78 contained language that would have required the Board of Optometry to be required to solicit recommendations of the State Medical Board in establishing its examination and education requirement for the pharmaceutical license endorsement. That one safeguard in SB 78, which the Alaska State Medical Board clearly recognized as inadequate in 2000, has been dropped from HB 306. Indeed, HB 306 is step backward from SB 78.

HB 215 retreated from the requirement on the Board of Optometry to solicit recommendations from the State Medical Board too. The bill only required optometrists to meet additional educational requirement, if any. This language was clearly inadequate. There was no indication as to who would be required to compete the additional educational requirements. In a further step backward, HB 306 requires no additional education requirements for any one – plain and simple.

SB 78 and HB 215 did not differentiate between optometry school graduates that finished before or after the date of enactment of the bill. HB 306 does not either. In fact, it is our belief that the recent graduates also lack the adequate training and education to safely administer systemic drugs because of the narrow scope of optometric education. In any case, to our knowledge there has been no recent, significant change in optometry school education to warrant a special waiver.



**KODIAK VISION CLINIC**  
**Jerimiah L. Myers, O.D.**  
*Doctor of Optometry*

214 W. Rezanof Dr., Ste. 1  
Kodiak, AK 99615  
(907) 486-8117

JUN 23 2003

Dear Peggy,

I grew up in Wrangell and graduated H.S. in 1966. My father graded the roads there for 20 years and my grand father built houses that still stand. The last 20 years I've been the Vision Care from Kodiak through the Aleutian chain. Of all the states with our rural life, like Wrangell and Unalaska, the people deserve the care we have been trained for in systemic medicines.

There are 4 times as many O.D.'s in 3 times as many locations as Ophthalmologists. Last month Washington State became the 40<sup>th</sup> to benefit from this privilege. I sometimes must refer to a village Aid or P.A. for medication needed, if I can find one. In health care yourself, I know you can relate to the inconvenience.

As a Wrangellite and eye care professional I beseech you to consider HB 306 for its service and betterment of Island life.

Sincerely,

Jerimiah Myers O.D.

# Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

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05/08/2003

Honorable Peggy Wilson  
State of Alaska  
House of Representatives  
Chair, House Health Education and Social Services Committee  
State Capitol, Room 104  
Juneau, AK 99801

Transmitted by Fax:  
907-465-3175

Re: HB 306 – Use of Pharmaceutical Agents by Optometrists

Dear Representative Wilson:

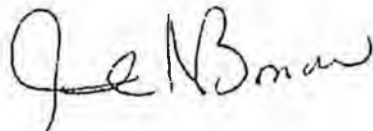
The Alaska State Medical Association (ASMA) represents Alaska's patients and the physicians who care for them.

ASMA opposes the expansion of the types of drugs allowed to be prescribed by optometrists. Optometrists simply lack the education and training to appropriately prescribe those drugs that would be allowed under HB 306. Drugs used in the treatments of the eye can have serious impacts on other body systems. Sufficient numbers of physicians exist to whom referrals can and should be made by optometrists for treatment that goes beyond drugs topically applied to the eye.

Keep in mind this would allow the prescription of all drugs with the exception of controlled substances (schedule IA) such as opium or heroin based drugs.

ASMA opposes HB 306. It is just not good medicine and patient care.

Sincerely,



By: Jeanne Bonar, MD  
President  
For: Alaska State Medical Association

Cc: Members, House Health Education and Social Services Committee

**ALASKA ACADEMY OF OPHTHALMOLOGY**

**Carl Rosen, M.D. President**

**542 West 2<sup>nd</sup> Ave**

**Anchorage, Ak 99501**

**907-563-8526**

5/8/03

House of Representatives  
Health, Education & Social Services Committee  
Juneau, Alaska 99801

Dear Representative:

I am writing to you to express my concern about HB 306. As you know, HB 306 would greatly expand the optometric scope of practice. The bill would authorize optometrists to prescribe oral drugs and controlled substances, and perform injection procedures. HB 306 is a bill that jeopardizes patient eye safety in Alaska.

In 2000, the State Medical Board unanimously opposed SB 78, a bill that would have authorized an expansion of the optometric scope of practice that was more restrictive than envisioned in HB 306. SB 78 prohibited optometrists from prescribing Schedule IIA controlled substances, which HB 306 does not. Furthermore, unlike HB 306, SB 78 required the State Board of Examiners of Optometry to solicit the State Medical Board for recommendations in establishing its examination and education requirements for the pharmaceutical license endorsement.


Even with these restrictions, the State Medical Board found that these provisions in SB 78 were inadequate to protect the public. The State Medical Board stated:

“Optometrists do not have the clinical experience to safely administer eye injections, intravenous and intramuscular injections, and oral medications, including some narcotics. Reading about the effect and side effects of medications, or attending seminars, does not prepare an optometrist for complications related to patients' other medical problems and chronic medications. The board's charge is to protect Alaskan patients; we believe that this legislation would endanger patients.”

It is unclear what has changed in optometric education and training since the State Medical Board made these comments that would warrant an expanded scope of practice for optometrists. An expanded scope of practice for optometrists still would endanger patients.

Please oppose HB 306.

Sincerely,



**Carl Rosen, M.D.**

4/11/03

Alaska Academy of Ophthalmology  
542 West 2nd Ave  
Anchorage, Ak 99501  
907-563-8526  
Dr. Carl Rosen, President

=====  
Ophthalmology and Optometry  
What are the differences?  
=====

**Are Optometrists as Thoroughly Trained as Ophthalmologists to Treat Complex Eye Disease?**

**NO.** An ophthalmologist completes 4 years of medical school and has received a medical degree. Plus, an ophthalmologist performs a 1 year, 60 hour per week internship in the 5th year of post-graduate study. An ophthalmologist also trains at a hospital or university teaching program for 3 more years of post-graduate study for closely supervised, advanced medical training by leaders in the field of ophthalmology – a residency. By observing, treating and overseeing patients with sick eyes (not simple vision problems), ophthalmologists develop skills required for sound medical judgment. Almost all recent graduates pass a rigorous specialty board certification process. Optometrists don't earn medical degrees; they receive no training in general medicine. Just 10% of optometrists perform a non-standardized "optometric residency" program, only some of which focus on ocular disease and are accredited. Furthermore, the American Optometric Association has rejected even a rudimentary optometric board certification system.

**Is the Practice of Optometry comparable to Primary Care Medicine?**

**NO.** A primary care physician is a generalist physician who provides definitive care to the undifferentiated patient at the point of first contact and takes continuing responsibility for providing the patient's care. Such a physician must be specifically trained to provide primary care services. Primary care specialties include family medicine, general internal medicine, or general pediatrics. The style of primary care practice is such that the personal primary care physician serves as the entry point for substantially all of the patient's medical and health care needs - not limited by problem origin, organ system, or diagnosis. Primary care physicians are advocates for the patient in coordinating the use of the entire health care system to benefit the patient.

There are providers of health care other than physicians who render some primary care services. Such providers may include nurse practitioners, physician assistants and some other health care providers such as optometrists. These providers of primary care may meet the needs of specific patients. However, they should provide these services in collaborative teams in which the ultimate responsibility for the patient resides with the physician.

**Myth or Reality: Services Provided by an Optometrist Are Less Expensive than Services Provided by an Ophthalmologist?**

**It's a myth!** The fee schedule that Medicare and Medicaid uses is the same for optometrists and ophthalmologists. Moreover, federal law prohibits participating Medicare providers to charge private patients a lower fee than Medicare patients. Private insurers reimburse similarly to Medicare and Medicaid, using a standard set of billing codes. Therefore, ophthalmologists are paid the same for patient visits, work, and consultation as optometrists.

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**Carl Rosen, M.D. President**

**542 west 2<sup>nd</sup> Ave**

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**907-563-8526**

5/8/03

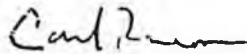
State House HESS Members  
Room 106, Capitol  
Juneau, Ak 99801

Dear Representative:

Attached, please find Alaska Native Brotherhood Camp 2 resolution in opposition to legislation expanding the optometric scope of practice. Currently in the State House is optometric scope of practice legislation, House Bili 306, "An Act relating to the use of pharmaceutical agents by optometrists"

Please feel free to call me if you have any questions or comments.

Sincerely,



Carl Rosen, M.D.

cc: Alaska Legislature



# *Alaska Native Brotherhood Camp 2*

RESOLUTION 2003-03

**TITLE: IN OPPOSITION OF LEGISLATION ALLOWING OPTOMETRISTS TO  
PRESCRIBE MEDICATIONS**

WHEREAS, the Alaska Native Brotherhood Camp No. 2 is a member of the Grand Camp of the Alaska Native Brotherhood, and

WHEREAS, the Grand Camp of Alaska Native Brotherhood's constitution states in Article I:

The purpose of this organization shall be to assist and encourage the Native in his advancement from his native state to his place among the cultivated races of the World, to oppose, to discourage, and to overcome the narrow injustices of race prejudice, to commemorate, the fine qualities of the Native Races of North America, to preserve their history, lore, art, and virtues, to cultivate the morality, education, commerce, and Civil Government of Alaska, to improve individual and municipal health and laboring conditions, and to create a true respect in Natives and in other persons with whom they deal for the letter and spirit of the Declaration of Independence and the Constitution and Laws of the United States.

WHEREAS, the Alaska Native Brotherhood Camp No. 2 adopts the same purpose of the Grand Camp of the Alaska Native Brotherhood, and

WHEREAS, the purpose includes "...to preserve Civil Government of Alaska", and

WHEREAS, the purpose further states "...to improve individual and municipal health" of the Native people, and

WHEREAS, the profession of optometry has attempted to pass legislation that would allow Optometrists to prescribe all therapeutic oral drugs, controlled substance, and

WHEREAS, the propose laws would allow Optometrists to perform all injection procedures including intravenous injections, intra-muscular injections and subcutaneous injections, and

WHEREAS, if the above be introduced by the Alaska State Legislature would be a reckless attempt to dabble in medical procedures which optometrists are not qualified; and


WHEREAS, this is a patient safety issue and it would not "...improve...health" as the purpose of the Alaska Native Brotherhood stands for;

NOW BE IT RESOLVED, that the Alaska Native Brotherhood, Camp Number 2 authorizes the President or his/her representative to oppose such legislation and

BE IT FURTHER RESOLVED, that the Alaska Native Brotherhood Camp Number 2, is in opposition to legislation that would reduce the quality of service by changing laws that would allow anyone to practice medicine for which they are not qualified.

APPROVED, by the ANB Camp 2 during a regular meeting of membership on February 3, 2003.

Signed,

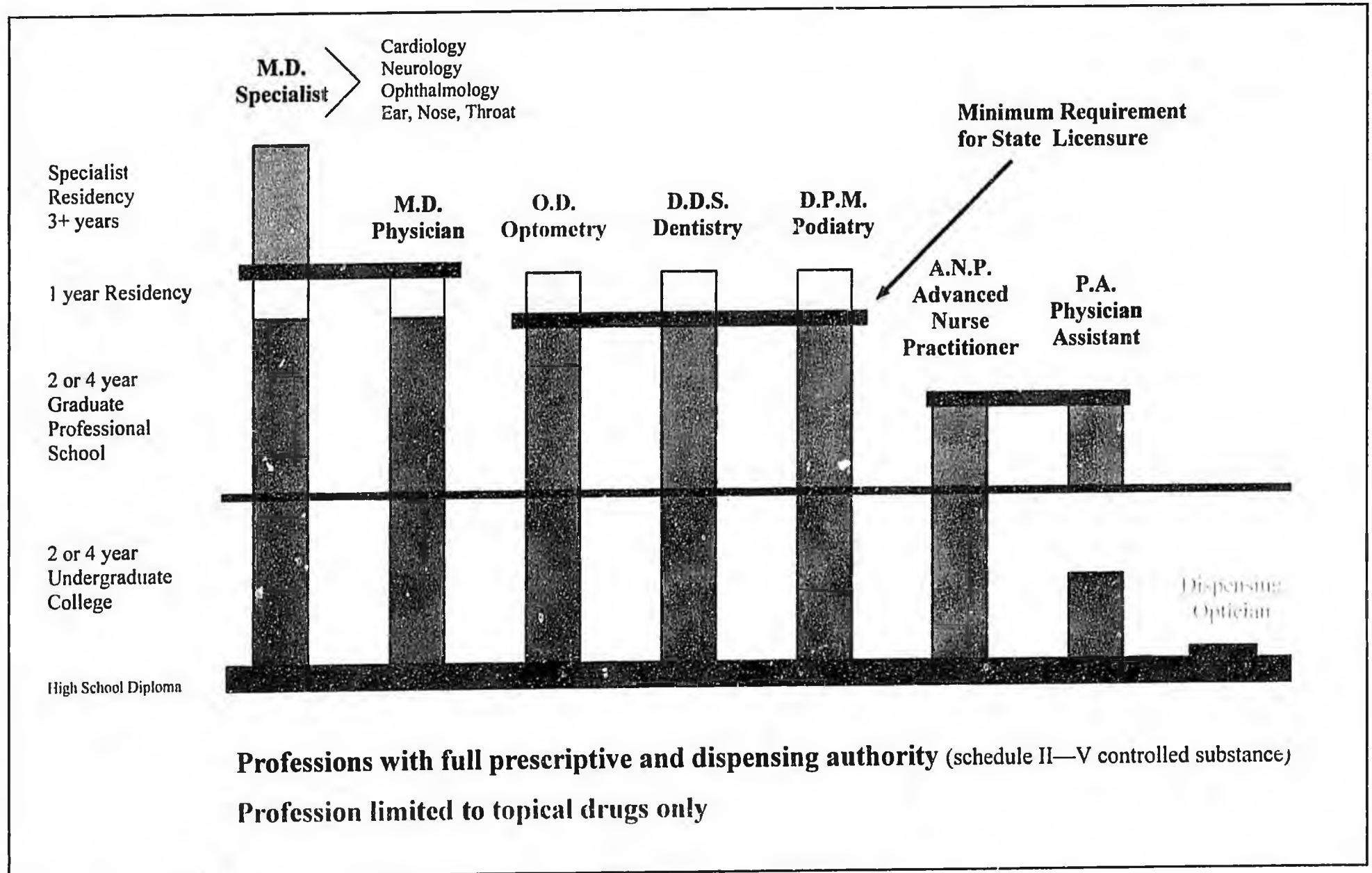
  
Andrew Ebona, President

  
Andrea Ebona-Michel, Recording Secretary

**Only Four States Allow Everything That the  
Optometry Lobby Wants in the Alaska  
Optometric Scope of Practice Legislation**



# Education and Training Requirements for Health Professionals





# American Optometric Association

243 N. Lindbergh Blvd. • St. Louis, MO 63141 • (314) 991-4100  
FAX: (314) 991-4101

March 2, 2004

RECEIVED

MAR 09 2004

Representative Peggy Wilson, Chair  
Health, Education and Social Services Committee  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative Wilson:

This letter is sent in strong support of legislation seeking to amplify the current scope of practice for Alaska's Doctors of Optometry by removing the 12 year old restriction of "topical only" from the drugs they currently prescribe. Alaska optometrists will still be restricted to only those drugs that treat the eye. Optometrists are independent, doctoral-level, primary eye care providers who, based on a stellar safe and effective practice record, have gained statutory authority over the past 28 years in all 50 states and the District of Columbia to prescribe drugs in order to provide the best primary eye care possible for the patients they serve. In 41 other states and the District of Columbia, this authority includes the prescription of oral drugs.

I have attached a chart indicating general prescriptive authority information. Based on the safe and effective practice record of optometrists, state legislatures have expanded original prescriptive authority laws well over 60 times authorizing the prescription of additional drugs or the treatment of additional conditions. No prescriptive authority law has ever been diminished or repealed by any state legislature.

In all 50 states and the District of Columbia, continuing education is a requirement for optometric license renewal. Optometry is the only healthcare profession in the U.S. with a universal continuing education requirement for license renewal purposes.

As with medical physicians, optometrists must obtain a license in each state in which they wish to practice:

- As with medical and dental school applicants, almost every applicant accepted into a four year doctoral-level optometry program holds a BA or BS degree;
- Candidates for licensure must be graduates of an accredited four-year professional program in optometry and hold the graduate-level doctor of optometry (OD) degree (this is the same point in the education process that a medical student is awarded the graduate-level doctor of medicine (MD) degree);
- Candidates must pass the three Part didactic and practical examination series administered by the National Board of Examiners in Optometry (NBEO);
- Candidates for licensure in Alaska must also pass your state board-administered optometry law exam.

The federal Medicare program recognizes optometrists as physicians, practicing within the scope of their state licensure. Optometry uses the same diagnosis and procedure codes as medicine when treating patients. Restrictions upon optometrists in Alaska reduce the number of providers available to treat Medicare patients, at a time when Medicare providers are in short supply.

When an ophthalmologist states that he or she has three more years of graduate-level education than an optometrist, we say, "of course they do." This is because they get very little training in the eye during medical school and must obtain this knowledge, as well as receive advanced training in surgery through a post-graduate residency. Optometrists now routinely work with medical specialists in the interest of the highest quality patient care. The clinical education of an optometrist does not have to parallel the education and training of an ophthalmologist anymore than the education and training of a family physician needs to parallel that of a heart surgeon.

Today's optometry students receive state of the art instruction in the use and prescription of pharmaceuticals. It is my understanding that in more than one of the 16 U.S. optometry schools the medical, dental, and optometry students take the same pharmacology class together in the same lecture hall at the same point in their doctoral-level professional education programs. In optometry programs around the country the number of pharmacology hours provided to optometry students equals or exceeds that offered to medical and dental students.

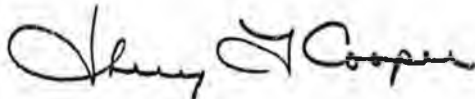
*Some are concerned about the # of hrs they intend doing these things!*

Malpractice insurance rates have remained historically low for optometrists (currently around \$415/year/\$2 million in liability coverage). In fact these rates are the same from state to state no matter what the prescriptive authority is. Malpractice carriers have found that the level of prescription drug authority – by any professional group – does not affect malpractice experience. Please see attached Fact Sheet on malpractice insurance, "Optometry . . . The Biggest Bang for the Malpractice Premium Buck".

You should keep in mind that Alaska family medical physicians, pediatricians, nurse practitioners, and actually all other medical specialty groups in your state already have statutory authority to prescribe these same drugs to treat eye disease with relatively little training in the diagnosis and treatment of the eye. Optometrists spend their entire professional graduate education and training in the area of eye care. Today's Doctors of Optometry are well equipped to provide competent, accessible, safe and affordable eye care for Alaska's residents.

If you need any additional information please contact me by e-mail at [SLCooper@AOA.org](mailto:SLCooper@AOA.org) or by phone at 800-365-2219/314-991-4100, Ext. 266.

Sincerely,



Sherry L. Cooper, Manager  
State Government Relations Center

ATTACHMENTS

## Optometry . . . The Biggest Bang for the Malpractice Premium Buck

Lately, many of the states introducing scope of practice amplification legislation have contacted us for information on the issue of malpractice. Apparently, big medicine and/or ophthalmology have continued to bring up malpractice "problems" as one reason optometrists should not be granted additional prescriptive authority. Okay, so nobody ever accused the medical lobby of being smart.

One only has to see the AMA NEWS, local newspapers, or television news broadcasts to know that there is a huge crisis in malpractice and malpractice liability coverage for **medical physicians**. The escalating problem of malpractice insurance premium rates is one of the primary legislative targets for the AMA. Most of their legislative activity centers around tort reform as the solution to the problem. On the other side are trial lawyers, an opponent with even more money and political muscle to expend.

A September 2002 report from the U.S. Department of Health and Human Services indicates that malpractice insurance premiums in states without reasonable limits on non-economic damages increased between 30% and 75% in 2001. In 2002, the situation deteriorated so that states without reasonable limits on non-economic damages experienced increases of between 36% -113%. States with reasonable limits on non-economic damages have not experienced quite the same level of rate increases.

Consider the following:

- Carriers are leaving the malpractice insurance market altogether.
- Hospital physicians are staging walk-outs to protest high premiums.
- We've heard of entire regions in some states where an obstetrician is not to be found and patients must drive three or four hours to see a doctor, or go without proper care.
- Many state legislatures are consumed with discussions on how to fix this problem in order to encourage competent, qualified medical physicians to continue practicing in the state.
- The Bush administration is pushing for malpractice reform at the Federal level.
- There are reports that \$100,000 or \$200,000+ per year is not uncommon for some specialty physicians to pay per year; if they can get coverage at all.

How medicine can even hope to use the malpractice "argument" against legislation proposing to increase optometric prescriptive authority is hard to understand.

**Malpractice insurance premiums for optometrists are, and remain, the lowest of any of the independent doctoral-level healthcare professions.** These premium rates are lower than those paid by even some non-doctoral supervised allied professions such as nurse practitioners and physician assistants.

The rate for Territory 1 in AOA's endorsed malpractice insurance plan (Territory 1 is the lowest of four experience-based rate territories) is \$415/year/\$2 million professional liability coverage per incident. **Not \$41,500, not \$4,150, but \$415 per year.** Most people pay more each month for their mortgage or car loan than an optometrist pays for an entire year's worth of professional malpractice liability coverage.

Malpractice liability for any of the healthcare professions rarely occurs based on prescription issues. In the AOA-endorsed insurance plan, Oklahoma (very broad prescriptive authority) and Maryland (very limited prescriptive authority) are both included in Territory 1 (the lowest) and optometrists in those states pay the same rate. Malpractice occurs primarily for two reasons: misdiagnosis (or lack of diagnosis) and bad treatment outcomes, not for prescriptive authority.

Malpractice rates are based on experience plus a profit for the carrier. **Malpractice rates set so unbelievably low for optometrists confirm a low rate of actual occurrence of malpractice.**

Unfortunately, as many carriers face huge losses from the medical profession, and from the carriers' investments, rates for optometrists may go up a bit as part of this "raising of the boat." In fact, some carriers may drop healthcare professional liability coverage altogether (this has happened in the past). Optometry may be caught up in this action and, to continue the boat theme, go "down with the boat."

However, the fact remains, at a rate of \$415/year (you can be assured the carriers are still making a comfortable profit) there is not much optometric malpractice occurring. This is a fact optometry can be proud of and use to its advantage in the legislative process. When medicine raises the malpractice issue with a legislator tell them: "I'll show you mine (rate), if you show me yours."

For further information contact Sherry L. Cooper, State Legislative Analyst, 800-365-2219/314-991-4100, Ext. 266 or [SLCooper@AOA.org](mailto:SLCooper@AOA.org).

Last Revised March 6, 2003



American Optometric Association

**SUMMARY – LEGEND DRUG PRESCRIPTIVE AUTHORITY FOR OPTOMETRISTS**

STATE	Medications Used To Treat ALLERGIES	Medications Used To Treat INFECTIONS	Medications Used To Treat GLAUCOMA	Medications Used To Treat INFLAMMATION	Medications Used To Treat PAIN (oral)
Alabama	T, O	T, O	T, O	T, O	O
Alaska	T	T	T	T	
Arizona	T, O	T, O	T	T, O <sup>1</sup>	O
Arkansas	T, O	T, O	T, O	T, O	O
California	T, O	T, O	T	T, O <sup>1</sup>	O
Colorado	T, O	T, O	T, O	T, O <sup>1</sup>	O
Connecticut	T, O	T, O	T, O	T, O	O
Delaware	T, O	T, O	T, O	T	O <sup>2</sup>
D.C.	T, O	T, O	T, O	T, O <sup>1</sup>	O
Florida	T	T	T	T	
Georgia	T	T	T	T	O
Guam	T, O	T, O	T, O	T, O	O
Hawaii	T	T		T	
Idaho	T, O	T, O	T, O	T, O	O
Illinois	T	T	T	T	O <sup>2</sup>
Indiana	T, O	T, O	T, O	T, O <sup>1</sup>	O <sup>2</sup>
Iowa	T, O	T, O	T, O	T, O	O
Kansas	T, O	T, O	T, O	T, O	O
Kentucky	T, O	T, O	T, O	T, O	O
Louisiana	T, O	T, O	T	T	
Maine	T, O	T, O	T	T, O <sup>1</sup>	O
Maryland	T	T, O	T	T <sup>3</sup>	
Massachusetts	T	T		T	
Michigan	T, O	T, O	T, O	T, O <sup>1</sup>	O
Minnesota	T, O	T, O	T, O	T, O <sup>1</sup>	O
Mississippi	T	T	T	T	
Missouri	T, O	T, O	T, O	T, O	O
Montana	T, O	T, O	T, O	T, O	O
Nebraska	T, O	T, O	T	T, O <sup>1</sup>	O
Nevada	T, O	T, O	T, O	T	O
New Hampshire	T, O	T, O	T, O	T, O <sup>1</sup>	O
New Jersey	T	T	T	T	
New Mexico	T, O	T, O	T, O	T, O <sup>1</sup>	O
New York	T	T	T	T	
North Carolina	T, O	T, O	T, O	T, O	O
North Dakota	T, O	T, O	T, O	T, O	O
Ohio	T, O	T, O	T, O	T	
Oklahoma	T, O	T, O	T, O	T, O	O
Oregon	T, O	T, O	T, O	T, O	O
Pennsylvania	T	T, O	T	T, O	O
Rhode Island	T	T	T	T	
South Carolina	T, O	T, O	T, O	T	O
South Dakota	T, O	T, O	T, O	T, O	O
Tennessee	T, O	T, O	T, O	T, O	O
Texas	T, O	T, O	T, O	T, O <sup>1</sup>	O
Utah	T, O	T, O	T, O	T, O	O
Vermont	T	T		T	
Virginia	T	T	T, O	T	O
Washington	T, O	T, O	T, O	T, O <sup>1</sup>	O
West Virginia	T, O	T, O	T, O	T, O	O
Wisconsin	T, O	T, O	T, O	T, O	O
Wyoming	T, O	T, O	T, O	T, O <sup>1</sup>	O

- KEY:** T Topical Legend Drugs  
 O Oral Legend Drugs  
<sup>1</sup> No Oral Steroids  
<sup>2</sup> No Controlled Narcotic Substances  
<sup>3</sup> No Topical Steroids

GLAUCOMA Tx = 47 states + DC + Guam  
 ORAL Rx AUTHORITY = 41 states + DC + Guam  
 CONTROLLED SUBSTANCE Rx AUTHORITY = 35 states + DC + Guam  
 INJECTABLES AUTHORITY = 25 states + DC

The information contained in this chart represents a summary, as of May 19, 2003, of the state optometry statutes/board regulations. In some states situations for legend drug prescriptive authority may vary. The key "T" or "O" in many instances represents every topical and/or oral legend drug available under a specific heading. For more complete information, please contact Sherry L. Cooper, Manager of the American Optometric Association's State Government Relations Center at 314-991-4100/800-365-2219, Ext. 266 or SLCooper@AOA.org.

❖ ❖ ❖ SUBJECTIVE RANKING ❖ ❖ ❖ SUBJECTIVE RANKING ❖ ❖ ❖

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Kentucky	T, O	T, O	T, O	T, O	O
Missouri	T, O	T, O	T, O	T, O	O
Montana	T, O	T, O	T, O	T, O	O
North Carolina	T, O	T, O	T, O	T, O	O
Oklahoma	T, O	T, O	T, O	T, O	O
Oregon	T, O	T, O	T, O	T, O	O
Tennessee	T, O	T, O	T, O	T, O	O
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Kansas	T, O	T, O	T, O	T, O	O
Michigan	T, O	T, O	T, O	T, O <sup>1</sup>	O
North Dakota	T, O	T, O	T, O	T, O	O
South Dakota	T, O	T, O	T, O	T, O	O
Utah	T, O	T, O	T, O	T, O	O
West Virginia	T, O	T, O	T, O	T, O	O
District of Columbia	T, O	T, O	T, O	T, O <sup>1</sup>	O
Minnesota	T, O	T, O	T, O	T, O <sup>1</sup>	O
Nebraska	T, O	T, O	T	T, O <sup>1</sup>	O
Nevada	T, O	T, O	T, O	T	O
New Mexico	T, O	T, O	T, O	T, O <sup>1</sup>	O
South Carolina	T, O	T, O	T, O	T	O
Wyoming	T, O	T, O	T, O	T, O <sup>1</sup>	O
Arizona	T, O	T, O	T	T, O <sup>1</sup>	O
California	T, O	T, O	T	T, O <sup>1</sup>	O
Delaware	T, O	T, O	T, O	T	O <sup>2</sup>
Indiana	T, O	T, O	T, O	T, O <sup>1</sup>	O <sup>2</sup>
Maine	T, O	T, O	T	T, O <sup>1</sup>	O
New Hampshire	T, O	T, O	T, O	T, O <sup>1</sup>	O
Texas	T, O	T, O	T, O	T, O <sup>1</sup>	O
Washington	T, O	T, O	T, O	T, O <sup>1</sup>	O
Georgia	T	T	T	T	O
Illinois	T	T	T	T	O <sup>2</sup>
Louisiana	T, O	T, O	T	T	
Ohio	T, O	T, O	T, O	T	
Pennsylvania	T	T, O	T	T, O	O
Virginia	T	T	T, O	T	O
Alaska	T	T	T	T	
Mississippi	T	T	T	T	
New Jersey	T	T	T	T	
Florida	T	T	T	T	
New York	T	T	T	T	
Rhode Island	T	T	T	T	
Hawaii	T	T		T	
Massachusetts	T	T		T	
Vermont	T	T		T	
Maryland	T	T, O	T	T <sup>3</sup>	

**KEY:** T Topical Legend Drugs  
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HB

333

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

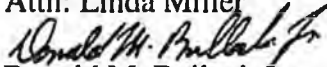
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 29, 2004

**SUBJECT:** CSHB 333(HES) (Work Order No. 23-LS0991\N)

**TO:** Representative Peggy Wilson  
Attn: Linda Miller

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

Enclosed with this memorandum is a final version of CSHB 333(HES). This version of the bill is based on CSHB 333(EDU) and includes the two amendments made by your committee. The first amendment allocates the receipts from the land conveyed under AS 14.40.507 so that elementary and secondary education programs receive 60 percent of the receipts and the university receives 40 percent. The second amendment was a conceptual amendment that transmits the receipts for elementary and secondary education into the Public School Trust Fund (AS 37.14.100). Since the Public School Fund Advisory board oversees the Public School Trust Fund, the bill no longer creates a new board.

Please review my memo to you concerning the risks and possible repercussions from contributing a new source of revenue into the Public School Trust Fund. In this version of the bill, I have added a duty for the commissioner of revenue to separately account for the contributions in this bill for the purpose of determining the percentage of market value that may be appropriated for elementary and secondary education.

Also, as I noted in my earlier memo, AS 29.45.030(a)(1)(B) in sec. 5 of the bill should be amended to exclude from taxation the interest in land transferred to the public school trust fund.

If I may be of further assistance, please advise.

DMB:med  
04-336.med

Enclosure

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-5037 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

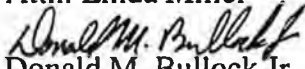
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 24, 2004

**SUBJECT:** CSHB 333(EDU) and Public School Trust Fund issues  
(Work Order No. 23-LS0991VZ)

**TO:** Representative Peggy Wilson  
Attn: Linda Miller

**FROM:**   
Donald M. Bullock Jr.  
Legislative Counsel

Enclosed with this memorandum is a draft CSHB 333(HES). Although the first amendment you provided me is clear (the allocation of the income between the university and elementary and secondary education) the conceptual amendment has at least two issues that need to be addressed. In addition, I am suggesting one further amendment to be considered, either in committee or on the floor.

The first amendment passed by the committee changed the allocation of the total receipts from equal shares to 60 percent for the education trust fund and 40 percent to the university endowment trust. I changed your three-fifths and two-fifths fractions to percentages as a stylistic change. These changes appear in AS 14.40.505 which would be enacted by sec. 4 of the bill.

The conceptual amendment, passed by the committee, would make two significant changes to the bill. First, the share of the receipts for elementary and secondary education would be deposited into the Public School Trust Fund established in AS 37.14.110. Second, the Public School Trust Fund Advisory Board created in AS 37.14.120 would perform the functions that had been assigned to the Education Trust Fund Board. The latter change is included in this draft of the bill based on our conversation on March 23. However, I need additional guidance from you regarding the deposit of receipts into the Public School Trust Fund.

The conceptual amendment would direct money conveyed to the education trust under AS 14.40.507 into the Public School Trust Fund,<sup>1</sup> rather than to the education trust fund. The net income of the Public School Trust Fund is dedicated to the state public school

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<sup>1</sup> Under AS 37.14.150, the Public School Trust Fund receives one half of one percent of the total receipts derived from the management of state land, including amounts paid to the states as proceeds of sale or annual rent of surface rights, mineral lease rental, royalties, royalty sale proceeds, and federal mineral revenue sharing payments or bonuses.

Representative Peggy Wilson

March 24, 2004

Page 2

program.<sup>2</sup> By comparison, AS 14.40.503, which would be enacted in sec. 4 of the bill, would allow the legislature to appropriate "up to five percent of the market value of the education trust fund" for elementary and secondary education. Thus, there is a discrepancy between the appropriation of "net income" and the percentage of market value. How would you like this discrepancy to be resolved?

Perhaps a more significant issue is the legal effect of directing an additional revenue stream into the Public School Trust Fund. Although there is no clear authority on this subject, additional contributions to the Public School Trust Fund would, in my opinion, put the dedication of the fund to public schools at risk.

A brief explanation of the purpose and history of the Public School Trust Fund is helpful in addressing this question. This fund is dedicated to the support of the public school system and is not a violation of the dedicated fund rule because it falls within an exception to the prohibition against dedicated funds. As a general rule, if a dedication is required for participation in a federal program or the fund was in existence before 1959, then the Alaska Constitution does not prohibit dedication of those funds. See Art. IX, sec. 7, Constitution of the State of Alaska.

The Public School Trust Fund (AS 37.14.110) and the required contribution of certain receipts (AS 37.14.150) were established to satisfy trust obligations imposed under federal law before 1959. In 1915 congress granted land to the state to hold in trust for public schools under 48 U.S.C. 353. In 1978, the legislature redesignated the land as general grant land and established the Public School Trust Fund. The legislature also dedicated one half of one percent of the total receipts from the management of state land and federal mineral revenue-sharing payments to the fund under AS 37.14.150.<sup>3</sup> Therefore, the present trust fund and the dedication of revenue are intended to satisfy federal trust requirements imposed when the land was originally granted to the state for public schools.

The Attorney General has concluded that a trust obligation exists with respect to the fund and that the dedication of revenues to the fund is constitutional until the amount

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<sup>2</sup> AS 37.14.140 prohibits the appropriation of the net income for a purpose other than the support of the public schools. Revenue that has not been appropriated or appropriated but not expended, remains in the fund until appropriated or expended.

<sup>3</sup> Sec. 2, ch. 182, SLA 1978, redesignated school land as general grant land. The land redesignated consisted of, "sections 16 and 36 in each township surveyed before 1959 under the Act of March 4, 1915, 48 U.S.C. 353, and patented to or approved for patent to the state on July 1, 1978 and land designated as school land which was received in exchange for land granted under that federal land grant and land granted to the state as lieu or indemnity land." A township is approximately 36 miles square and contains 36 sections. *Black's Law Dictionary* 1492 (6th ed. 1990). The two sections in each township dedicated to schools represent approximately 5.6% of the land in the surveyed townships.

Representative Peggy Wilson

March 24, 2004

Page 3

deposited equals the fair market value of the school lands. When the amount deposited into the fund exceeds the fair market value of the school lands, the Attorney General has opined that the additional deposits conflict with the dedicated fund provision of the Alaska Constitution. (1988-1 Op. (Inf.) Att'y, Gen 293; 1985-2 (Inf.) Att'y Gen 159; See also 1992 Op. Att'y Gen. No. 1).

It is possible, however, that the current fund and dedication of revenue could be vulnerable to legal challenge. It may be that a court would not agree that the decision to reconstitute the trust in 1978 from land to money, in itself, permits the dedication of revenue to accomplish this. There is no clear legal authority on how the court would treat this issue.

With this background in mind, the authority of the legislature to increase the amount flowing into the principal of the fund, can be examined. As a creation of the legislature, AS 37.14.150 could be amended by the legislature to allow for the contribution of the new receipts identified in CSHB 333(HFS) to the existing trust fund. I do not believe any changes to federal law are required. However, it is unclear how this would affect the fund's status as an exception to the dedicated fund prohibition. It is possible that, if any significant changes are made to the present statutory framework of the fund, it would destroy the fund's protected status as an exception to the dedicated fund rule. This is one risk you incur if the amount of money flowing into the principal of the fund is increased by the legislature.

This also raises a related issue. If the legislature increases the amount that annually flows into the fund, the fund may more quickly grow beyond the original fair market value of the lands used to create the original federal trust. This issue certainly exists anyway, as noted by the Attorney General in opinions cited above. In short, any change to the Public School Trust Fund creates a risk that the fund would lose its protected status as a fund that can legally dedicate money to public schools.

*nothing to  
Appropriate  
fund &*

Please let me know whether you would like a new CS for HB 333 that would direct the new receipts for education into the Public School Trust Fund rather than the Education Fund, and how you would like the difference between the bill's use of percentage of market value and net income in AS 37.14.140 to be resolved.

\* As a final point, in my review of the bill for your CS, I noted that AS 29.45.030(a)(1)(B), which would be amended in sec. 5 of the bill, should be amended to also shield the interest in land conveyed to the education trust from taxation.

If I may be of further assistance, please advise.

DMB:mdr  
04-114.mdr

Enclosure

23-LS0991\E  
Bullock  
3/25/04

**CS FOR HOUSE BILL NO. 333(HES)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES OGG, COGHILL AND HOLM, Wilson**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to an endowment for public education and the University of Alaska;**  
2 **relating to university land; establishing a trust fund for public education; and providing**  
3 **for an effective date."**

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

5 **\* Section 1. AS 14.40.170(a) is amended to read:**

6 (a) The Board of Regents shall

7 (1) appoint the president of the university by a majority vote of the  
8 whole board, and the president may attend meetings of the board;

9 (2) fix the compensation of the president of the university, all heads of  
10 departments, professors, teachers, instructors, and other officers;

11 (3) confer such appropriate degrees as it may determine and prescribe;

12 (4) except as provided under AS 14.40.507, have the care, control,  
13 and management of

14 (A) all the real and personal property of the university; and

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(B) land

[(i)] conveyed to the Board of Regents by the commissioner of natural resources in the settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended; [AND

(ii) SELECTED BY THE UNIVERSITY OF ALASKA AND CONVEYED TO IT BY THE COMMISSIONER OF NATURAL RESOURCES UNDER AS 14.40.365;]

(5) keep a correct and easily understood record of the minutes of every meeting and all acts done by it in pursuance of its duties;

(6) under procedures to be established by the commissioner of administration, and in accordance with existing procedures for other state agencies, have the care, control, and management of all money of the university and keep a complete record of all money received and disbursed;

(7) adopt reasonable rules for the prudent trust management and the long-term financial benefit to the university of the land of the university;

(8) provide public notice of sales, leases, exchanges, and transfers of the land of the university or of interests in land of the university;

(9) administer, manage, market, and promote a postsecondary education savings program, including the Alaska Higher Education Savings Trust under AS 14.40.802 and the Alaska advance college tuition savings fund under AS 14.40.803 - 14.40.817.

\* Sec. 2. AS 14.40.291(a) is amended to read:

(a) Notwithstanding any other provision of law, university-grant land, state replacement land that becomes university-grant land on conveyance to the university, [LAND SELECTED BY AND CONVEYED TO THE UNIVERSITY OF ALASKA UNDER AS 14.40.365,] and any other land owned by the University of Alaska, except for land transferred under AS 14.40.507, is not and may not be treated as state public domain land. [LAND CONVEYED TO THE UNIVERSITY OF ALASKA UNDER AS 14.40.365 SHALL BE MANAGED UNDER AS 14.40.365 -

1 14.40.368 AND POLICIES OF THE BOARD OF REGENTS OF THE UNIVERSITY  
2 OF ALASKA.]

3 \* **Sec. 3.** AS 14.40.400(a) is amended to read:

4 (a) The Board of Regents shall establish a separate endowment trust fund in  
5 which shall be held in trust in perpetuity all

6 (1) net income derived from the sale or lease of the land granted under  
7 the Act of Congress approved January 21, 1929, as amended;

8 (2) receipts transferred to the fund under AS 14.40.505 [NET  
9 INCOME DERIVED FROM THE SALE, LEASE, OR MANAGEMENT OF THE  
10 LAND SELECTED BY AND CONVEYED TO THE UNIVERSITY OF ALASKA  
11 UNDER AS 14.40.365]; and

12 (3) monetary gifts, bequests, or endowments made to the University of  
13 Alaska for the purpose of the fund.

14 \* **Sec. 4.** AS 14.40 is amended by adding new sections to read:

15 **Sec. 14.40.495. Education trust and education trust fund established.** (a)  
16 The education trust and education trust fund are established as a trust and a separate  
17 education trust fund of the state.

18 (b) The education trust corpus is composed of the undivided interest in lands  
19 conveyed to it under AS 14.40.507.

20 (c) The principal of the education trust fund consists of

21 (1) sums transferred to the fund under AS 14.40.505; and

22 (2) gifts, bequests, and contributions of cash or other assets from a  
23 person.

24 (d) The amount available for appropriation from the education trust fund shall  
25 be calculated by the commissioner of revenue under AS 14.40.503.

26 **Sec. 14.40.497. Powers and duties of the commissioner of revenue.** The  
27 commissioner of revenue is the treasurer of the education trust fund and has the power  
28 and duty, subject to the oversight of the Public School Fund Advisory Board under  
29 AS 37.14.130, to

30 (1) act as official custodian of the cash and investments belonging to  
31 the education trust fund by securing adequate and safe custodial facilities;

1 (2) receive all items of cash and investments belonging to the  
2 education trust fund;

3 (3) collect the principal and income from investments owned or  
4 acquired by the education trust fund and deposit the amounts in the education trust  
5 fund;

6 (4) invest and reinvest the assets of the education trust fund as  
7 provided in this section and as provided for the investment of funds under  
8 AS 37.14.170;

9 (5) exercise the powers of an owner with respect to the assets of the  
10 education trust fund;

11 (6) maintain accounting records of the education trust fund in  
12 accordance with investment accounting principles and AS 14.40.503;

13 (7) engage an independent firm of certified public accountants to  
14 annually audit the financial condition of the education trust fund's investments and  
15 investment transactions;

16 (8) enter into and enforce contracts or agreements considered  
17 necessary for the investment purposes of the education trust fund;

18 (9) report to the board the condition and investment performance of the  
19 education trust fund; and

20 (10) do all acts, whether or not expressly authorized, that the  
21 commissioner of revenue considers necessary or proper in administering the assets of  
22 the education trust fund.

23 **Sec. 14.40.503. Use of education trust fund; percentage of market value.**  
24 Up to five percent of the market value of the education trust fund, as established under  
25 AS 14.40.495, may be annually appropriated by the legislature equally for the support  
26 of public elementary and secondary education.

27 **Sec. 14.40.505. Funding from education trust and university lands.** By  
28 November 15 of each year, the commissioner of revenue shall transfer to the principal  
29 of the education trust fund (AS 14.40.495) 60 percent, and to the University of Alaska  
30 endowment trust fund (AS 14.40.400) 40 percent, of a sum equal to the total receipts  
31 derived from the management of the land conveyed under AS 14.40.507, including

1 amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral  
2 lease rentals, royalties, or royalty sale proceeds from the previous fiscal year, after  
3 deducting contributions to the Alaska permanent fund that are required by law.

4 **Sec. 14.40.507. Education trust and university land endowment.** The  
5 legislature conveys to the University of Alaska as tenant in common with the state,  
6 and subject to the limitations of this section, an undivided two percent interest in land  
7 that constitutes the state public domain, and to the education trust as tenant in common  
8 with the state, and subject to the limitations of this section, an undivided two percent  
9 interest in state land that is managed by the Department of Natural Resources under  
10 AS 38. The conveyance shall be recorded under AS 40.17.020. Notwithstanding  
11 another provision of law,

12 (1) the interest in land conveyed to the University of Alaska and the  
13 education trust is strictly limited to the right to receive income earned and received by  
14 the state as proceeds from royalties, rent, sale, lease, and other disposal of land that  
15 constitutes the state public domain and state land that is managed by the Department  
16 of Natural Resources under AS 38, after deducting contributions to the Alaska  
17 permanent fund required by law and after deducting administrative service fees,  
18 application fees, filing fees, processing fees, or other similar fees;

19 (2) the interest in land conveyed to the University of Alaska and the  
20 education trust does not include a right or interest in possession of land, in the  
21 management or disposal of the land, or in a decision-making process relating to the  
22 use of the land; except where otherwise provided in law and regulation, the  
23 Department of Natural Resources shall be the sole agency to manage or dispose of  
24 land subject to this section;

25 (3) the Department of Natural Resources does not owe the University  
26 of Alaska or the education trust a fiduciary duty with respect to its management or  
27 disposition of the land subject to this section.

28 **Sec. 14.40.509. Definitions.** In AS 14.40.495 - 14.40.509,

29 (1) "board" means the Public School Fund Advisory Board established  
30 by AS 37.14.120;

31 (2) "fund" means the education trust fund established in AS 14.40.495.

1 \* **Sec. 5.** AS 29.45.030(a) is amended to read:

2 (a) The following property is exempt from general taxation:

3 (1) municipal property, including property held by a public corporation  
4 of a municipality, state property, property of the University of Alaska, or land that is  
5 in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-  
6 830, 70 Stat. 709, except that

7 (A) a private leasehold, contract, or other interest in the  
8 property is taxable to the extent of the interest; however, an interest created by  
9 a nonexclusive use agreement between the Alaska Industrial Development and  
10 Export Authority and a user of an integrated transportation and port facility  
11 owned by the authority and initially placed in service before January 1, 1999,  
12 is taxable only to the extent of, and for the value associated with, those specific  
13 improvements used for lodging purposes;

14 (B) notwithstanding any other provision of law, property  
15 acquired by an agency, corporation, or other entity of the state through  
16 foreclosure or deed in lieu of foreclosure and retained as an investment of a  
17 state entity is taxable; this subparagraph does not apply to federal land granted  
18 to the University of Alaska under AS 14.40.380 or 14.40.390, to other land  
19 granted to the university by the state to replace land that had been granted  
20 under AS 14.40.380 or 14.40.390, or to an interest in land conveyed by the  
21 state to the university or the education trust under AS 14.40.507  
22 [AS 14.40.365];

23 (C) an ownership interest of a municipality in real property  
24 located outside the municipality acquired after December 31, 1990, is taxable  
25 by another municipality; however, a borough may not tax an interest in real  
26 property located in the borough and owned by a city in that borough;

27 (2) household furniture and personal effects of members of a  
28 household;

29 (3) property used exclusively for nonprofit religious, charitable,  
30 cemetery, hospital, or educational purposes;

31 (4) property of a nonbusiness organization composed entirely of

1 persons with 90 days or more of active service in the armed forces of the United States  
2 whose conditions of service and separation were other than dishonorable, or the  
3 property of an auxiliary of that organization;

4 (5) money on deposit;

5 (6) the real property of certain residents of the state to the extent and  
6 subject to the conditions provided in (e) of this section;

7 (7) real property or an interest in real property that is exempt from  
8 taxation under 43 U.S.C. 1620(d), as amended;

9 (8) property of a political subdivision, agency, corporation, or other  
10 entity of the United States to the extent required by federal law; except that a private  
11 leasehold, contract, or other interest in the property is taxable to the extent of that  
12 interest;

13 (9) natural resources in place including coal, ore bodies, mineral  
14 deposits, and other proven and unproven deposits of valuable materials laid down by  
15 natural processes, unharvested aquatic plants and animals, and timber.

16 \* Sec. 6. AS 37.14.130 is amended to read:

17 **Sec. 37.14.130. Powers and duties of board.** The board created in  
18 AS 37.14.120 has the following powers and duties:

19 (1) to hold regular meetings and special meetings considered  
20 necessary; [AND]

21 (2) to have prepared an annual accounting of the principal and income  
22 of the fund established in AS 37.14.110;

23 (3) to oversee the administration of the education trust fund  
24 established in AS 14.40.495 by the commissioner of revenue; and

25 (4) to submit to the governor and make available to the legislature  
26 by February 1 each year a report describing the annual level of contributions to,  
27 income of, and expenses of the education trust fund [REPEALED].

28 \* Sec. 7. AS 14.40.365, 14.40.366, 14.40.368, and 14.40.461 are repealed.

29 \* Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to  
30 read:

31 APPLICABILITY. AS 14.40.505, as enacted in sec. 4 of this Act, applies to receipts

- 1 derived from the management of state and university land received on or after the effective
- 2 date of this Act.
- 3 \* **Sec. 9.** This Act takes effect July 1, 2004.



## Committee Assignments:

## Member:

House Special Committee on Fisheries  
 House Special Committee on Education  
 House Transportation Committee  
 House Judiciary Committee

**Dan Ogg**  
 Representative

Session:  
 Room 409  
 Capitol Building  
 Juneau, Alaska 99801  
 Phone: 907-465-2487  
 Toll Free: 800-865-2487  
 Fax: 907-465-4956  
 Email: rep.dan.ogg@legis.state.ak.us

Interim:  
 112 Mill Bay Road  
 Kodiak, Alaska 99615  
 Phone: 907-486-8872  
 Fax: 907-486-5264

**SPONSOR STATEMENT****House Bill 333**

2/03/04

**"An Act relating to an endowment for public education; and providing for an effective date."**

This bill would establish a separate education fund of the state. The principal of the fund would be created by sums transferred to the account by the commissioner of revenue each year. This sum would equal the total receipts derived from the management of state and University of Alaska lands as established in AS14.40.507. In addition, the principal of the fund would be augmented by the allowance of gifts, bequests, and contributions of cash or other assets from individuals. The principal of the fund shall be retained perpetually in the fund for investment. The net income of the fund may be appropriated annually by the legislature.

In essence, the state and the University would be "tenants in common," meaning that, for the intent and purposes of this bill, one percent of the land conveyance to the state under sections 6 (a) and (b) of the Alaska Statehood Act shall be conveyed to the "tenants" upon the effective date of this bill. The tenants would then accumulate one percent of all new amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses from the effective date of this bill.

The rights of management and development of land conveyed under this concept would be retained by the Department of Natural Resources (DNR). However, the heightened fiduciary duty to the University that is usually owed by a managing tenant in common to other tenants in common will not apply. This bill does not require additional consultation or review by the University of DNR's land management decisions.

A new board within the Department of Education and Early Development (EED), entitled the Education Fund Board is established by this bill and would be responsible for administering the funds. The board would be comprised of the President of the University, two current members of the Board of Regents, and two members of the State Board of Education, the commissioner of EED, and three public members.

With the exception of four states, all of the university land grants were settled before the end of the 19th century. Alaska is one of those states. The time has come for Alaska to endow its public education system with a grant of its land. Of all the states, Alaska's Land Grant University is 49<sup>th</sup> in acreage granted by the state or federal government. The only state university that has less of a land grant is Delaware. This is not a situation of unwillingness on the part of the state or federal government, but a situation of circumstances.

District 36 - Kodiak Island Borough/Lake & Peninsula Borough  
 Akhiok • Chiniak • Karluk • Kodiak • Larsen Bay • Old Harbor • Ouzinkie • Port Lions  
 Iguigig • Iliamna • Kokhanok • Levelock • Newhalen • Nondalton • Pedro Bay • Port Alsworth

In 1634, four years after the establishment of the Massachusetts Colony, the colony's founding fathers gave an island as a land grant to Dorchester, one of the colony's towns. Dorchester dedicated the income from the island to fund the first free school in America. Granting lands for funding education has been the case ever since. The Morrill Act of 1862 entitled each state a grant of federal lands the income from which would provide the financial base of operation for at least one college or university. The University of Alaska at Fairbanks is Alaska's Land Grant University.

During the territorial days, land transferred to the University was minimal since a prerequisite to any transfer was that the land had to be surveyed. Since most of Alaska was not surveyed, only about 112,000 acres were transferred before statehood. When Alaska became a state, the federal government granted Alaska 104 million acres. Many assumed the University's land grant would come out of the state lands. Since statehood four attempts have been made by the legislature to grant lands to the University. Legislation to grant lands was vetoed once by Governor Bill Egan and three times by Governor Tony Knowles. The last land grant was Senate Bill 7 of the 21<sup>st</sup> Legislature, which granted the University 250,000 acres. The veto by Knowles was subsequently overridden by the legislature with a two-third's vote.

The governor then challenged the validity of the veto asserting that the bill was an "appropriation" and required a three-quarter veto override. The legislature challenged the Knowles decision in court. The Alaska Supreme Court's recent decision ruled in favor of the legislature indicating that they had legally overridden Knowles' veto. Unfortunately, the court remanded the case to the state Superior Court to determine if giving state land to the University created an unconstitutionally dedicated fund.

Should the grant be found by the court to be a constitutional dedication, actual revenues going to the University will be a long time coming. In response to a legislator's question on January 22, 2004 inquiring how long before land is developed under Senate Bill 7, the University responded that under the best of circumstances, the University does not expect to make anything off that land for 10 years and it could well be 20 years.

Passage of this bill will accomplish the recession of Senate Bill 7, thus ending the remaining court battle over unconstitutional dedication. It will give the University and public education a land asset without the headache of land management. It will eliminate the lengthy need for selection and separate development and the costs attached thereto. It will develop an income stream from the endowment as soon as new revenues from new developments and new land sales occur. With HB333, the education endowment could begin now, instead of 10 to 20 years from now.

Consider the size of an endowment if 1% had been set aside since statehood. In fiscal year 2003 the cumulative total petroleum revenue from just oil over these intervening years is over \$53 billion. One percent of that figure is \$530 million. That number doesn't take into account that the revenue would have been compounded yearly adding to the principal of that endowment and the subsequent income stream to the University and K-12 education.

If enacted, this bill will affect only 1% of new income from new developed resources or the new sale of state lands. This will not impact existing income streams from resources or land sales. The endowment will build over time, so present and future generations will benefit educationally from our grant land asset.

23-LS0991\X  
Bullock  
3/8/04

CS FOR HOUSE BILL NO. 333( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES OGG, COGHILL AND HOLM, Wilson

A BILL

FOR AN ACT ENTITLED

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(B) land

[(i)] conveyed to the Board of Regents by the commissioner of natural resources in the settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended; [AND

(ii) SELECTED BY THE UNIVERSITY OF ALASKA AND CONVEYED TO IT BY THE COMMISSIONER OF NATURAL RESOURCES UNDER AS 14.40.365;]

(5) keep a correct and easily understood record of the minutes of every meeting and all acts done by it in pursuance of its duties;

(6) under procedures to be established by the commissioner of administration, and in accordance with existing procedures for other state agencies, have the care, control, and management of all money of the university and keep a complete record of all money received and disbursed;

(7) adopt reasonable rules for the prudent trust management and the long-term financial benefit to the university of the land of the university;

(8) provide public notice of sales, leases, exchanges, and transfers of the land of the university or of interests in land of the university;

(9) administer, manage, market, and promote a postsecondary education savings program, including the Alaska Higher Education Savings Trust under AS 14.40.802 and the Alaska advance college tuition savings fund under AS 14.40.803 - 14.40.817.

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2 OF ALASKA.]

3 \* **Sec. 3.** AS 14.40.400(a) is amended to read:

4 (a) The Board of Regents shall establish a separate endowment trust fund in  
5 which shall be held in trust in perpetuity all

6 (1) net income derived from the sale or lease of the land granted under  
7 the Act of Congress approved January 21, 1929, as amended;

8 (2) receipts transferred to the fund under AS 14.40.505 [NET  
9 INCOME DERIVED FROM THE SALE, LEASE, OR MANAGEMENT OF THE  
10 LAND SELECTED BY AND CONVEYED TO THE UNIVERSITY OF ALASKA  
11 UNDER AS 14.40.365]; and

12 (3) monetary gifts, bequests, or endowments made to the University of  
13 Alaska for the purpose of the fund.

14 \* **Sec. 4.** AS 14.40 is amended by adding new sections to read:

15 **Sec. 14.40.495. Education trust and education trust fund established.** (a)

16 The education trust and education trust fund are established as a trust and a separate  
17 education trust fund of the state.

18 (b) The education trust corpus is composed of the undivided interest in lands  
19 conveyed to it under AS 14.40.507.

20 (c) The principal of the education trust fund consists of

21 (1) sums transferred to the fund under AS 14.40.505; and

22 (2) gifts, bequests, and contributions of cash or other assets from a  
23 person.

24 (d) The amount available for appropriation from the education trust fund shall  
25 be calculated by the commissioner of revenue under AS 14.40.503.

26 **Sec. 14.40.497. Powers and duties of the commissioner of revenue.** The  
27 commissioner of revenue is the treasurer of the education trust fund and has the power  
28 and duty, subject to the oversight of the Education Trust Fund Board under  
29 AS 14.40.501, to

30 (1) act as official custodian of the cash and investments belonging to  
31 the education trust fund by securing adequate and safe custodial facilities;

1 (2) receive all items of cash and investments belonging to the  
2 education trust fund;

3 (3) collect the principal and income from investments owned or  
4 acquired by the education trust fund and deposit the amounts in the education trust  
5 fund;

6 (4) invest and reinvest the assets of the education trust fund as  
7 provided in this section and as provided for the investment of funds under  
8 AS 37.14.170;

9 (5) exercise the powers of an owner with respect to the assets of the  
10 education trust fund;

11 (6) maintain accounting records of the education trust fund in  
12 accordance with investment accounting principles and AS 14.40.503;

13 (7) engage an independent firm of certified public accountants to  
14 annually audit the financial condition of the education trust fund's investments and  
15 investment transactions;

16 (8) enter into and enforce contracts or agreements considered  
17 necessary for the investment purposes of the education trust fund;

18 (9) report to the board the condition and investment performance of the  
19 education trust fund; and

20 (10) do all acts, whether or not expressly authorized, that the  
21 commissioner of revenue considers necessary or proper in administering the assets of  
22 the education trust fund.

23 **Sec. 14.40.499. Administration of the education trust fund; Education**  
24 **Trust Fund Board established.** (a) The education trust fund shall be administered  
25 by the Education Trust Fund Board.

26 (b) The Education Trust Fund Board is established in the Department of  
27 Education and Early Development. The board is composed of

28 (1) two members of the State Board of Education and Early  
29 Development, selected by the president of the board;

30 (2) the commissioner of education and early development or the  
31 commissioner's designee; and

1 (3) two public members appointed by the governor; in appointing the  
2 public members, the governor shall give a preference to persons who have experience  
3 and expertise in education.

4 (c) Each public member of the board is appointed for a term of four years, and  
5 may be reappointed.

6 (d) Members of the board are entitled to per diem and travel allowances as  
7 provided by law for members of state boards and commissions.

8 **Sec. 14.40.501. Powers and duties of the Education Trust Fund Board.**

9 When acting as administrator of the education trust fund, the Education Trust Fund  
10 Board shall

11 (1) hold regular and special meetings it considers necessary; the board  
12 may hold meetings by teleconference;

13 (2) keep audio tape recordings of each meeting of the board to be made  
14 available on request; and

15 (3) oversee the administration of the education trust fund by the  
16 commissioner of revenue;

17 (4) submit to the governor and make available to the legislature by  
18 February 1 each year a report describing the annual level of contributions to, income  
19 of, and expenses of the education trust fund.

20 **Sec. 14.40.503. Use of education trust fund; percentage of market value.**

21 Up to five percent of the market value of the education trust fund, as established under  
22 AS 14.40.495, may be annually appropriated by the legislature equally for the support  
23 of public elementary and secondary education.

24 **Sec. 14.40.505. Funding from education trust and university lands.** By

25 November 15 of each year, the commissioner of revenue shall transfer to the principal  
26 of the education trust fund created in AS 14.40.495 and to the University of Alaska  
27 endowment trust fund created in AS 14.40.400 equal shares of a sum equal to the total  
28 receipts derived from the management of state and University of Alaska land  
29 described under AS 14.40.507, including amounts paid to the state as proceeds of sale  
30 or annual rent of surface rights, mineral lease rentals, royalties, or royalty sale  
31 proceeds from the previous fiscal year.

1           **Sec. 14.40.507. Education trust and university land endowment.** The  
2 commissioner of natural resources shall separately convey to the University of Alaska  
3 and the education trust created under AS 14.40.495, as tenants in common, an  
4 undivided two percent interest in all lands conveyed under secs. 6(a) and 6(b), Alaska  
5 Statehood Act (P.L. 85-508, 72 Stat. 339), which constitutes the education trust and  
6 university land endowment. Notwithstanding the transfer of ownership, the rights of  
7 management and development of land conveyed under this section shall be retained by  
8 the Department of Natural Resources. The Department of Natural Resources,  
9 however, does not owe a heightened fiduciary duty to the University of Alaska or the  
10 education trust as a result of the management and development of land under this  
11 section.

12           **Sec. 14.40.509. Definitions.** In AS 14.40.495 - 14.40.509,

13                   (1) "board" means the Education Trust Fund Board;

14                   (2) "fund" means the education trust fund established in AS 14.40.495.

15 \* **Sec. 5.** AS 29.45.030(a) is amended to read:

16           (a) The following property is exempt from general taxation:

17                   (1) municipal property, including property held by a public corporation  
18 of a municipality, state property, property of the University of Alaska, or land that is  
19 in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-  
20 830, 70 Stat. 709, except that

21                           (A) a private leasehold, contract, or other interest in the  
22 property is taxable to the extent of the interest; however, an interest created by  
23 a nonexclusive use agreement between the Alaska Industrial Development and  
24 Export Authority and a user of an integrated transportation and port facility  
25 owned by the authority and initially placed in service before January 1, 1999,  
26 is taxable only to the extent of, and for the value associated with, those specific  
27 improvements used for lodging purposes;

28                           (B) notwithstanding any other provision of law, property  
29 acquired by an agency, corporation, or other entity of the state through  
30 foreclosure or deed in lieu of foreclosure and retained as an investment of a  
31 state entity is taxable; this subparagraph does not apply to federal land granted

1 to the University of Alaska under AS 14.40.380 or 14.40.390, to other land  
2 granted to the university by the state to replace land that had been granted  
3 under AS 14.40.380 or 14.40.390, or to land conveyed by the state to the  
4 university under AS 14.40.507 [AS 14.40.365];

5 (C) an ownership interest of a municipality in real property  
6 located outside the municipality acquired after December 31, 1990, is taxable  
7 by another municipality; however, a borough may not tax an interest in real  
8 property located in the borough and owned by a city in that borough;

9 (2) household furniture and personal effects of members of a  
10 household;

11 (3) property used exclusively for nonprofit religious, charitable,  
12 cemetery, hospital, or educational purposes;

13 (4) property of a nonbusiness organization composed entirely of  
14 persons with 90 days or more of active service in the armed forces of the United States  
15 whose conditions of service and separation were other than dishonorable, or the  
16 property of an auxiliary of that organization;

17 (5) money on deposit;

18 (6) the real property of certain residents of the state to the extent and  
19 subject to the conditions provided in (e) of this section;

20 (7) real property or an interest in real property that is exempt from  
21 taxation under 43 U.S.C. 1620(d), as amended;

22 (8) property of a political subdivision, agency, corporation, or other  
23 entity of the United States to the extent required by federal law; except that a private  
24 leasehold, contract, or other interest in the property is taxable to the extent of that  
25 interest;

26 (9) natural resources in place including coal, ore bodies, mineral  
27 deposits, and other proven and unproven deposits of valuable materials laid down by  
28 natural processes, unharvested aquatic plants and animals, and timber.

29 \* Sec. 6. AS 14.40.365, 14.40.366, 14.40.368, and 14.40.461 are repealed.

30 \* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to  
31 read:

1 INITIAL TERMS OF PUBLIC MEMBERS. Of the two public members first  
2 appointed under AS 14.40.499(b)(3), added by sec. 4 of this Act,

- 3 (1) one person shall serve a term of two years; and  
4 (2) one person shall serve a term of four years.

5 \* Sec. 8. This Act takes effect July 1, 2004.

# LEGISLATIVE RESEARCH REPORT

MARCH 1, 2004



REPORT NUMBER 04.176

## REVENUE PROJECTIONS FROM FUTURE RESOURCE DEVELOPMENT

PREPARED FOR REPRESENTATIVE DAN OGG

BY CHERIE NIENHUIS, LEGISLATIVE ANALYST

You asked about potential revenues from new resource development. Specifically, you wished to know how much revenue the State would receive over the next 20 years from rents, royalties, taxes, and other revenue sharing mechanisms for the projected development of currently undiscovered natural resources. You mentioned a proposal to place one percent of the proceeds into an endowment for public education.

"Undiscovered" resources are those defined as "unspecified bodies of mineral-bearing material surmised to exist on the basis of broad geologic knowledge and theory."<sup>1</sup> Broad geologic knowledge and theory is just that—speculation based on geologic formations and the probability of occurrence of petroleum or other mineral deposits. Because there is no assurance that these deposits exist in commercially viable quantities, estimated amounts of undiscovered petroleum resources are usually expressed in probabilities. For example, volumes of in-place resources are often estimated in terms of three or more different levels: a conservative, or low estimate, for which geologists assign a 95 percent probability of existence; a high estimate (an optimistic one, perhaps), which is assigned a 5 percent probability; and a mean estimate, which is between the high and low volume estimates, and assigned a 50 percent probability.<sup>2</sup>

These values are further refined to include recoverability factors, such as technical and economic recoverability. Resources are *technically* recoverable when they can be extracted given current technology. Resources are *economically* recoverable when they can be extracted without net loss for producers given the current economic conditions. Both of these factors are moving targets. Although advances in technology are difficult to predict with any accuracy, changes in economic conditions affecting resource recoverability—notably, the market price of oil—are generally included in analyses of undiscovered resource development potential.

<sup>1</sup>Howard R. Williams and Charles J. Meyers, *Manual of Oil and Gas Terms*, Eleventh Edition (New York: Matthew Bender & Company, Inc., 2000), p. 1154.

<sup>2</sup>For example, in-place petroleum resources for a portion of the Arctic National Wildlife Refuge were estimated by the U.S. Geologic Survey to be 15.6 billion barrels of crude oil at the 95<sup>th</sup> percentile; 42.3 billion barrels at the 5<sup>th</sup> percentile; and 27.8 billion barrels at the 50<sup>th</sup> percentile, or the mean level, of probability.

The Arctic National Wildlife Refuge (ANWR) and the National Petroleum Reserve-Alaska (NPR-A) are two of the most widely publicized areas in the state where large quantities of undiscovered petroleum resources are believed to exist. Over the years, several government organizations have conducted assessments of the geologic formations in the federally-owned portions of the areas to determine the oil-producing potential of each. At least eight assessments have been released since 1986 detailing the potential of the coastal plain of ANWR, including one by the Alaska Division of Oil and Gas, one by the Energy Information Administration, three by the Bureau of Land Management, and three, including the most recent, by the U.S. Geologic Survey (USGS). Each assessment produced different results. Those familiar with the intricacies of resource assessments, however, note that technological advances in data collection and processing have enabled geologists to conduct more comprehensive and accurate assessments, and most support the findings released by the USGS in 1998. Even so, estimates based on geologic assessments are not proven until exploratory wells are drilled and the resource is discovered.<sup>3</sup> Many factors stand in the way of exploration and development of a significant proportion of Alaska's undiscovered resources, however, not the least of which are Congressional approval (ANWR) and the economic feasibility of producing and transporting the resources (gas line, and the development of remote, roadless areas).

With these caveats in mind, one section of the Department of Revenue's *Fall 2003 Revenue Sources Book* is devoted to new resource development opportunities in the state.<sup>4</sup> The department addresses four major sources of oil development potential: the Central North Slope satellites, the Beaufort Sea, the NPR-A, and ANWR. Also mentioned in the context of new revenue is the Alaska natural gas pipeline. Each of these sources has hurdles to overcome before exploration and development could occur, and not all are anticipated to come on-line within the next five years. Table 1 shows the Department of Revenue's *projected cumulative revenue* from these five sources as reprinted from the revenue sources book. The department's projections include only royalty and severance tax revenue, and show accumulated revenues at five and ten year intervals, in millions of undiscounted dollars (not inflation adjusted).

**Table 1: Projected Cumulative Revenue from New Oil Exploration and Gas Line Project, FY 2006 to FY 2030 (in millions of undiscounted dollars)**

Year	Central North Slope Satellites	Beaufort Sea	Undiscovered NPR-A	ANWR	Natural Gas Line	Total
2006	\$ 27	\$ -	\$ -	\$ -	\$ -	\$ 27
2010	\$ 174	\$ 18	\$ -	\$ -	\$ -	\$ 192
2015	\$ 480	\$ 145	\$ 261	\$ 484	\$ 2,156	\$ 3,526
2020	\$ 854	\$ 268	\$ 1,145	\$ 2,122	\$ 5,282	\$ 9,671
2030	\$ 1,622	\$ 338	\$ 1,644	\$ 6,058	\$ 11,671	\$ 21,333

Note: Revenue amounts are cumulative; that is, in the year 2030, the revenue accrued to the State from the five resource development projects for the 25 years from 2006 to 2030 is expected to total approximately \$21.3 billion. These amounts reflect royalty and severance tax revenues only.

Source: Department of Revenue, *Fall 2003 Revenue Sources Book*, Table 3-4, p. 32.

<sup>3</sup> As explained in the Department of Revenue's *Fall 2003 Revenue Sources Book*, p. 28, "Exploratory drilling in Alaska is risky. On the North Slope, since 1994, we estimate that about 70% of the wells failed to discover economically recoverable reserves."

<sup>4</sup> We include a copy of this section of the department's publication as Attachment A.

The State also collects corporate income taxes from most oil and gas companies operating in Alaska.<sup>5</sup> The amount of corporate income tax accruing from these new operations is difficult to predict, because income tax is dependent upon profitability. It is expected that producers will actually expend more money than they recover in the first couple of years of exploration and development, but that the State could see some income tax revenues in the 4<sup>th</sup> or 5<sup>th</sup> year of operation.

The Department of Revenue has not projected corporate income tax revenue for the above four oil development projects. The McDowell Group, a research-based consulting firm that has provided economic analyses to the State for several projects, has used a statistical relationship of royalty revenue and corporate income tax to determine the amount of projected corporate income tax revenue from future operations.<sup>6</sup> Applying this methodology, we project a reasonable, but conservative estimate of cumulative corporate income tax revenue from the above four projects of about \$2.7 billion dollars by the year 2030. Officials at the Department of Revenue project the cumulative corporate income tax for the natural gas line to be about \$6.7 billion by the same year.

Other revenues, including cash bonuses, lease rentals, property taxes and other minor taxes are also paid against petroleum operations. Although bonus revenue can be significant, it is unpredictable. The U.S. Energy Information Administration has estimated that lease bonus revenue for ANWR alone could be as much as \$3 billion, with the State receiving 50 percent of that amount.<sup>7</sup> Property taxes can add up to substantial annual revenue, but local governments receive most of the money. Altogether, we estimate that the cumulative value of these additional revenue sources will not exceed \$3.5 billion.

Should all five of the above undiscovered resource projects be developed, using the Department of Revenue's timelines and the assumptions, we conservatively project that the State will receive an accumulated total of \$34.233 billion (undiscounted) by the year 2030. One percent of this amount would equal approximately \$342.3 million.

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#### NEW MINERAL RESOURCE DEVELOPMENT

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The Department of Revenue also projects revenue from mining operations. Although they do not forecast revenue twenty years into the future, they name several new mineral resource development opportunities on the near horizon. Developers of the Pogo gold project near Delta Junction recently received crucial authorization by the U.S. Army Corps of Engineers and estimate that production will begin in late 2005. The Pogo mine is expected to produce a minimum of 375,000 ounces of gold per year and to employ 300 persons year round. When gold reached a recent peak of \$425 per ounce, the project was valued at \$2.3 billion.

The increased value of gold has renewed interest in developing the Kensington mine near Juneau and the Donlin Creek mine near the Kuskokwim River. Situated on land owned by the Calista Native Corporation, the Donlin Creek gold deposit, where 20 million ounces of the ore has been identified, if developed, would place it among the 10 largest gold mines in the world. Major

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<sup>5</sup> As you may know, subchapter S corporations and limited liability companies are currently not subject to Alaska's corporate income tax.

<sup>6</sup> The McDowell Group found that corporate income tax revenues from petroleum operations have historically averaged 25 percent of the amount of royalties paid against those operations.

<sup>7</sup> Although the State's share of revenue from the development of ANWR, if it occurs, has yet to be determined, most analysts predict that Congress would not authorize a share of greater than 50 percent.

hurdles for the Donlin Creek project are its inaccessibility and its need for large supplies of power. Developers nevertheless hope to begin production in 2007.

Compared with petroleum production revenue and royalties, mining contributes relatively little to the State coffers even when prices are high. In 2002, the entire mineral industry paid \$15.2 million in taxes, rents and royalties to the state and local governments. Of that amount, local governments received \$9.7 million, leaving \$5.5 million to the State. Assuming the best of scenarios—that these projects double the revenue the State receives—we calculate one percent of this amount to be only \$110,000.

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I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

**Attachment A**

"Resource Development Opportunities,"  
*Fall 2003 Revenue Sources Book,*  
Alaska Department of Revenue

3.

RESOURCE DEVELOPMENT  
OPPORTUNITIES

## Looking for New Oil Reserves

There are essentially three phases involved in bringing new oil and gas reserves into production: leasing, exploration and development. In this section we will examine current trends in leasing and exploration as well as new development issues on the Alaska North Slope.

### Leasing

The state's leasing program continues to be quite successful. There are currently over 4.8 million acres of state land under oil and gas leases. Since 1995, lease sale bonuses and rents have generated over \$200 million for the state. Leases are owned by many different oil companies and private citizens. As of today, ConocoPhillips controls the largest amount of acreage at 925,785 acres. The top ten companies control 3.7 million acres while 90 other entities control the remaining 1.2 million acres.

Table 3-1. State-Owned Leases  
Thousands

Company	Acreage	Percent
ConocoPhillips	926	19.0%
Anadarko	514	10.6%
Petro-Canada	411	8.4%
BP	406	8.4%
Union	321	6.6%
Chevron USA	296	6.1%
Encana	236	4.9%
ExxonMobil	191	3.9%
Burlington Resources	184	3.8%
Forest	179	3.7%
All Others	<u>1,201</u>	24.7%
<b>Total</b>	<b>4,863</b>	

Source: Lessee's Acreage Summary, Division of Oil and Gas, Alaska Department of Natural Resources, November 2003.

Since 1995 the total amount of acreage under lease has more than doubled. This suggests a successful ongoing leasing program that is generating state revenue and making a significant amount of acreage available to exploration. The diversity of ownership suggests that some leases are pursued with an eye to selling them to an entity that has the ability to explore or gain access to existing facilities. The bottom line is that considerable acreage is in the hands of lessees and the ownership of leases is diversified between large companies and smaller firms and individuals.

## Exploration

In order to produce oil or gas you need to find it. Exploration is driven by many factors but the primary one is the likelihood of finding oil or gas in sufficient quantity to justify commercial production. The North Slope of Alaska has been explored by geologists since the beginning of the last century and ideas about where to drill the next exploration well continue to be refined as new pools are discovered.

The likelihood of finding oil or gas in sufficient quantity to justify commercial production is enhanced first by the availability of acreage with good potential. The use of improved technology provides a higher probability of discovery. The existence of surface facilities to collect, process and move the production to market lowers the cost of developing a discovery, thereby reducing the field size that is necessary to declare commercialization.

Table 3-2. Total Alaska Exploratory Wells, North Slope and Cook Inlet, 1995-2003

	1995	1996	1997	1998	1999	2000	2001	2002	2003	Total
<b>Total Wells</b>	<b>8</b>	<b>10</b>	<b>13</b>	<b>14</b>	<b>5</b>	<b>8</b>	<b>19</b>	<b>21</b>	<b>14</b>	<b>113</b>
Prudhoe Unit			1	5	1			1		8
Other North Slope Onshore	3	4	4	5	1		4	1	0	22
Other North Slope Offshore			2					1	4	7
NPR-A						4	5	4	1	14
Alpine (Colville River Unit)	4	5		1	2	1	5		1	19
Southwest Kupanuk			4		1	3	2	3		13
Cook Inlet	1	1	2	2			4	3	3	16
Shallow Gas				1				8	5	14

Source: Well data from Alaska Oil and Gas Conservation Commission through November 2003.

Exploratory drilling in Alaska is risky. On the North Slope, since 1994, we estimate that about 70% of the wells failed to discover economically recoverable reserves. There were good years in which over 60% of the wells drilled led to commercial discoveries, interspersed with bad years where drilling failed to yield a commercial discovery.

Table 3-3. North Slope Exploration Summary, 1994-2002

	Total Wells	Oil Discovery	Suspended	Plugged and Abandoned
1994	6	0	1	5
1995	7	4	2	1
1996	9	2	2	5
1997	10	6	1	3
1998	10	6	0	4
1999	5	2	3	0
2000	7	0	0	7
2001	16	3	5	8
2002	10	1	2	7

In addition to being risky, drilling exploration wells in Alaska is expensive, especially "wildcat" wells or wells drilled in remote locations. The United States Geological Survey (USGS) estimates that drilling a wildcat well in a remote area like the National Petroleum Reserve-Alaska (NPR-A) costs over two-and-a-half times what it would cost to drill a development well at Prudhoe Bay.<sup>(1)</sup> The USGS believes that the accumulations in the NPR-A will be moderate in size, in the reserves range "commonly developed as "stand alone" or satellite fields on the central Alaska North Slope in recent years" of less than 250 million barrels. Large accumulations like Prudhoe Bay "are not expected to occur."<sup>(2)</sup>

Between 1995 and 2003 an average of approximately 12 exploratory wells were drilled annually on the North Slope and in Cook Inlet (see Table 3-2 on the prior page.) In 1999, the year of the last major oil price crash, only five North Slope wells were drilled.

A flurry of exploration activity occurred in 2000, 2001 and 2002 as the result of several key events: (1) the discovery of Alpine; (2) the leasing of NPR-A acreage close to the developing Alpine field; (3) discoveries and development of Tam and Meltwater, southwest of the main Kuparuk field; and (4) high oil prices.

Oil discoveries were announced in the NPR-A but no specific development plans have been made public. The two key factors that underpin exploration activity, attractive acreage and proximity to existing surface facilities were definitely in play during this period. ConocoPhillips drilled 10 of the 14 NPR-A wells drilled over the 2000-2003 time period, with BP drilling two wells and Anadarko drilling one. Drilling in the NPR-A tapered off to one well in 2003 at Puviaq.

Seven offshore wells were drilled over the period 1995-2003: Liberty and Warthog in 1997, McCovey in 2002 and three wells in the Oooguruk Unit and one offshore Kuparuk in 2003. Marginally economic oil reserves lie in Liberty and oil was discovered in the Oooguruk Unit. The other three wells found little or no oil.

BP, as a Prudhoe Bay unit operator, continued a steady program of exploring near existing fields in the late 1990's that resulted in the several new commercial discoveries. BP has announced that they will not be exploring outside of existing units. Other unit partners such as ConocoPhillips and ExxonMobil would have paid a proportional share of the cost of these wells.

In 2002, policymakers decided that something must be done to encourage wildcat exploration on the North Slope. The number of exploratory wells drilled there had declined from 16 in 2001 to six in 2003. The second largest producer in Alaska, BP, swearing off frontier exploration in Alaska, had laid off or sent their exploration people to Houston, and sold off their exploration lands and 3-D seismic. As pointed out previously, wildcat exploration is expensive and risky. To encourage wildcat exploration, the legislature passed and the governor signed into law SB 185, that provides for a credit against exploration expenses for wells drilled far away from other wells or unit infrastructure.

(1) See USGS Open-File Report 03-44, "Economics of Undiscovered Oil in Federal Lands on the National Petroleum Reserve, Alaska," (January 2002) by Emil D. Attanasi [NPR-A Economic Report] at Pages 20-21.

(2) See USGS Fact Sheet 045-02, "U.S. Geological Survey 2002 Petroleum Resource Assessment of the National Petroleum Reserve in Alaska (NPR-A)" [NPR-A Fact Sheet].

Activity in the Cook Inlet saw an average of two wells per year with a total of 10 wells drilled between 2001 and 2003. The effect of higher natural gas prices and seasonal shortages of natural gas to supply industrial demand, as well as royalty incentives, all played a role in encouraging the search for new gas reserves in the Cook Inlet region.

The other major boost to exploration activity is in the drilling of shallow gas wells targeting coal bed methane as evidenced by the 13 shallow gas wells drilled by Evergreen over the last two years. Higher gas prices, proximity to the existing natural gas grid and local market as well as favorable royalty treatment no doubt have contributed to interest in exploring for this resource.

Given the high cost of drilling exploratory wells, it should come as no surprise that nearly 80% of the non-shallow gas exploratory wells over the 1995-2002 period were drilled by the two major producers/operators on the North Slope, ARCO/ConocoPhillips and BP. ARCO/ConocoPhillips accounted for roughly 60% of the exploratory wells drilled. The third major producer, ExxonMobil, did not drill any exploratory wells.

However, other companies have been drilling. In 2003, Pioneer Natural Resources drilled the three wells in the Ooguruk Unit between Kuparuk River Unit and Thetis Island that discovered oil. Winstar drilled offshore from Oliktok Point. Forest Oil has been very active exploring the Redoubt Unit in the Cook Inlet. Marathon and Unocal, as well as ConocoPhillips, have been active exploring for gas in the Cook Inlet.

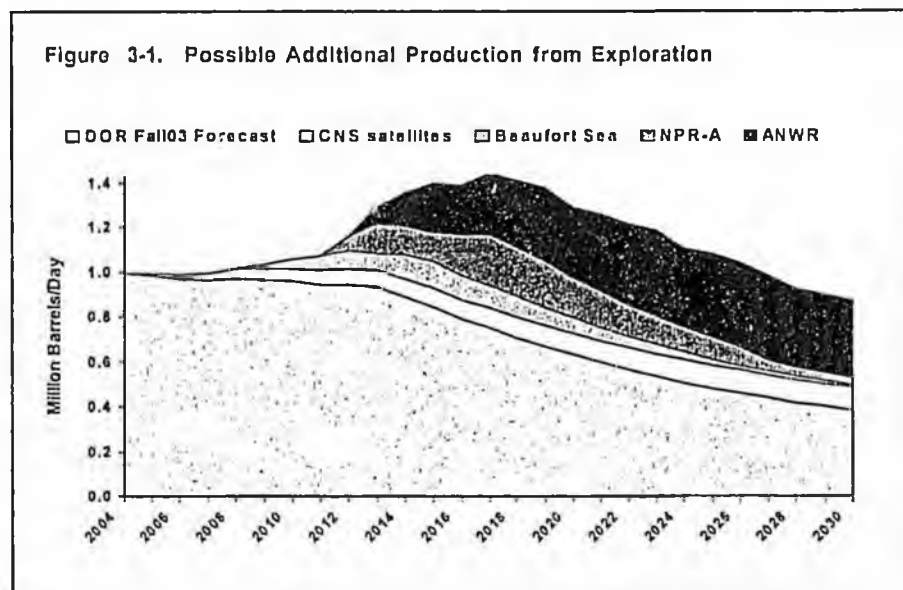
### Conclusion

- Recent exploration activity has been relatively concentrated in one firm, ConocoPhillips.
- New entrants, however, are buying leases and in some cases drilling wells (Encana, Winstar and Pioneer Resources)
- Major increases in exploration drilling are going to overwhelmingly be driven by the opening up of new areas that are located close to existing surface infrastructure. The most recent example is the NPR-A, where the eastern area lies close to the western edge of the North Slope oil gathering infrastructure at Alpine.
- Although oil and gas prices can make a difference in terms of cash available to explore, high oil prices alone may not be enough to cause the biggest current producers on the North Slope to drill North Slope exploration wells in 2004.
- Clearly, investment in surface infrastructure can dramatically improve the commerciality of exploring and development. This is the motivation for the initiative by the state to plan for road and bridge access to the NPR-A. Some exploration wells have been drilled recently by companies with little or no access to surface facilities; however most wells are drilled by companies with existing production and facilities.

## Developing New Oil Fields

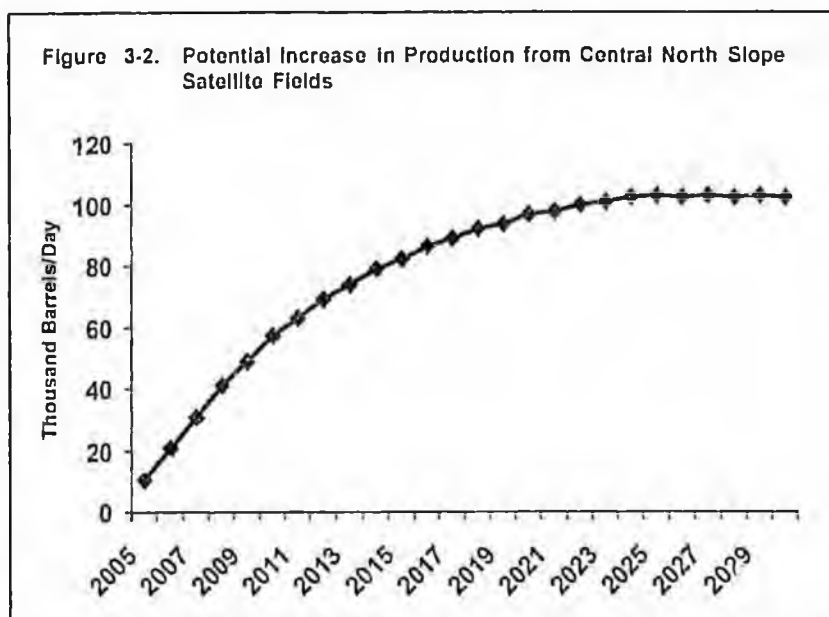
Exploration and aggressive development of found oil reserves could place ANS production on an increasing path by the end of this decade. Here, we have highlighted four areas that could be sources for such growth: the Central North Slope satellites, Beaufort Sea, NPR-A and ANWR. ANWR could provide as much — or more — in oil reserves and production as the other three areas combined. Oil exploration incentives, as provided in the recently adopted exploration tax credit, as well as the initiative to build a new year-round access road to the NPR-A are designed to encourage the exploration necessary to realize this additional oil production.

Also, exploration is not the only way to add reserves. For instance, more aggressive development of heavy oil resources could add reserves and production. Whether we reach this higher production path depends crucially on the level of exploration and development spending, something which must increase from depressed 2002 and 2003 levels.



## Central North Slope Satellites

In its last slope-wide evaluation of oil and gas resources, the USGS estimated that there were 2.3 billion barrels of technically recoverable, undiscovered oil reserves in the Central coastal regions of the North Slope. The USGS believed this oil would mainly be in the "Turbidite" and "Barrow Arch Beaufortian" geological plays.<sup>(1)</sup> Since that evaluation in 1995, producers have discovered and put into production more Turbidite (Meltwater, Tam, Tabasco, Midnight Sun and Aurora) and Barrow Arch Beaufortian (Alpine and Polaris) reservoirs.<sup>(2)</sup> Adjusting these technically recoverable barrels to take into account recent discoveries, we estimate that there are about 1.9 billion barrels of technically recoverable oil still remaining to be found in the Central Coastal regions. The USGS also felt that around half of this technically recoverable oil would be economically recoverable.<sup>(3)</sup> Of the estimated 1.9 billion barrels of technically recoverable oil remaining net of post-1995 discoveries, 880 million barrels should be economically recoverable.



(1) USGS Open-File Report 95-751, Emil Attanasi and Ken Bird, "Economics and undiscovered conventional oil and gas accumulations in the 1995 National Assessment of U.S. Oil and Gas Resources: Alaska," [USGS95], Table 3, Page 37.

(2) Since these barrels were put into production and therefore economically recoverable, we could have adjusted the economically recoverable, rather than technically recoverable, reserve numbers down. However, recent discoveries will not only turn undiscovered barrels into discovered barrels. They will add geological information that increases the estimate of undiscovered, technically recoverable, reserves. To roughly offset this effect we have kept constant the percentage of technically recoverable barrels that are economically recoverable.

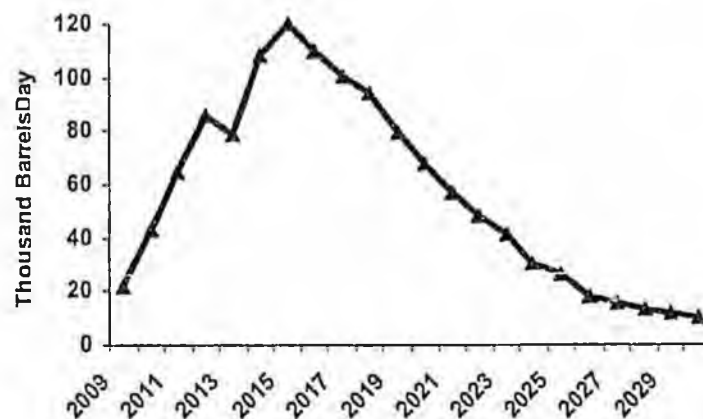
(3) Of the Central Coastal region's 1.9 billion barrels of remaining technically recoverable reserves, 45.75% (916 million barrels) should be economically recoverable. The economic recovery factors reflect mid-points between the \$18 and \$30 cases of USGS[95] Table 3.

Finding and producing these reserves will require further investments in exploration and development. Due to capital constraints, these reserves will come on slowly. We derive a conservative production forecast for these satellites and fields by assuming that 75 million barrels of additional Central North Slope reserves will be put into production every other year starting in 2005. The 75 million barrels assumption is conservative because in 2001 and 2002 the producers put three satellites with about 300 million barrels of reserves into production. However, in 2003 there were no new satellite discoveries put into production. Exploration efforts continue though. Pioneer recently announced an oil find just north of Kuparuk in the newly formed Oooguruk unit. By 2010, currently unannounced satellite developments could add around 50,000 barrels a day to our forecast.

### Beaufort Sea

In total, U.S. Minerals Management Service (MMS) estimates that there are 8.82 billion barrels of technically recoverable reserves and 2.27 billion barrels of economically recoverable oil at \$18 per barrel oil prices and around 2.5 billion barrels at \$22 per barrel. The MMS recently held Beaufort Sea Lease Sale 186 that garnered \$10 million in bonus bids. For the Beaufort Shelf area, the MMS projects that the three fields developed from areas leased in this sale will yield 460 million barrels of reserves. See James D. Craig, "Economic Results, Beaufort Shelf Province."

Figure 3-3. Possible Production from Beaufort Sea-Lease Sale 186



## NPR-A

In 2001, ConocoPhillips announced an oil discovery in the NPR-A. Currently, the Bureau of Land Management (BLM) is completing an environmental impact statement (EIS) for possible development of these discoveries as Alpine satellites. We estimate that the NPR-A will yield 430 million barrels of oil in our production forecast. Production starts in FY 2009 and ramps up to 60,000 barrels a day by 2015.

The NPR-A might yield more oil reserves, oil reserves that could be produced at a higher rate. The USGS evaluated the oil and gas resources in the NPR-A in 2002, and concluded that there were 9.3 billion barrels of technically recoverable reserves there. Of that amount, the USGS concluded that 1.3 billion barrels would be economic to explore for and produce at a \$22 per barrel ANS West Coast oil price — our long run price forecast.<sup>(1)</sup> In the EIS, BLM envisions a development of multiple drill sites along with two new central processing facilities in the NPR-A. Provisionally, the BLM estimates the NPR-A reserves from this development would be around 1.4 billion barrels, slightly higher than the USGS's 2002 number.

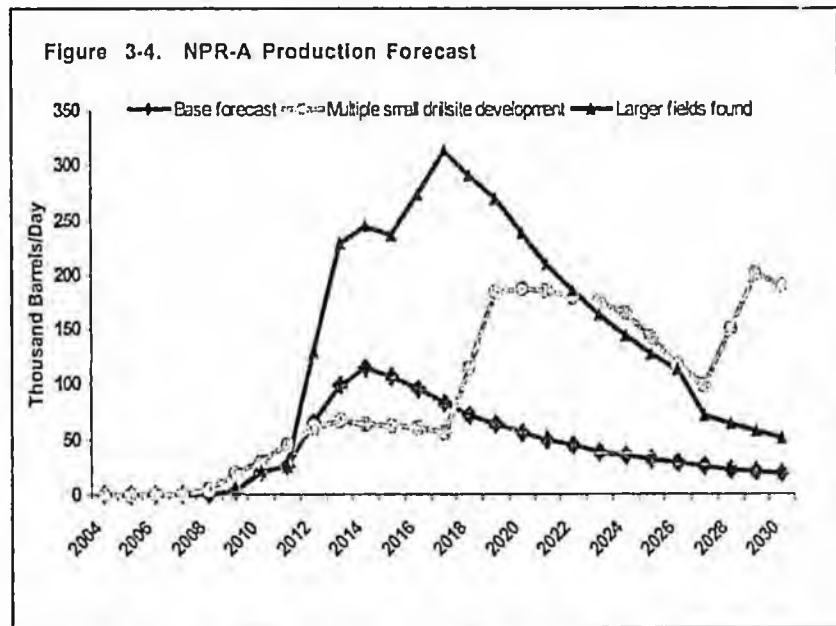
How quickly these reserves are produced depends on the pace of exploration and the size of the fields discovered. Since 2000, 14 exploration drills have been drilled in the NPR-A and a further three or four are planned for the 2003-2004 drilling season. The USGS assumed that there were about eight accumulations with 256 to 512 million barrels in the NPR-A, three of which were in "Subarea 110" of the NPR-A, the area closest to Alpine and TAPS.<sup>(2)</sup> For the NPR-A these are large fields, and these larger fields would be produced before smaller accumulations since they are easier to find and more economic to develop.<sup>(3)</sup> After an initial round of exploration (assuming 20 wildcat wells), the USGS believes that one of these three 256-512 million barrel fields would result in a 430 million barrel field discovery. Under the USGS's cost and development assumptions, to overcome the challenges facing NPR-A development requires that the potential prize of a larger field (400 million barrels or more) is needed for exploration at \$22 per barrel oil prices. Once found, a relatively small field (250 million barrel) will be economic. Explorers just will not incur high exploration costs to look for those fields.

(1) See NPR-A fact sheet.

(2) See USGS fact sheet histogram. The USGS divided the NPR-A into eight subareas for the purpose of estimating product transportation costs to TAPS. See Economic report at Page 17.

(3) See USGS fact sheet, "The economic analysis simulates exploration by assuming that larger accumulations will be discovered early..."

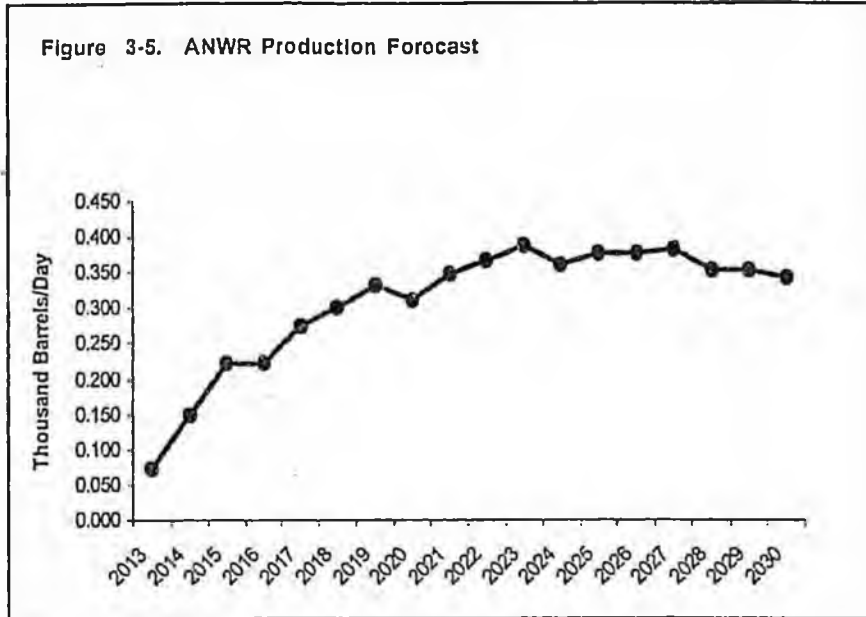
The graph illustrates the production from the NPR-A in our forecast, and the additional production from the NPR-A if a larger field is found or, alternatively, if smaller fields are found and can be economically produced. Lowering exploration costs (through the recently enacted SB 185 or through a permanent road) make the higher forecast more likely to occur. The USGS estimates that the initial finding costs per barrel for the NPR-A is \$0.39, or \$168 million.<sup>(1)</sup> Explorers pay out these millions of dollars years before first production. Decreasing the cost of this frontier exploration by roughly 30% due to the passage of SB 185 will increase the rate of return on a 430 million barrel field a full percentage point — from 13% to 14% — at \$22 per barrel oil prices.



## ANWR

The USGS estimates that there are 10.3 billion barrels of technically recoverable reserve in the Arctic National Wildlife Refuge (ANWR), or more barrels than the original estimate for the giant Prudhoe Bay field. At our forecast price of \$22 per barrel, the USGS estimates that 4.4 billion barrels are economically recoverable from federal lands, and almost another billion from non-federal lands. Since ANWR production will probably come from larger fields (with an 80% chance of there being a 1.024 to 2.048 billion barrel field), production should ramp up quickly. We estimate that once Congress opens ANWR to oil exploration and development it will take seven years for the first oil to be produced from the area. If opened in 2006, ANWR is assumed to add between 200 and 400 thousand barrels a day of production by the middle of the next decade.

(1) See NPR-A Economic Report, Table 4, Page 37.



## Gas Line

The producers, the state and other interested parties continue to explore ways to monetize the over 30 trillion cubic feet of natural gas on the North Slope.<sup>(1)</sup> The three largest producers on the North Slope (BP, ConocoPhillips, and ExxonMobil) have looked at a project to pipe about 4.5 billion cubic feet of gas per day to markets in the Lower 48 or Canada. Many hurdles must be overcome for the project to proceed. If these hurdles are overcome, the state stands to receive around \$600 million a year in royalty and severance tax payments per year. Including corporate income tax and property tax, revenues to the state and municipalities increase to around \$1 billion per year.<sup>(2)</sup>

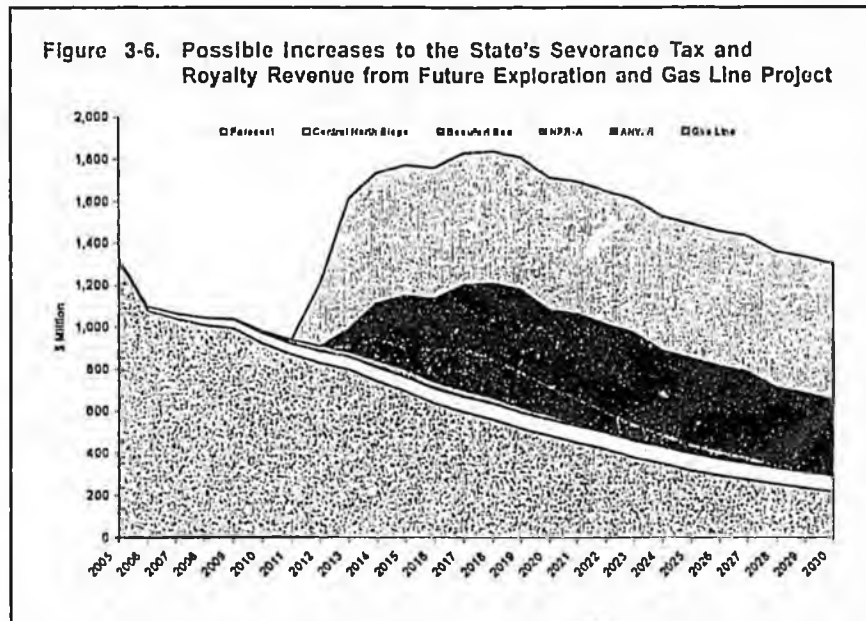
(1) Producers on the North Slope currently use the natural gas there to enhance oil production through miscible injection (EOR) projects, cycling and pressure maintenance. Natural gas also is used as field fuel, to fuel some of the pump stations on the Trans-Alaska pipeline and is sold in small quantities to local utilities.

(2) For purposes of this analysis, we have assumed a \$4 per mmBtu price at market. We have not factored in possible changes to the state fiscal system. The state and municipal-take is based on the current fiscal structure. We also have not taken into account oil losses due to gas voidage from an oil and gas reservoir.

# 3.

## Conclusion

In our forecast of oil and gas base revenue (production tax and royalty), we project a decline of 30% by FY 2010 and almost 50% by FY 2015. However, by FY 2015 revenue from future oil exploration and a gas line could more than offset this anticipated decline in oil and gas base revenue from currently producing or discovered fields. With a very active oil and gas exploration and development effort, by FY 2015 our oil and gas base revenue could be 30% higher than it is today.



**Table 3-4. Cumulative Revenue from New Oil Exploration and Gas Line Project to FY 2030  
\$ Millions (Undiscounted Dollars)**

	Central North Slope and Satellites	Beaufort Sea	Additional NPR-A	ANWR	Gas Line	Total
2006	27	0	0	0	0	27
2010	174	18	0	0	0	192
2015	480	145	261	484	2,156	3,526
2020	854	268	1,145	2,122	5,282	9,672
2030	1,622	338	1,644	6,058	11,671	21,333

## Minerals

Alaska's traditional resource-based industries in mining, fish, tourism and timber all have potential for growth. In this Revenue Sources Book, we have chosen to examine the mining industry. Most of this information comes from the "Alaska Minerals Industry 2002" report, Department of Natural Resources, 2003.

### Mining

Between 2001 and 2002, the production value of industrial, energy and metal minerals increased 10% to over \$1 billion. Industrial minerals (e.g., sand and gravel) increased from \$82.4 million to \$152.2 million, mostly as a result of increased road repair and construction. Energy minerals (e.g., coal) decreased from \$48.3 million to \$37.6 million, mostly due to the loss of exports to Korea. Metal minerals increased from \$788.6 million to \$823.1 million, mostly as a result of an increase in the price of gold.

In 2002, zinc prices decreased by more than 12% from 2001 but, as production increased, the total value of zinc decreased only by 1%. Even with prices dropping since the first half of 2001, zinc still accounted for over 60% of the production value for all metals.

Both gold and silver prices increased by 14% and 5%, respectively in 2002 and have continued to rise in 2003. In fact the price of gold in 2003 (January-October) is currently 16% higher and zinc prices are 3% higher than in 2002. According to Andrew Keen at the London Metal Exchange, lead and zinc prices should improve slowly in 2004. Additionally, Korea has signed a new two-year agreement to once again import coal from Alaska.

Employment in the minerals industry in 2002 was 2,824 full-time equivalent jobs, down by 11 from 2001. Average annual earnings in 2002 of \$63,763 were among the highest in the state.

### Producing Mines

The four largest producing mines in Alaska are:

**Red Dog:** Is a joint venture between Nana Regional Corporation and Teck-Cominco and the largest producer of zinc concentrate in the world. Out of a total of 718,106 tons of zinc produced in Alaska in 2002, Red Dog accounted for 637,800 or 89%. Red Dog has almost 550 employees.

**Fort Knox:** Is owned by Kinross Gold Corporation and produced 410,519 ounces of gold in 2002. This is 73% of the total production of gold in the state. Fort Knox has almost 400 employees.

**Greens Creek:** Is a joint venture between Kennecott Minerals and Hecla mining and is the third largest silver producer in North America. Out of a total of 17,858,183 ounces of silver produced in Alaska in 2002, Greens Creek produced 10,913,183 or 61%. Greens Creek has over 260 employees.

**Usibelli Coal:** Is owned by Usibelli Coal Mines Inc. and has among the lowest sulfur coal in the world. Usibelli produced 1,157,879 tons of coal which is essentially all of the commercial coal produced in Alaska. Usibelli had approximately 80 employees in 2002. In 2003, Korea signed a contract valued at \$20 million with Usibelli to resume importing coal from Korea.

### Advanced Stage Projects

The three largest advanced stage projects are:

**Pogo:** Is a joint venture between Sumitomo and Teck-Cominco and the closest of the three projects to construction. Start of construction should be by late 2003 or early 2004 and production should begin in late 2005 or early 2006. The mine should produce greater than 375,000 ounces of gold per year and should employ about 360 employees during production.

**Kensington:** Is owned by Coeur d'Alene mines and still has some hurdles to overcome before construction can begin. However, if production does occur, then the mine should produce approximately 85,000 ounces of gold per year and have about 225 employees.

**Donlin Creek:** Is a joint venture between Placer Dome, NovaGold Resources, Calista Corporation and TKC and has the largest gold resource in Alaska. According to the Alaska Journal of Commerce (Bradner, 2003) the largest "challenge" to overcome for Donlin Creek to become a producing mine is to find enough power to operate the mine.

### Revenue

According to the Department of Natural Resources, the mining industry paid \$15.2 million to the state and municipalities in 2002. Most of this revenue was from payments to municipalities (\$9.7 million.) The mining industry makes revenue payments to the state in the form of rents and royalties, corporation income taxes (if the businesses are subchapter C corporations) and mining license taxes. We do expect some increase in the state revenues as a result of strong gold prices, improving zinc prices, a new coal contract with South Korea and in the long run from new developments.

The only advanced stage project development that we included in the forecast was Pogo because this project is the closest to construction and is the most likely to begin production within the next five years. No tax revenue would be realized in the two-year forecast window because production is not slated to begin until early 2006. Additionally, because of the 3½-year tax holiday after production starts, we would not see any mining license revenue until FY 2010 or 2011 at the earliest. Exploration credits may be applied against 50% of royalties and tax liabilities and further reduce revenue.

*Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, e-mail corrections@appellate.courts.state.ak.us.*

THE SUPREME COURT OF THE STATE OF ALASKA

THE ALASKA LEGISLATIVE	)	Supreme Court No. S-10344
COUNCIL, on behalf of the Alaska	)	
State Legislature,	)	Superior Court No.
	)	1JU-00-1237 CI
Appellant,	)	
	)	<u>OPINION</u>
v.	)	
	)	[No. 5768 - January 9, 2004]
HONORABLE TONY KNOWLES,	)	
in his official capacity as Governor	)	
of the State of Alaska,	)	
	)	
Appellee.	)	

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Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Patricia A. Collins, Judge.

Appearances: James P. Crawford, Division of Legal and Research Services, Legislative Affairs Agency, Juneau, for Appellant. Joanne M. Grace, Assistant Attorney General, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee. Thomas S. Waldo, Earthjustice, Juneau, for Amici Curiae Alaska Center for the Environment, Northern Alaska Environmental Center, and Southeast Alaska Conservation Council.

Before: Fabe, Chief Justice, Matthews, Eastaugh, Bryner, and Carpeneti, Justices.

CARPENETI, Justice.

## I. INTRODUCTION

The Alaska Legislative Council appeals the superior court's denial of its challenge to former Governor Tony Knowles's veto of, and refusal to implement, Senate Bill 7, which transfers land and the income derived from that land to the University of Alaska. The legislative council argues that the superior court erred in holding that S.B. 7 constitutes an appropriation subject to the governor's enhanced veto power requiring a three-fourths vote by the legislature in order to override the veto under article II, section 16 of the Alaska Constitution. Because the superior court erred in concluding that S.B. 7 is an appropriation to the University of Alaska, we reverse the superior court's grant of summary judgment to the governor.

## II. FACTS AND PROCEEDINGS

### A. Facts

The Alaska Legislature passed S.B. 7 on March 30, 2000. Senate Bill 7 enacted AS 14.40.365, which entitles the University of Alaska to select between 250,000 and 260,000 acres of state lands.<sup>1</sup> The bill provides that selected land would then be

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<sup>1</sup> Under Committee Substitute for Senate Bill (C.S.S.B.) 7, 21st Leg. 2nd Sess. (2000), AS 14.40 is amended by adding AS 14.40.365, which reads in relevant part:

University land from Statehood Act land selection conveyances.

(a) The University of Alaska may select and is entitled to receive the conveyance of not less than 250,000 and not more than 260,000 acres of land conveyed to the state under Sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339). The Board of Regents of the University of Alaska shall periodically submit a list of selections to the commissioner of natural resources and, if the list of selections contains land within the boundaries of a municipality, the Board of Regents

(continued...)

conveyed to and managed by the university under amendments to AS 14.40.170(a)<sup>2</sup> and

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<sup>1</sup>(...continued)

of the University of Alaska shall submit the list to the municipality. The Board of Regents and the commissioner of natural resources shall periodically and jointly submit to the legislature, within 30 days of the beginning of a regular legislative session, a list of the selections of land proposed to be conveyed by the state to the University of Alaska under this section. If the list submitted to the legislature contains land within the boundaries of a municipality, the Board of Regents and the commissioner of natural resources shall provide a copy of the list to the municipality. Each list must contain not more than 25 percent of the total acres of land to which the university is entitled after subtracting previous conveyances under this section, but not less than 25,000 acres or the remaining entitlement under the section, whichever is less. A list of selections submitted shall be considered approved for conveyance to the University of Alaska unless the legislature acts to disapprove the list during the legislative session during which the list was submitted. If the amount of land to be conveyed exceeds the balance due the university under this section, the university shall set out the land to be conveyed in priority order.

<sup>2</sup> C.S.S.B. 7 amends AS 14.40.170(a) to read in relevant part (underlined text is new):

(a) The Board of Regents shall

...

(4) have the care, control, and management of

(A) all the real and personal property of the university; and

(B) land

(i) conveyed to the Board of Regents by the commissioner of natural resources in the settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214),

(continued...)

AS 14.40.291.<sup>3</sup> Senate Bill 7 also provides that the income from the transferred land will be held in perpetual trust for the benefit of the university.<sup>4</sup>

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<sup>2</sup>(...continued)

as amended, and in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended; and

(ii) selected by the University of Alaska and conveyed to it by the commissioner of natural resources under AS 14.40.365:

<sup>3</sup> C.S.S.B. 7 amends AS 14.40.291 to read (underlined text is new; bracketed text is deleted):

(a) Notwithstanding any other provision of law, university-grant land, state replacement land that becomes university-grant land on conveyance to the university, land selected by and conveyed to the University of Alaska under AS 14.40.365, and any other land owned by the University of Alaska is not and may not be treated as state public domain land. Land conveyed to the University of Alaska under AS 14.40.365 shall be managed under AS 14.40.365 - 14.40.368 and policies of the Board of Regents of the University of Alaska.

(b) Title to or interest in [TO] land described in (a) of this section may not be acquired by adverse possession, prescription, or in any other manner except by conveyance from the university.

(c) The land described in (a) of this section is subject to condemnation for public purpose in accordance with law.

<sup>4</sup> C.S.S.B. 7 amends AS 14.40.400(a) to read (underlined text is new; bracketed text is deleted):

(a) The Board of Regents shall establish a separate endowment trust fund in which shall be held in trust in perpetuity all

(1) [ALL] net income derived from the sale or lease of the land granted under the Act of Congress approved

(continued...)

Governor Knowles vetoed the bill on April 17, 2000, stating that “‘earmarking’ state lands for dedicated projects ‘ will complicate state land management, contribute to significant land use conflicts, and likely lead to years of litigation.’ ” On April 21, 2000 the legislature voted to override the veto by a margin of forty-one to nineteen, a margin representing more than two-thirds but less than three-fourths of the legislature voting to override the veto. Governor Knowles rejected the override vote, asserting that the legislature did not reach the three-fourths override vote required to override a veto of an appropriations bill.

#### B. Proceedings

The legislative council brought suit to force Governor Knowles to implement S.B. 7, asserting that it is not an appropriations bill subject to the governor’s enhanced appropriations veto. The conservation amici<sup>5</sup> attempted to intervene in that action in order to challenge the constitutionality of S.B. 7, but the superior court denied their motion to intervene because that court decided only the question whether S.B. 7 was an appropriations bill subject to the governor’s enhanced veto. The superior court

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<sup>4</sup>(...continued)

January 21, 1929, as amended; [AND]

(2) net income derived from the sale, lease, or management of the land selected by and conveyed to the University of Alaska under AS 14.40.365; and

(3) [All] monetary gifts, bequests, or endowments made to the University of Alaska for the purpose of the fund.

<sup>5</sup> The Alaska Center for the Environment, the Northern Alaska Environmental Center, and the Southeast Alaska Conservation Council are collectively referred to as the conservation amici.

held that S.B. 7 was an appropriations bill, thereby upholding the governor's veto of S.B. 7. The legislative council appeals.<sup>6</sup>

### III. STANDARD OF REVIEW

We review constitutional issues *de novo*, as they present questions of law.<sup>7</sup> In reviewing such questions we "adopt the rule of law that is most persuasive in light of precedent, reason, and policy."<sup>8</sup>

### IV. DISCUSSION

#### A. Non-Monetary Asset Transfers Are Not Appropriations Subject to the Governor's Enhanced Veto Under Article II of the Alaska Constitution.

This appeal requires us to decide whether S.B. 7 constitutes an appropriation under article II, section 16 of the Alaska Constitution. Under article II, section 15, the governor is empowered to "veto bills passed by the legislature" and "may, by veto, strike or reduce items in appropriation bills."<sup>9</sup> The legislature's power to override the Governor's veto depends on the type of bill that has been vetoed. Under article II, section 16, "[b]ills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the

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<sup>6</sup> Conservation amici seek to intervene if we decide this case on the basis of the constitutional prohibition against dedicated funds. If we decline to reach that issue but determine that S.B. 7 is not an appropriations bill, the conservation amici ask that the case be remanded so that they may renew their motion to intervene.

<sup>7</sup> *State v. Malloy*, 46 P.3d 949, 951 (Alaska 2002).

<sup>8</sup> *Guin v. Ha*, 591 P.2d 1281, 1284 n.6 (Alaska 1979).

<sup>9</sup> Alaska Const. art. II, § 15.

membership of the legislature.”<sup>10</sup> Accordingly, if S.B. 7 was an appropriation bill, the legislature failed to override the governor’s veto; if it was not an appropriation bill, the affirmative vote of forty-one members of the legislature was sufficient to enact it into law. For the reasons that follow, we hold that S.B. 7 was not an appropriation and that the legislature therefore successfully overrode the governor’s veto.

The governor argues that our previous decisions allowing non-monetary asset transfers to be classified as appropriations under article XI, section 7 of the Alaska Constitution should be extended to govern the scope of an appropriations veto under article II. But these decisions arose in the context of article XI of the Alaska Constitution, which grants Alaska’s citizens the right to “propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.”<sup>11</sup> This right is limited, and initiatives and referenda cannot be used to “make or repeal appropriations.”<sup>12</sup> We previously held that “by the term ‘appropriations,’ article XI, section 7 prohibits an initiative whose primary object is to require the outflow of state assets in the form of land as well as money.”<sup>13</sup> More recently, we expanded the non-monetary definition of “appropriations” under article XI to include initiatives prioritizing the right to harvest salmon<sup>14</sup> and designating University of Alaska land for use by the

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<sup>10</sup> Alaska Const. art. II, § 16.

<sup>11</sup> Alaska Const. art. XI, § 1.

<sup>12</sup> Alaska Const. art. XI, § 7.

<sup>13</sup> *Thomas v. Bailey*, 595 P.2d 1, 7 (Alaska 1979) (ballot initiative granting state land to certain Alaska residents was an unconstitutional appropriation by initiative).

<sup>14</sup> *Pullen v. Ulmer*, 923 P.2d 54, 59 (Alaska 1996).

Community College System of Alaska.<sup>15</sup> These decisions struck down non-monetary asset transfers as unconstitutional appropriations under article XI, section 7 of the Alaska Constitution.

In the present case, the superior court held that article II, section 16 of the Alaska Constitution shares article XI, section 7's broad definition of an appropriation, and that "a bill [that] results in removing or dedicating assets from the treasury that would otherwise be available to fund state government" is therefore an appropriations bill.<sup>16</sup> While it is appealing to interpret the Alaska Constitution to have a consistent definition of "appropriations" throughout the document, articles II and XI require different interpretations of "appropriations" because they serve vastly different purposes.<sup>17</sup> Article XI provides citizens with a limited power to enact laws. The limitations concerning appropriations have two parallel purposes — preventing the dissipation of state resources by popular vote and vindicating legislative control over the allocation of state assets. As we stated in *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*:

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<sup>15</sup> *McAlpine v. University of Alaska*, 762 P.2d 81, 87-89 (Alaska 1983).

<sup>16</sup> *Legislative Council v. Knowles*, No. 1JU-00-1237 CI (Alaska Super., August 17, 2001).

<sup>17</sup> We have held that even within the context of article XI, section 7, the word "appropriations" may have different meanings depending on whether the challenged initiative seeks to make an appropriation or repeal one. *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153, 1156-57 (Alaska 1991). A broad construction is used to prevent the enactment by initiative of state asset give-away programs. *Id.* at 1156. But as this reason does not apply when an initiative merely seeks to repeal an appropriation, a narrow construction is used in repeal cases. In repeal cases the term "appropriations" is construed to refer only to annual spending decisions. *Id.* at 1157.

Our prior cases defining "appropriation" in the context of article XI, section 7 have concentrated on the two parallel purposes for preventing the making of appropriations through the initiative process. First, initiatives should not be "used to enact give-away programs, which have an inherent popular appeal, that would endanger the state treasury." *Thomas v. Bailey*, 595 P.2d 1, 7 (Alaska 1979). This is because "[i]nitiatives for the purpose of requiring appropriations were thought to pose a special danger of 'rash, discriminatory, and irresponsible acts.'" *Id.* (quoting V. Fischer, Alaska's Constitutional Convention 80-81 (1975)). The second "reason for prohibiting appropriations by initiative is to ensure that the legislature, and only the legislature, retains control over the allocation of state assets among competing needs." *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 88 (Alaska 1988).<sup>18)</sup>

Accordingly, in cases involving making appropriations by initiative, we have carried out the framers' design to prevent popular give-away programs and maintain legislative control over the allocation of state assets by broadly interpreting the scope of "appropriations" under article XI of the Alaska Constitution.

In contrast, article II's definition is not governed by the overriding goal of preventing initiatives from wasting public assets or encroaching on protected legislative powers. Instead, article II, sections 15 and 16 of the Alaska Constitution govern the balance of power between the legislative and executive branches of Alaska's government. Because articles II and XI serve different purposes, we reject the governor's argument that the expansive scope given "appropriations" in article XI as to the making of appropriations should be extended to article II. We determine the scope of "appropriations" as used in article II by examining the minutes of the Constitutional Convention and the Alaska Constitution itself.

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<sup>18</sup> 818 P.2d 1153, 1156 (Alaska 1991).

We have previously treated article II appropriations as being limited to monetary appropriations. In *Alaska Legislative Council v. Knowles*,<sup>19</sup> (*Knowles II*) we determined the scope of the governor's power to veto individual items in an appropriations bill under article II, section 15 of the Alaska Constitution.<sup>20</sup> We assumed that items in appropriations bills, and therefore bills composed of individual items, can only appropriate monetary assets:

Reducing an item lessens its amount; striking it lessens its amount to nothing. This implies that an 'item' must include a sum of money. Likewise, a passage that does not include a 'sum of money dedicated to a particular purpose' is not an 'item' which the governor can strike or reduce. Therefore, a veto that does not delete or reduce the amount of money appropriated is not a valid exercise of the power article II, section 15 grants.<sup>21</sup>

Though *Knowles II* involved the governor's veto of language restricting a monetary appropriation under the item veto power,<sup>22</sup> rather than the veto of a non-monetary appropriation under the general power to veto an entire bill as presented by this case, its understanding of article II appropriations is instructive. We now explicitly adopt

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<sup>19</sup> 21 P.3d 367 (Alaska 2001).

<sup>20</sup> In addition to providing the governor with the power to veto entire bills, the issue presented by this case, Alaska Constitution article II, § 15 also grants the governor the power to "veto, strike, or reduce items in appropriations bills."

<sup>21</sup> *Knowles II*, 21 P.3d at 373.

<sup>22</sup> *Id.* at 370-71.

*Knowles II*'s exclusively monetary characterization of article II appropriations items and hold that the governor's appropriations veto applies only to monetary appropriations.<sup>23</sup> \*

This conclusion finds ample support in the minutes of the Alaska Constitutional Convention, which demonstrate that the framers of the Alaska Constitution intended the governor's appropriations veto under article II, sections 15 and 16 to apply only to monetary appropriations. The framers repeatedly referred to appropriations in monetary terms during the debates over article II, section 15. Delegate Sundborg understood that the enhanced, three-fourths veto override requirement would apply to "any bill dealing with taxation or any bill affecting payments of money under existing statutes or an item or items in the general appropriations bill."<sup>24</sup> Delegate McCutcheon, a member of the committee that drafted that section, understood the section to provide that "a greater number [of votes were] required to override the veto on money matters."<sup>25</sup> Delegate V. Rivers stated that this section was "a provision in regard to the appropriation and spending of money which would allow somewhat more power to lie in the strong executive."<sup>26</sup> If the delegates had intended the governor's appropriation veto to encompass non-monetary asset transfers, we would expect to see in the minutes and the section proposals some indication of that intention. Instead the minutes indicate

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<sup>23</sup> We gave a similarly narrow construction to the use of the term "appropriations" in article XI, section 7 with respect to the prohibition on repealing appropriations by initiative in *City of Fairbanks v. Fairbanks Convention and Visitors Bureau*, 818 P.2d 1153, 1157 (Alaska 1991).

<sup>24</sup> 3 PROCEEDINGS OF THE ALASKA CONSTITUTIONAL CONVENTION (PACC) 1739 (January 11, 1956).

<sup>25</sup> *Id.* at 1740.

<sup>26</sup> *Id.* at 1741.