11503 HOUSE JUDICIARY

Suzanne: Here are some FAQ's from another EPA site on OPA.

1. Which federal agencies are responsible for implementing the Oil Pollution Act (OPA)?

Executive Order 12777, issued on October 18, 1991, delegated the authority to implement the Oil Pollution Act (OPA) to several federal agencies. EPA carries the responsibility for non-transportation-related onshore facilities and incidents in the Inland Zone. **United States Coast Guard (USCG) has responsibility for marine transportation-related facilities and incidents in the Coastal Zone. The Department of Transportation's Office of Pipeline Safety within the Research and Special Programs Administration oversees onshore transportation-related facilities. The Department of Interior has responsibility for off-shore fixed facilities beyond the coastline. The National Oceanic and Atmospheric Administration is responsible for natural resource damage assessments relating to oil discharges.**

2. How can I report an oil spill?

Spills should be reported immediately to the National Response Center at 800-424-8802. Threats of discharges or releases to the waters of the U.S. should also be reported.

3. What is the definition of oil?

Oil is defined as oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil [40 CFR 112.2 and CWA Section 311(a)(1)]. Section 1001(23) of the Oil Pollution Act (OPA) further narrows this definition be excluding any substance which is specifically listed or designated as a hazardous substance under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund").

4. Does the Oil Pollution Act (OPA) preempt state laws?

No. The Oil Pollution Act (OPA) Section 1018(a) specifically provides that the OPA does not preempt state laws.

5. Who is responsible for cleanup costs incurred under the Oil Pollution Act (OPA)?

Section 1001(32)(B) of the Oil Pollution Act (OPA) states that in the case of an onshore facility, any person owning or operating the facility is the responsible party.

6. Who can be ordered to cleanup an oil spill?

EPA can enter into an agreement or order any person who owns or operates a facility to perform a cleanup under Section 311(c) and/or (e) of the Clean Water Act (CWA), as amended by the Oil Pollution Act (OPA).

7. Where can I find the text of the laws dealing with Oil Spills?

The Oil Pollution Act (OPA) can be found at http://www4.law.cornell.edu/uscode/33/ch40.html.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HJR 9
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Legislature
Title "Urging the United States Congress to honor the process and judgment of the federal courts..."
BRU: Legislative Council
Component: Council and Subcommittees Session Expenses
Sponsor "Representatives LeDoux, Gara, ..."
Requestor House Resources Committee
Component No. 783

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation has zero fiscal impact on the Legislative Affairs Agency.

Prepared by: Karla Schofield, Deputy Director
Phone 465-6626
Division: Administrative Services
Date/Time 3/29/05 10:02 AM

Approved by: Pamela Varni, Executive Director
Date 3/29/2005
Agency: Legislative Affairs Agency

(Revised 9/2001 OMB)

HJR

12

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 22, 2005 **FURTHER REFERRALS: Finance**

Date of Committee Action: April 25, 2005

The JUDICIARY Committee considered: **HJR 12**

HOUSE JOINT RESOLUTION NO. 12 **CONST. AM: BUDGET RESERVE FUND REPEAL**

Proposing amendments to the Constitution of the State of Alaska relating to the repeal of the budget reserve fund.

Recommends it be replaced with [ ] HCS *or* [X] CS for HJR 12 (W&M)

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [X] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	***FN#**	**Fiscal**	**Indet.**	**Zero**
GOV		✓		

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	**FN#**	**Fiscal**	**Indet.**	**Zero**
REV	1	✓		

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	Gruenberg			✓	
	Kott	—			
	ANDERSON	X			
	DAHLSTROM	X			
	COGHILL			✓	
	GARA				✓
			✓		
Chair:	McGUIRE	✓			
Chair:					

10

HOUSE COMMITTEE REPORT

4-22-05

(7)

Date Referred to Committee: April 12, 2005

FURTHER REFERRALS: Judiciary, Finance

Date of Committee Action: 4/21/2005

The STATE AFFAIRS Committee considered: **HJR 12**

HOUSE JOINT RESOLUTION NO. 12 **CONST. AM: BUDGET RESERVE FUND REPEAL**

Proposing amendments to the Constitution of the State of Alaska relating to the repeal of the budget reserve fund.

Recommends it be replaced with [ ] HCS *or* [✓] CS for HJR12 (W&M)

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [X] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
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CRT
EED
DEC
DFG
GOV
HSS
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LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero
REV	1	✓		

Signing with recommendations	Printed Last Name	DP (4)	DNP	NR (2)	AM
	Gardner			X	
	LYNN	X		-	
	ELKINS	X			
	RAMRAS	X			
	Brenkey			-	
Chair: Paul K Seaton	SEATON	X			
Chair:					

HOUSE COMMITTEE REPORT

4.12.05

(7)

Date Referred to Committee: February 18, 2005

FURTHER REFERRALS: State Affairs
Judiciary
Finance

Date of Committee Action: Apr. 11, 2005

The HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS considered: **HJR 12**

HOUSE JOINT RESOLUTION NO. 12 **CONST. AM: BUDGET RESERVE FUND REPEAL**

Proposing amendments to the Constitution of the State of Alaska relating to the repeal of the budget reserve fund.

Recommends it be replaced with [ ] HCS *or* [x] CS *for* HJR 12 (W & M)

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [x] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
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UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
REV	1	✓		

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP (3)	DNP	NR (1)	AM
	SAMUELS			X	
Peggy Wilson	WILSON	N			
Paul R Seaton	SEATON	✓			
Chair:					
Chair:		Y			

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HJR12
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: OOG
Title: Constitutional amendment relating to to the repeal of the budget reserve fund
RDU: Elections
Component: Elections
Sponsor: Representative Harris
Requester: (H) Ways and Means Committee
Component No.: 21

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

If this amendment appears on the 2006 ballot, the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58 is $1.5 Should the addition of this question require printing an 8 1/2 by 18 inch ballot the cost will increase to $22.0.

Prepared by: Lauri Allred, Admin. Assistant Supervisor
Phone: 465-4611
Division: Division of Elections
Date/Time: 3/29/05 9:52 AM
Approved by: Laura A. Glaiser, Director
Date: 3/29/2005
Agency: Office of the Lt. Governor, Division of Elections

(Revised 9/23/2004 OMB)

Conceptual Amendment #1

FAILED

to HJR 12 (W & W) by Rep. Gara

Expenditures from the fund should not provide more than 20% more to majority members' districts than to minority members' districts.
2/3 vote would be required to disrupt this requirement.

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-4859
Fax (907) 465-3799

Interim: (June-Dec)
716 West 4th Avenue, Suite 300
Anchorage, AK 99501-2133
(907) 269-0129
Fa (907) 269-0128

John Harris
Speaker of the House

MEMORANDUM

TO: Representative Lesil McGuire, Chair
House Judiciary Committee

FROM: Representative John Harris

DATE: April 21, 2005

RE: Request for Hearing, CS for HJR 12 (W&M)

Please consider this request to hear House Joint Resolution 12: Proposing amendments to the Constitution of the State of Alaska relating to the repeal of the budget reserve fund at your earliest possible convenience.

I appreciate your consideration of my request. Please do not hesitate to contact Tom Wright of my staff or me if you have any questions or need further information.

JLH:tw

Alaska State Legislature

Session: (Jan-May)
State Capitol, Room 208
Juneau, AK 99801-1182
(907) 465-4859
Fax (907) 465-3799

Interim: (June-Dec)
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Anchorage, AK 99501-2133
(907) 269-0129
Fax (907) 269-0128

John Harris
Speaker of the House

SPONSOR STATEMENT

COMMITTEE SUBSTITUTE for
HOUSE JOINT RESOLUTION 12 (W&M)
CONSITUTIONAL AMENDMENT: BUDGET RESERVE FUND REPEAL

In 1990, the Constitutional Budget Reserve was established to provide cash to fund state government during times when low oil prices caused revenues to fall short of expenditures. It was funded by proceeds of settlements of tax and royalty disputes with the oil companies. Most of these large disputes have been settled and little additional dedicated revenue is expected anytime in the future.

Theoretically, the CBR should grow in size because the account is to be repaid when revenues exceed expenditures. To date, this has not occurred. The cumulative draw has been over $5 billion.

By repealing this amendment, there is no longer a need for a three-quarter vote whenever additional funds are needed to balance our budget. Also, elimination of this amendment will help facilitate the development of a fiscal plan that will allow the legislature to balance a budget on a year-to-year basis with known anticipated revenues.

As written within the resolution, funds from the CBR would be placed into a capital construction permanent fund. Appropriations from the fund are to be made on a percent of market value method with no more than five per cent of the average of the fiscal year end market values of the fund for the first five of the preceding six years.

The state needs a long term fiscal plan and the first step should be the repeal of the constitutional budget reserve fund amendment.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HJR12
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: OOG
Title: Constitutional amendment relating to to the repeal of the budget reserve fund
RDU: Elections
Component: Elections
Sponsor: Representative Harris
Requester: (H) Ways and Means Committee
Component No.: 21

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	1.5	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

If this amendment appears on the 2006 ballot, the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8 1/2 by 18 inch ballot the cost will increase to $22.0.

Prepared by: Lauri Allred, Admin. Assistant Supervisor
Phone 465-4611
Division: Division of Elections
Date/Time 3/29/05 9:52 AM
Approved by: Laura A. Glaiser, Director
Date 3/29/2005
Agency: Office of the Lt. Governor, Division of Elections

(Revised 9/23/2004 OMB)

Available Balance in Constitutional Budget Reserve Fund

in thousands

	FY 2002		FY 2003		FY 2004		FY 2005	
Beginning balance as of July 1	3,110,104		2,466,918		2,093,556		2,155,078	
Cash flow (borrowing) and repayment:								
	(100,000)	8/10	(100,000)	7/12	(100,000)	7/23	(100,000)	8/12
	(100,000)	8/15	(100,000)	8/12	(100,000)	8/12	(100,000)	8/17
	(100,000)	11/13	(50,000)	9/17	(100,000)	9/11	100,000	11/4
	(100,000)	12/10	(100,000)	10/11	100,000	1/6	100,000	1/27
	(100,000)	12/13	(100,000)	11/14	100,000	4/12		
	(100,000)	1/25	(50,000)	2/18	100,000	6/28		
	(100,000)	2/15						
	(100,000)	5/13						
	50,000	6/27	85,000	6/27				
Net cash flow borrowing	(750,000)		(415,000)		-		-	
Additional (deficit borrowing) or repayment	(134,312)		(83,120)		(10,785)			
Subfunds swept per Article IX, section 1	130,695		88,755		94,627			
Subfund balances appropriated back	(101,947)		(130,695)		(88,755)			
Direct appropriations:								
Treasury operations	(125)		(121)		(109)			
New revenues	212,503		166,819		61,627			
Appropriated fund transfer from GF					4,917			
Ending balance as of June 30 (audited)	2,466,918		2,093,556		2,155,078			

Please direct any questions about this information to Lisa Pusich, State Accountant at 465-5616.

F. Budget Gap and the Constitutional Budget Reserve

The table below reflects the amount needed to make up the difference between the Department of Revenue's forecast of Unrestricted General Purpose Revenue and the annual general fund budget, shown here as a flat $2.2517 billion (the Governor's proposed budget) for all operating, capital, debt service, lease payments and supplemental appropriations. (1)

Table 2-9. Difference Between Unrestricted General Purpose Revenue and General Fund Budget "The Gap"(1)
$ Million

Fiscal Year	Total Unrestricted General Purpose Revenue	Transfer from Alaska Science & Technology	General Fund Appropriation (1)	Difference
Actual 2003	1,947.6	95.0	2,496.2 (2)	453.6 (2)
2004	2,245.3	.	2,300.6	55.3
2005	1,961.1	.	2,251.7	290.6
2006	1,770.5	.	2,251.7	481.2
2007	1,465.8	.	2,251.7	785.9
2008	1,450.7	.	2,251.7	801.0
2009	1,393.6	.	2,251.7	858.1
2010	1,390.2	.	2,251.7	861.5
2011	1,328.7	.	2,251.7	923.0
2012	1,277.0	.	2,251.7	974.7
2013	1,214.8	.	2,251.7	1,036.9
2014	1,156.0	.	2,251.7	1,095.7
2015	1,099.9	.	2,251.7	1,151.8

(1) The projected FY 2005-2015 budget of $2.2517 billion is simply a reference point for analysis. Any budget estimate used to determine "The Gap" will have its detractors — some will contend spending should be cut, while others will argue just as strongly that spending should be increased to reflect inflation and population growth.
(2) The "Gap", or draw on the CBRF for FY 2003, is shown as the actual cash withdrawal.

(1) http://www.gov.state.ak.us/omb/04_OMB/fy04fiscal_summary.pdf

Rainy Day Funds

Appendix A. State Budget Stabilization Funds

Contents

- Alabama, Alaska, Arizona, California, Colorado
- Connecticut, Delaware, Florida, Georgia
- Idaho, Indiana, Iowa, Kansas, Kentucky
- Louisiana, Maine, Maryland, Massachusetts, Michigan
- Mississippi, Missouri, Nebraska, Nevada, New Hampshire
- New Jersey, New Mexico, New York, North Carolina, North Dakota
- Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island
- South Carolina, South Dakota, Tennessee, Texas, Utah
- Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming

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The states of Arkansas, the District of Columbia, Hawaii, Illinois, Montana, and Oregon do not have budget reserve funds.

Alabama

Education Proration Prevention Fund (Statutory)
Method for deposit: Automatic appropriation of $21M in the first year (following the fund's depletion) and $8M thereafter up to $75M. Automatic appropriation can be waived via emergency resolution.
Method for withdrawal: Declaration of proration by governor, or declaration of emergency by legislature with a 2/3 vote.

Alaska

Budget Reserve Fund (Statutory)
Method for deposit: By appropriation.
Method for withdrawal: By appropriation.

Constitutional BudgetReserve Fund (Constitutional)
Method for deposit: Mineral litigation/dispute settlements.
Method for withdrawal: 1) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year; 2) for any public purpose with a 3/4 vote.

Arizona

Budget Stabilization Fund (Statutory)
Method for deposit: By appropriation (amount determined by formula comparing real, adjusted Arizona personal income growth to 7 year trend); fund capped at 5 percent of prior year GF revenue.
Method for withdrawal: By appropriation (amount determined by formula); 2/3 vote is required to waive formula-determined withdrawal.

California

Special Fund for Economic Uncertainties (Statutory)
Method for deposit: Year-end surplus or by appropriation.
Method for withdrawal: 1) Transfer by controller to cover revenue shortfall or other GF deficiency; 2) Director of finance can allocate funds for disaster relief (with notification to the Joint Legislative Budget Committee).

Colorado

Required Reserve (Statutory)
Method for deposit: 4 percent of GF appropriations.
Method for withdrawal: Automatic expenditure when revenue estimates fall below targets; fund can only be used to cover appropriations already authorized. (If

economic conditions require expenditures from the fund, the governor must develop a plan that would maintain the reserve at no less than 2 percent. The plan is subject to legislative modification.)

Connecticut

Budget Reserve Fund (Statutory)
Method for deposit: Year-end surplus; fund capped at 5 percent of net GF appropriations for the fiscal year in progress.
Method for withdrawal: Automatic appropriation to cover budget deficit to the extent that funds are available.

Delaware

Budget Reserve Account (Constitutional)
Method for deposit: Automatic deposit from previous year's unencumbered funds; fund capped at 5 percent of estimated GF revenues.
Method for withdrawal: By appropriation to cover budget deficit or to compensate for revenue reductions; requires 3/5 vote.

Florida

Working Capital Fund (Statutory)
Method for deposit: Year-end surplus until fund reaches minimum level of 5 percent of net GF revenue for the previous fiscal year; fund capped at 10 percent.
Method for withdrawal: By appropriation when governor declares an emergency.

Budget Stabilization Fund (Statutory)
Method for deposit: Automatic deposit beginning in FY 1995 equal to 1 percent of previous year's GF revenue collections, increasing each year until the reserve reaches minimum level of 5 percent (in FY 1999); principal fund balance capped at 10 percent .
Method for withdrawal: By executive transfer when revenue collections in the general revenue fund will be insufficient to meet general revenue fund appropriations.

Georgia

Revenue Shortfall Reserve (Statutory)
Method for deposit: Year-end surplus; fund capped at 3 percent of net revenue collections.
Method for withdrawal: By appropriation.

Idaho

Budget Reserve Account (Statutory)
Method for deposit: By appropriation.
Method for withdrawal: By appropriation.

Indiana

Counter-Cyclical Revenue and Economic Stabilization Fund (Statutory)
Method for deposit: Statutory formula triggered when the annual growth rate in adjusted personal income exceeds 2 percent; fund capped at 7 percent of state GF revenue.
Method for withdrawal: Statutory formula triggered when the annual growth rate in adjusted personal income is less than a negative 2 percent.

Iowa

Cash Reserve Fund (Statutory)
Method for deposit: By appropriation when there is a year-end GF surplus; fund capped at 5 percent of the adjusted GF revenue estimate for the current fiscal year.
Method for withdrawal: By appropriation for non-recurring emergency expenditures; requires 3/5 vote if the fund's balance drops to less than 3 percent of the adjusted revenue estimate for the year in which the appropriation is made.

Economic Emergency Fund (Statutory)
Method for deposit: By appropriation when there is a year-end GF surplus; fund capped at 5 percent of the adjusted revenue estimate for the current fiscal year.
Method for withdrawal: By appropriation for emergency expenditures.

Kansas

Budget Stabilization Fund (Statutory)
Method for deposit: Funded by a one-time federal dispro-portionate share windfall; fund expected to be depleted by the end of FY 1996.
Method for withdrawal: By appropriation.

Kentucky

Budget Reserve Trust Fund (Statutory)
Method for deposit: By appropriation; fund capped according to provisions in the biennial budget act.
Method for withdrawal: Allotted by governor to meet a revenue shortfall; 2 governor must notify legislature. (Conditions governing the use of the fund are attached to its appropriation every two years. At the end of the biennium, the fund lapses and has to be recreated. The state also has created in the general fund the Surplus Fund Account. No expenditures may be made from the account unless appropriated by the legislature, or unless required by the budget reduction provisions of the budget bill.)

Louisiana

Revenue Stabilization - Mineral Trust Fund (Constitutional)
Method for deposit: Automatic deposit of revenues exceeding $750M from taxes on the production of, or exploration for, minerals. With some limitations, the $750M base may be increased every 10 years, beginning in the year 2000, by a law enacted by a 2/3 vote.
Method for withdrawal: By appropriation, not to exceed one-third of the fund and requiring a 2/3 vote when: 1) the official forecast for a fiscal year is less than revenues received by the state in the preceding fiscal year; 2) if a deficit for the current fiscal year is projected due to a decrease in the official forecast.

Maine

Rainy Day Fund (Statutory)
Method for deposit: Transfer from the GF unappropriated surplus; fund capped at 4 percent of total GF revenues received in the immediately preceding fiscal year.
Method for withdrawal: Subject to annual legislative deliberations. (According to statute, appropriations may be made by a 2/3 vote of the legislature upon recommendation of the governor, but only for prepayment of outstanding GF bonds or for major construction. In practice, however, the legislature has enacted exceptions to the statute to use the funds as needed for emergencies, disasters, or other expenditures deemed necessary.)

Maryland

Revenue Stabilization Account (Statutory)
Method for deposit: By appropriation. Beginning in FY 1995, the governor shall include in the budget bill an appropriation equal to at least the lesser of $50M or the amount necessary for the fund balance to exceed 5 percent of estimated GF revenues for the fiscal year.
Method for withdrawal: Transferred by governor if authorized by an act of the General Assembly or specifically authorized in the state budget bill as enacted; amount of transfer is reduced by amount of general fund budget reductions made by legislature.

Massachusetts

Commonwealth Stabilization Fund (Statutory)
Method for deposit: After the year-end GF consolidated net surplus is determined, a portion can be used as general revenue in the current fiscal year. Of the remaining surplus, 60 percent is transferred to the stabilization fund; fund capped at 5 percent of current fiscal year revenues.
Method for withdrawal: By appropriation: 1) to make up any difference between actual state revenues and allowable state revenues when actual revenues fall below the allowable amount; 2) to replace the state and local loss of federal funds; 3) for any event that threatens the health, safety or welfare of the people or the fiscal stability of the state.

Michigan

Countercyclical Budget & Economic Stabilization Fund (Statutory)
Method for deposit: Statute requires appropriation of an amount equal to (annual growth rate in real personal income in excess of 2 percent) X (total GF revenues for the fiscal year ending in the current calendar year).
Method for withdrawal: If annual growth rate in real personal income is negative, withdrawal equals deficiency multiplied by the total GF revenues for the fiscal year ending in the current calendar year, but no more than needed to balance the budget.

Minnesota

Budget & Economic Stabilization Fund (Statutory)
Method for deposit: By surplus until the total amount in the account equals 5 percent of total GF appropriations for the current biennium. Restoration of the reserve should occur when objective measures, such as increased growth in total wages, reflect upturns in the state's economy. (Beginning July 1, 1993, forecast unrestricted budgetary GF balances were first appropriated to restore the budget reserve and cash flow account to $500M. As of July 1, 1995, $180M of the account was dedicated to elementary and secondary education.)
Method for withdrawal: By transfer authorized by the commissioner of finance, with approval of the governor and in consultation with the Legislative Advisory Commission, when: 1) a negative budgetary balance is projected and when objective measures (such as reduced growth in total wages) reflect downturns in the state's economy; 2) probable receipts for the GF will be less than anticipated and the amount available for the rest of the biennium will be insufficient.

Mississippi

Working Cash Stabilization Reserve Fund (Statutory)

Method for deposit: Year-end surplus until the fund reaches $40M; thereafter, 50 percent of the unencumbered GF cash balance until the fund reaches 7.5 percent of GF appropriations.
Method for withdrawal: Transfer by the executive director of the Department of Finance & Administration: 1) to meet cash-flow needs (borrowed funds must be repaid within the same fiscal year); 2) to cover deficits (up to $50M in any one fiscal year); 3) to provide funds for disaster assistance.

Missouri

Budget Stabilization Fund (Statutory)
Method for deposit: By appropriation; fund is not to exceed 5 percent of the receipts into the GF for the proceeding fiscal year.
Method for withdrawal: By appropriation to the governor to meet budget shortfalls. (The General Assembly may appropriate to the governor any portion of the existing balance to cover budget shortfalls. Also, in any year in which the governor finds it necessary to withhold appropriated funds, the governor may order the commissioner of administration to make transfers from the fund to fulfill expenditures authorized by appropriation. The governor must notify the General Assembly of his intent to make such an authorization; and, if not disapproved by concurrent resolution within 30 days of the receipt of such notice by the General Assembly, the authorization is considered valid. Further, the General Assembly shall not appropriate money from the fund without authorization from the governor.)

Nebraska

Cash Reserve Fund (Statutory)
Method for deposit: Transfer by state treasurer when actual GF net receipts for the preceding 3 months exceed estimated receipts for the 3-month period.
Method for withdrawal: Transfer is made to the GF when the cash balance in the GF is inadequate to meet current obligations.

Nevada

Fund to Stabilize Operation of State Government (Statutory)
Method for deposit: Transfer by controller of 40 percent of revenues in excess of required fund balance, which is 10 percent of GF appropriations; fund capped at $100M.
Method for withdrawal: By appropriation only if: 1) the total actual revenue of the state falls short by 5 percent or more of the total anticipated revenue for the biennium in which the appropriation is made; 2) the legislature and governor declare a fiscal emergency.

New Hampshire

Revenue Stabilization Reserve Account (Statutory)
Method for deposit: With some limitations, transfer by comptroller of any surplus at the end of each biennium; fund capped at 5 percent of actual GF unrestricted revenues for the most recently completed fiscal year.
Method for withdrawal: Transfer by comptroller with the approval of fiscal committee and governor when: 1) GF operating deficit occurred for most recently completed fiscal year; and 2) unrestricted GF revenues in the most recently completed fiscal year were less than budget forecast. Fund cannot be used for any other purpose without a 2/3 vote and governor's approval.

New Jersey

Surplus Revenue Fund (Statutory)
Method for deposit: 50 percent of actual revenue collections in excess of governor's certification of revenues; fund capped at 5 percent of anticipated revenues.
Method for withdrawal: By appropriation only: 1) upon certification by the governor that anticipated GF revenues are estimated to be less that those certified upon approval of appropriations act; 2) upon findings by the legislature that to offset anticipated GF revenue declines, an appropriation from the fund is more prudent than a tax increase; 3) when the governor declares an emer-gency and notifies the Joint Legislative Budget Oversight Committee.

New Mexico

Operating Reserve Fund (Statutory)
Method for deposit: Transfer from GF.
Method for withdrawal: By specific authorization of the legislature only in the event that GF revenues and balances are insufficient to meet authorized levels of appropriations.

New York

Tax Stabilization Reserve Fund (Statutory)
Method for deposit: Year-end surplus up to 0.2 percent of aggregate GF disbursements; reserve fund cannot exceed 2 percent of GF disbursements for the fiscal year.
Method for withdrawal: By transfer at the end of a fiscal year when GF receipts fall below the aggregate amount disbursed from the GF. (Once borrowed, fund must be paid back within six years in three equal installments. Repayments to the Tax Stabilization Reserve Fund shall be stipulated in annual budget bills.) The fund also can be temporarily loaned to the GF to assist with cash flow .

North Carolina

Savings Reserve Account (Statutory)
Method for deposit: Transfer of one-fourth of any unreserved credit balance at the end of the fiscal year; fund capped at 5 percent of previous year's GF appropriations.
Method for withdrawal: The fund cannot be tapped unless approved by an act of the General Assembly.

North Dakota

Budget Stabilization Fund (Statutory)
Method for deposit: Transfer of GF surplus in excess of $70M at the end of the biennium.
Method for withdrawal: Governor may transfer for revenue shortfall in excess of 2-1/2 percent of the estimate made by the most recently adjourned Assembly.

Ohio

Budget Stabilization Fund (Statutory)
Method for deposit: Transfer from GF by the director of Budget & Management; a written report on the transfer must be submitted to the Controlling Board; fund capped at 4 percent of GF revenues for the preceding fiscal year.
Method for withdrawal: By appropriation.

Oklahoma

Constitutional Reserve Fund (Constitutional)
Method for deposit: Transfer by the state treasurer of surplus GF revenue; fund is capped at 10 percent of GF revenue for the preceding fiscal year.
Method for withdrawal: Up to 1/2 of the balance may be appropriated if: 1) forthcoming fiscal year GF revenue is certified to be less than that of current fiscal year certification; or 2) emergency declaration by governor with concurrence by Legislature with a 2/3 vote, 3) joint emergency declaration by speaker and president pro tempore with concurrence by Legislature with a 3/4 vote.

Pennsylvania

Tax Stabilization Reserve Fund (Statutory)
Method for deposit: By appropriation; fund capped at 3 percent of GF revenue estimates.
Method for withdrawal: By appropriation with 2/3 vote when governor declares an emergency or to counterbalance downturns in the economy that will result in significant unanticipated revenue shortfalls.

Puerto Rico

Budgetary Fund (Statutory)
Method for deposit: Not less than 1/3 percent of the Budget Joint Resolution (the governor or director of OMB may order depositing a larger amount); fund capped at 6 percent of the appropriated funds of the Budget Joint Resolution in any year.
Method for withdrawal: OMB director may transfer funds to cover appropriations when resources are insufficient, to provide for payment of public debt service, to address any unexpected situation in the public service, or to honor obligations of programs funded with contributions or grants from the U.S. government that have not been received.

Rhode Island

Budget Reserve and Cash Stabilization Account (Statutory)
Method for deposit: By transfer; fund capped at 3 percent of total fiscal year resource
Method for withdrawal: By appropriation when the budget officer declares that actual GF revenue will not equal the original estimates upon which appropriations were based, (State statutes call for the fund to be repaid in the second fiscal year following the fiscal year in which a transfer was made from the fund and, when necessary, in subsequent fiscal years.)

South Carolina

Capital Reserve Fund (Statutory)
Method for deposit: By appropriation an amount equal to 2 percent of GF revenue of the latest completed fiscal year.
Method for withdrawal: By appropriation when revenues at the end of the fiscal year are projected to be less than expenditures authorized by appropriation for that year. If the fund is not tapped for that reason, it can be used for other purposes with 2/3 vote of members present and voting, but not less than 3/5 vote of total membership. (If the Capital Reserve Fund is not tapped to address a budget deficit, the Legislature--with a 2/3 vote of members present and voting, but not less than 3/5 of the total membership--can appropriate money from the fund: 1) to finance in cash previously authorized capital improvement bond projects; 2) to retire interest or principal on bonds previously issued; or 3) for capital improvements or other non-recurring purposes.

General Reserve Fund (Constitutional)
Method for deposit: Transfer of GF revenues in excess of annual operating expenditures; fund is capped at 3 percent of GF revenue of the latest completed fiscal year. (Funds withdrawn from the General Reserve Fund must be restored annually at a rate of not less than 1 percent of the general fund revenue of the latest completed fiscal year until the fund is restored to 3 percent.)

Carnell-Felder Set-Aside Account (Statutory)
Method for deposit: By appropriation for non-recurring purposes.
Method for withdrawal: By appropriation to prevent a year-end deficit. (The Carnell-Felder Set-Aside Account was authorized beginning in FY 1995 to cushion the state's budget against unforeseen revenue shortfalls stemming from inaccurate revenue estimates.)

South Dakota

Budget Reserve Fund (Statutory)
Method for deposit: Transfer of prior year unobligated cash balance; fund capped at 5 percent of GF appropriations for the prior fiscal year.
Method for withdrawal: By appropriation.

Tennessee

Reserve for Revenue Fluctuations (Statutory)
Method for deposit: By appropriation.
Method for withdrawal: By transfer by the commissioner of Finance and Administration to offset revenue shortfalls, with notification to the chairs of the Finance, Ways & Means Committees of the Senate and House. (The statute declares legislative intent to be that, to the extent possible, revenue shortfalls will be offset by reductions in expenditures before using amounts in the reserve fund.)

Texas

Economic Stabilization Fund (Constitutional)
Method for deposit: Transfer of 1/2 of any unencumbered general revenue fund balance at end of each biennium plus portions of oil and natural gas production tax collections. The Legislature also may appropriate additional funds; fund capped at 10 percent of general revenue fund deposits (excluding interest and investment income) during the preceding biennium. (The constitutional amendment creating the fund mandates the following revenue transfers to it: 1) one-half of any unencumbered general revenue fund balance at the end of each fiscal biennium; 2) an amount of general revenue equal to 75 percent of the amount by which oil production tax collections in any future fiscal year exceed oil production tax collections in fiscal year 1987; 3) an amount of general revenue equal to 75 percent of the amount by which natural gas production tax collections in any future fiscal year exceed oil production tax collections in the fiscal year 1987. For purposes of calculating the transfer, natural gas tax collections would be adjusted to reflect 12 months of collections in each fiscal year.)
Method for withdrawal: By appropriation with a 3/5 vote of members present if: 1) the comptroller certifies that appropriations from general revenue made by the preceding legislature for the current biennium exceed available general revenues for the remainder of the biennium; 2) an estimate of anticipated revenues for a succeeding biennium is less than the revenues estimated to be available for the current biennium; 3) for any purpose with 2/3 vote of members present.

Utah

Budget Reserve Account (Statutory)
Method for deposit: 25 percent of GF surplus; fund capped at 8 percent of the GF appropriation for the fiscal year in which the surplus occurred.**Method for withdrawal:** By appropriation to cover operating deficits or retroactive tax refunds.

Vermont

Budget Stabilization Trust Fund (Statutory)
Method for deposit: Undesignated GF surplus; fund is capped at 5 percent of GF appropriations for the prior fiscal year; also any additional amounts as may be authorized by the General Assembly.
Method for withdrawal: Transfer by the commissioner of Finance and Management to the extent necessary to offset a GF deficit.

Virginia

Revenue Stabilization Fund (Constitutional)
Method for deposit: By formula as specified in the state's constitution; fund capped at 10 percent of the average annual tax revenues for the three fiscal years immediately preceding.
Method for withdrawal: By appropriation (up to 1/2 of the fund's balance) with specific provisions. (The General Assembly may appropriate an amount for transfer from the fund to compensate for no more than one-half of the difference between the total general fund revenues appropriated and a revised general fund revenue forecast presented to the General Assembly prior to or during a subsequent regular or special legislative session. However, no transfer shall be made unless the general fund revenues appropriated exceed such revised general fund revenue forecast by more than 2 percent of certified tax revenues collected in the most recently ended fiscal year.)

Washington

Budget Stabilization Account (Statutory)
Method for deposit: By appropriation based on statutory formula.
Method for withdrawal: By appropriation, with 60 percent vote, to provide of continuation of agency programs when revenues fall below forecast, for labor force training, or for any purpose the Legislature determines would reduce unemployment caused by the state's economic cycle.

Emergency Reserve Fund (Statutory)
Method for deposit: Beginning in FY 1996, transfer by state treasurer of all state revenues in excess of the state expenditure limit for that fiscal year; fund capped at 5 percent of biennial GF state revenues.
Method for withdrawal: By appropriation, with 2/3 vote required, only if the appropriation does not cause total expenditures to exceed the state expenditure limit.

The Budget Stabilization Account was repealed effective July 1, 1995, by Laws 1994, ch.2, Sect. 9 (Initiative Measure No. 601, approved November 2, 1993). The Emergency Reserve Fund was created (via Initiative 601) effective July 1, 1995.

West Virginia

Revenue Shortfall Reserve Fund (Statutory)
Method for deposit: Beginning in FY 1995, transfer of the first 50 percent of all surplus revenues accrued during the fiscal year just ended; fund capped at 5

percent of GF appropriations for the fiscal year just ended.
Method for withdrawal: By appropriation to meet any anticipated revenue shortfall.

Wisconsin

Budget Stabilization Fund (Statutory)
Method for deposit: By appropriation.
Method for withdrawal: By appropriation.

Wyoming

Budget Reserve Account (Statutory)
Method for deposit: Year-end surplus plus appropriations.
Method for withdrawal: By appropriation.

The states of Arkansas, the District of Columbia, Hawaii, Illinois, Montana, and Oregon do not have budget reserve funds.

States Broaden the Scope of Rainy Day Funds

Posted August 1997; reviewed March 2004.
Email statebudget-info@ncsl.org for more information.
Visitor counts for this page.

Denver Office: Tel: 303-364-7700 | Fax: 303-364-7800 | 7700 East First Place | Denver, CO 80230 | Map
Washington Office: Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 | Washington, D.C. 20001

APPENDIX V

Constitutional Provisions and Statutes Pertaining to the Constitutional Budget Reserve Fund

Constitutional amendment adopted in 19[illegible] election.

Article IX, Section 17. Budget Reserve Fund. (a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

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

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

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

Statutes defining key terms in Constitutional Budget Reserve Fund.

AS 37.10.410. "Administrative proceedings involving taxes" defined. (a) The following money received by the state is considered to be received as a result of the termination of an administrative proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of Alaska:

(1) past due taxes that are received by the state for each tax year for which a request for an informal conference under AS 43.05.240(a) is made to the Department of Revenue, together with penalties and interest on the taxes;

(2) past due taxes that are received by the state after a request for a formal hearing under AS 43.05.240(b)(1) is made to the Department of Revenue, together with penalties and interest on the taxes.

(b) Money received by the state under the following conditions is not considered to be received as the result of the termination of an administrative proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of Alaska:

(1) taxes that are not due at the time the request for the proceeding was made under AS 43.05.240(a) or (b)(1);

(2) taxes set out in a return not audited by the Department of Revenue at the date of collection; or

(3) taxes collected for a tax year for which the taxpayer did not give notice of appeal of an assessment made by the Department of Revenue. (§1 ch 5 SLA 1994)

Statutes defining key terms in Constitutional Budget Reserve Fund (continued).

Section 37.10.420. "Money available for appropriation" defined. (a) For purposes of applying art. IX, sec. 17(b), Constitution of the State of Alaska,

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

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

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

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

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

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

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

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

(3) "the amount of appropriations made in the previous calendar year for the previous fiscal year" means appropriations made from sources identified in (2) of

this subsection for a fiscal year that were enacted during the calendar year that ends on December 31 of that same fiscal year.

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

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

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

Commissioner may transfer some or all management to the AK Permanent Fund Corporation.

Section 37.10.430. Management of the Budget Reserve Fund. (a) The Department of Revenue may transfer management responsibility over all or a portion of the budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska) to the Alaska Permanent Fund Corporation.

Department of Revenue must report annually on comparative performance of fund

(b) By March 15 of each year, the Department of Revenue shall, after consulting with the Alaska Permanent Fund Corporation, prepare a report setting out the balance in the budget reserve fund (art. IX, sec. 17, Constitution of the State of Alaska) on January 1 and on December 31 of the previous calendar year. The report shall state the nominal, real, and realized return on the budget reserve fund compared to the nominal, real, and realized return on the permanent fund and the general fund during the previous calendar year.

HJR

19

HOUSE COMMITTEE REPO

(7)

Date Referred to Committee: April 22, 2005 **FURTHER REFERRALS: Finance**

Date of Committee Action: April 26, 2005

The JUDICIARY Committee considered: **HJR 19**

HOUSE JOINT RESOLUTION NO. 19 **CONST. AM: PERMANENT FUND P.O.M.V.**

Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from the Alaska permanent fund based on an averaged percent of the fund market value.

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____ _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
REV	1			✓
GOV	2	✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Kott	✓			
	Gruenberg			✓	
			X		
	Coghill	✓			
	Gara			✓	
Chair:	Moore	✓			
Chair:					

HOUSE COMMITTEE REPO

4·22·0

(7)

Date Referred to Committee: April 19, 2005 **FURTHER REFERRALS: Judiciary Finance**

Date of Committee Action: ~~April~~ 22, 2005

The HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS considered: **HJR 19**

HOUSE JOINT RESOLUTION NO. 19 **CONST. AM: PERMANENT FUND P.O.M.V.**

Proposing amendments to the Constitution of the State of Alaska relating to and limiting appropriations from the Alaska permanent fund based on an averaged percent of the fund market value.

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
REV	1			✓
GOV.	2	✓		

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP (4)	DNP	NR (1)	AM
	Rokeberg	X			
	SAMUELS	X			
	MOSES	X			
	Gruenberg			✓	
Chair:	Weyhrauch	X			
Chair:					

ALASKA STATE LEGISLATURE

WAYS AND MEANS COMMITTEE

Representative Bruce Weyhrauch, Chair

Sponsor Statement for HJR 19

House Joint Resolution 19 proposes changing Alaska's Constitution to require inflation proofing of the entire Permanent Fund and to limit the payouts from the fund.

Many large endowments and public funds use a system known as "percent of market value" payouts, or POMV, to provide payouts while still protecting both the principal and earnings of a fund. POMV limits payouts to a set percentage of the fund's market value, often 5 percent. This has shown to be the maximum sustainable payout rate that will still maintain a fund's real value over time.

However, under current law only the principal of the Permanent Fund is protected and inflation-proofed. The earnings reserve account is not considered part of the principal, is not inflation-proofed and is open to appropriation. In addition, payouts are computed as a portion of the Fund's earnings. This means that if the Fund were to have little or no earnings in a single year, a payout for dividends or other State spending would not be allowed.

Moving to a POMV system and adding the earnings reserve to the Fund would not only provide inflation proofing of the entire fund, but would provide a more reliable and predictable payout each year, regardless of the Fund's performance in an individual year. This would make it more likely that the State could continue the Permanent Fund Dividend program in the future, an outcome that is heartily supported by many Alaskans.

Making these changes in the Constitution, rather than in Alaska Statutes adds an additional layer of protection to the fund because the Constitution can only be changed with a vote of the people.

If passed, HJR 19 would place an initiative on the next statewide election ballot that would propose the following three changes to Alaska's Constitution:

- Remove the provision that "all income be deposited in the general fund unless otherwise provided by law"
- Add a provision that would not allow appropriations for the Fund to exceed 5 percent of the average market value of the Fund over five years
- Add a provision that would consider the money in the earnings reserve account to be part of the Permanent Fund

Version 24-LS0919\A
Revised April 22, 2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HJR 19
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Revenue
Title: Const. Am: Permanent Fund P.O.M.V
RDU: AK Permanent Fund Corporation
Component: AK Permanent Fund Corporation
Sponsor: House Ways and Means
Requester: House Ways and Means
Component No.: 109

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

HJR 19 would ask voters in the next general election whether to approve a constitutional amendment that would limit annual appropriations to no more than 5% of the average year-end market value of the Fund for the preceding five years.

HJR 19 would not affect the budgeted costs to manage and invest the Permanent Fund, nor would it change the amount of income earned by Permanent Fund investments.

Prepared by: Michael Burns, Executive Director/CEO
Phone 907-465-2047
Division: Alaska Permanent Fund Corporation
Date/Time 04/20/05
Approved by:
Date 4/20/2005
Agency

(Revised 9/23/2004 OMB)

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HJR19
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: OOG

Title: Proposing amendments to the Constitution of the State of Alaska
RDU: Elections
Component: Elections

Sponsor: House Ways and Means
Requester: House Ways and Means
Component No.: 21

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual	0.0	1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time						
Part-time						
Temporary						

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

If this amendment appears on the 2006 ballot, the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58 is $1.5 (in thousands). Should the addition of this question require printing an 8 1/2 by 18 inch ballot the cost will increase to $22.0.

Prepared by: Gumesindo Rosales, Elections Special Assistant
Phone 465-4611
Division: Division of Elections
Date/Time 4/21/05 1:38 PM
Approved by: Laura A. Glaiser, Director
Date: 4/21/2005
Agency: Office of the Lt. Governor, Division of Elections

Alaska Permanent Fund Corporation

Financial projection comparison of the Alaska Permanent Fund (median case) under status quo versus POMV spending limit beginning in FY05. Under each scenario only the dividend (under current statutory calculation) is paid out.

All $ values in millions except the per person dividend

Current Statutes	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY05 - FY15 Totals
Contributions & appropriations (after payouts)	24,654	25,680	26,690	27,658	28,640	29,647	30,684	31,742	32,821	33,921	35,040	
Unrealized gains (losses) on invested assets	2,548	2,717	2,895	3,084	3,282	3,489	3,707	3,934	4,173	4,423	4,685	
Realized earnings account (after payouts)	2,113	2,772	3,337	3,799	4,258	4,806	5,387	6,006	6,664	7,366	8,111	
Total market value end of year (after payouts)	29,316	31,169	32,923	34,541	36,180	37,942	39,777	41,682	43,659	45,710	47,836	47,836
Total lump sum dividend appropriation	607	691	886	1,082	1,170	1,168	1,229	1,290	1,352	1,417	1,484	12,378
Per person dividend under current statute	$950	$1,080	$1,380	$1,680	$1,800	$1,780	$1,860	$1,930	$2,000	$2,070	$2,150	$18,680
Transfer status quo inflation proofing (realized earnings to Principal)	624	650	676	700	725	751	777	804	831	859	887	8,283
POMV spending limit information												
POMV 5% spending limit	1,309	1,332	1,384	1,464	1,551	1,620	1,682	1,743	1,805	1,867	1,930	17,689
less AFPC management costs	48	50	51	53	55	56	58	60	61	63	65	620
Net 5% POMV limit available for appropriation	1,261	1,282	1,333	1,411	1,497	1,564	1,624	1,684	1,744	1,804	1,865	17,068
Total lump sum dividend payout (current formula)	607	691	886	1,082	1,170	1,168	1,229	1,290	1,352	1,417	1,484	12,378
% of dividend to the POMV payout limit	46%	52%	64%	74%	75%	72%	73%	74%	75%	76%	77%	69%
Per person dividend under current statute	$950	$1,080	$1,380	$1,680	$1,800	$1,780	$1,860	$1,930	$2,000	$2,070	$2,150	$18,680

Assumptions:

1. POMV assumes a 5% payout limit, which is first used to fund APF administrative costs; and then only the dividend (current statutory calculation) is paid out.
2. Additional POMV monies above the dividend to the 5% limit is not spent, but left in the Fund to earn additional income.
3. POMV payout assumes calculation methodology is 5% of the ending market value (pre payout) for the first five of the last six fiscal years.
4. Callan Associates 2004 Capital Market Assumptions, APFC 2004 asset allocation, Fall 2004 revenue forecast and APF financial statements through 6/30/04. All payouts are assumed to happen at fiscal year end, all dollar values in millions except the per person dividend.

Alaska Permanent Fund Corporation

Financial projection of the Alaska Permanent Fund (median case) under the POMV spending limit beginning in FY05.

All $ values in millions except the per person dividend

POMV - 5% (beginning in FY05)	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY05 - FY15 Totals
Total Market Value End of Year (after payouts)	28,662	29,876	31,084	32,234	33,370	34,523	35,703	36,904	38,126	39,368	40,630	40,630
5 year average market value lagged one year	26,189	26,637	27,683	29,275	31,027	32,403	33,635	34,869	36,103	37,348	38,609	
POMV 5% spending limit	1,309	1,332	1,384	1,464	1,551	1,620	1,682	1,743	1,805	1,867	1,930	17,689
less AFPC management costs	48	50	51	53	55	56	58	60	61	63	65	620
Net 5% POMV limit available for appropriation	1,261	1,282	1,333	1,411	1,497	1,564	1,624	1,684	1,744	1,804	1,865	17,068
Split 50/50												
50% of net POMV approp for public services	631	641	666	705	748	782	812	842	872	902	933	8,534
50% of net POMV approp for dividend program	631	641	666	705	748	782	812	842	872	902	933	8,534
equates to per person dividend	$990	$1,000	$1,030	$1,080	$1,130	$1,170	$1,210	$1,240	$1,270	$1,300	$1,330	$12,750
Split 60/40												
40% of net POMV approp for public services	504	513	533	564	599	626	650	674	698	722	746	6,827
60% of net POMV approp for dividend program	757	769	800	846	898	938	974	1,010	1,046	1,083	1,119	10,241
equates to per person dividend	$1,202	$1,209	$1,245	$1,305	$1,372	$1,420	$1,460	$1,498	$1,536	$1,573	$1,609	$15,429
Split 70/30												
30% of net POMV approp for public services	378	385	400	423	449	469	487	505	523	541	560	5,121
70% of net POMV approp for dividend program	883	897	933	988	1,048	1,095	1,137	1,179	1,221	1,263	1,306	11,948
equates to per person dividend	$1,411	$1,419	$1,461	$1,532	$1,610	$1,666	$1,712	$1,757	$1,801	$1,844	$1,887	$18,098

Assumptions:

1. POMV assumes lump sum available for appropriation is paid out after accounting for APF expenses.
2. POMV payout assumes calculation methodology is 5% of the ending market value (pre payout) for the first five of the last six fiscal years.
3. Callan Associates 2004 Capital Market Assumptions, APFC 2004 asset allocation, Fall 2004 revenue forecast and APF financial statements through 6/30/04. All payouts are assumed to happen at fiscal year end, all dollar values in millions except per person dividend.

Alaska Permanent Fund Corporation

"The need for change"

1969: The boom begins

September 1969—Alaska receives $900 million from the Prudhoe Bay oil lease sale.

The Operating Budget for that fiscal year (FY70) was $173 million.

Using the information and testimony gathered during meetings held across the state, the Legislature decided to invest in Alaska, through capital projects and state programs.

By 1975 people were asking, "What happened to the $900 million?" The implication was that the money had been wasted, and Alaskan's began to accept the idea of saving for the future.

1974: Start of pipeline construction

With the promise of more oil money on the horizon, Alaska's leaders brought a plan before the people of Alaska to save a portion of the State's oil wealth.

"Just as a wise and prudent family sets aside money in a savings account for the future, so should Alaska's state government set aside a rainy day fund to benefit this and future generations of Alaskans."

1976 Voter's Guide
Statement in favor of the proposed constitutional amendment

1976—1980: What should we do with the Fund?

~~Development Bank~~ or **Investment Fund**

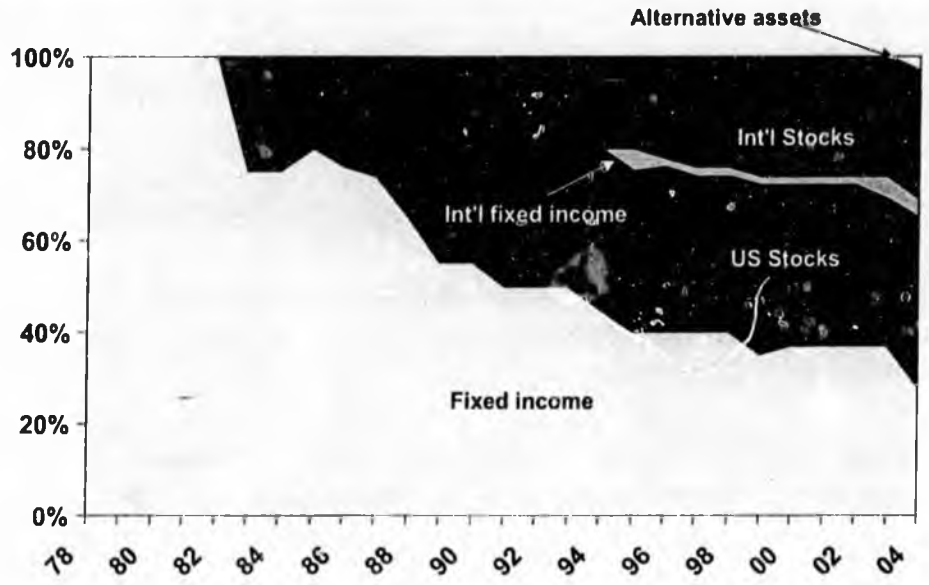
"... to benefit all generations..."

AS 37.13.020(1)

... the Fund should provide a means of conserving a portion of the state's revenue from mineral resources to benefit all generations of Alaskans.

As the Trustees manage the Fund, they must balance the rights of current generations against those of future generations. Neither the protection of the Fund for the future nor the payouts to current generations should take precedence.

The Fund, then and now



	1980	2005
Investments:	**Bonds**	**Bonds, stocks, real estate, and alternative investments**
Payout method:	**Based on realized income**	**Still based on realized income**
Inflation proofing:	**Statutory calculation and transfer to principal**	**Still use statutory calculation and bookkeeping transfer**

Return and income calculations

Recognized method

Total return

- Inflation

Real return

Alaska method

Total Return

- Unrealized gains/losses

Realized income

- Amerada Hess income

Statutory income

The need for change

As the markets have changed over the last 25 years, so have the Fund's investments. As a result, the payout structure that worked in 1980 no longer fits with how the Fund is managed today.

It made sense to base payouts on realized income when the fund was invested entirely in bonds. But now that a significant portion of the Fund's assets accumulate unrealized gains, this current payout structure does not allow current generations of Alaskans to take full advantage of the Fund's growth.

At the same time, the Legislature may expend all of the Fund's accumulated earnings. In some years this has left the Fund vulnerable to overspending. As the Legislature contemplates the use of earnings for government services, the Fund's Board of Trustees believe that it is important to limit spending within sustainable yield to preserve the Fund's value over time.

What is POMV?

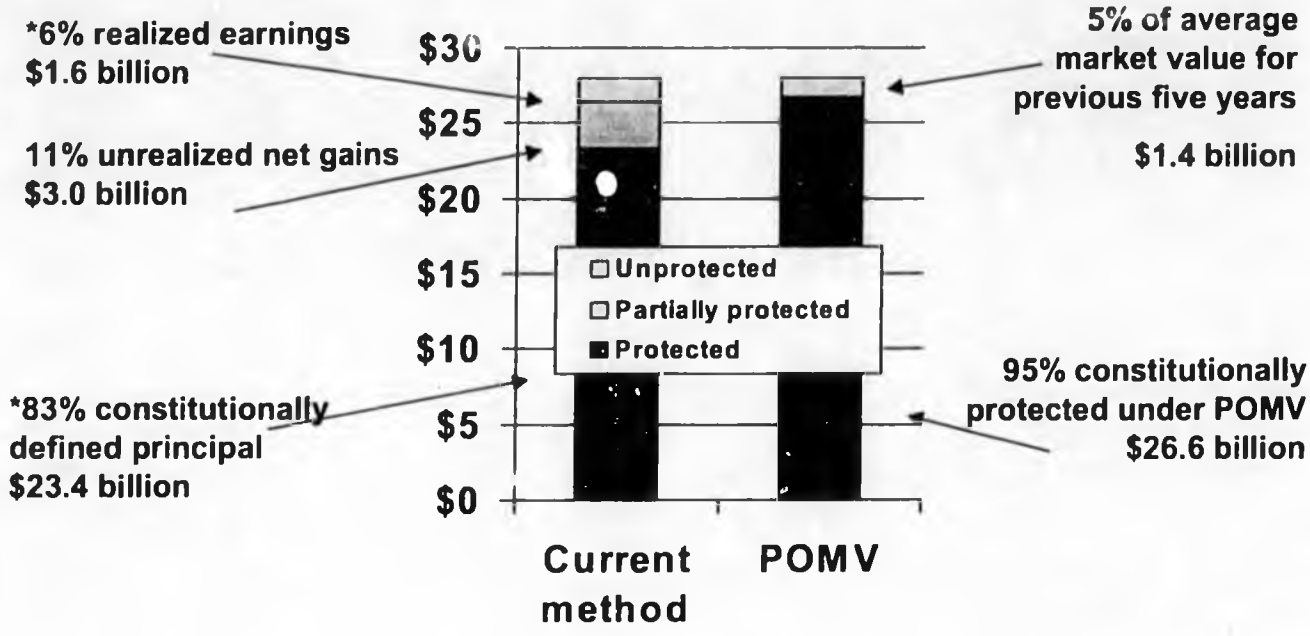
POMV is a spending limit for the Permanent Fund that is compatible with the Fund's investments. It is not a fiscal plan for the state.

Under POMV, no more than 5 percent of the Fund's market value, averaged over five years, may be withdrawn each year.

Under the current system, all realized earnings are available for spending from the Fund.

POMV v Status quo in FY2004

POMV protects more of the Fund from overspending than is protected under the current structure.



*** Values as of June 30, 2004 and do not reflect $581 million PFD payment or $170 million inflation proofing transfer from realized earnings to principal.**

What about inflation proofing?

Currently a transfer is made each year to offset the effect of inflation on the Fund's principal. The earnings of the Fund (17% of the Fund on June 30, 2004) are not inflation-proofed.

	FY94 to FY03 actual	FY05 to FY14 projected
Total return	**7.8%**	**7.6%**
Inflation rate	**2.5%**	**2.6%**
Real rate of return	**5.3%**	**5.0%**

If no more than 5% is withdrawn from the Fund each year, the gains that result from inflation will remain in the Fund. This will inflation proof the entire Fund, and preserve its purchasing power for future generations.

Who uses POMV?

- Anchorage Fairbanks, North Slope Borough and Sitka residents voted to use POMV for municipal trust accounts.
- Private foundations such as the Rasmuson Foundation and the Ford Foundation are required by the IRS to pay out at least 5% of their market value.
- 83% of colleges and universities polled by the National Association of College and University Business Officers use some form of a POMV payout method.

What are Alaskans asking?

- **Will this change leave the principal unprotected?**

If the markets were to perform poorly for several years in a row, it is possible that a small part of what used to be known as principal would be available for appropriation by the Legislature. However, the Legislature is not obligated to withdraw the full 5 percent available under POMV. In addition, POMV would provide better protection when the Fund rises in value, as it has for 25 of the last 28 years.

- **How will POMV affect my dividend?**

It is up to the Legislature to determine whether a new dividend calculation is appropriate under POMV, and if so what that dividend amount would be.

- **Is POMV a raid on the Permanent Fund?**

No. The Legislature already has the authority to spend the Fund's realized earnings, and does spend a portion of the earnings each year when for Permanent Fund Dividends. POMV would change how the amount available for spending is determined.

- **Why fix the Permanent Fund if it isn't broken?**

The Trustees believe that the current structure is broken. Earnings are not inflation-proofed, the Fund is vulnerable to overspending and the payout structure is not compatible with the standard asset allocation for an institutional fund. POMV would address all of these issues.

Testimony on HJR 19, POMV Resolution
House Judiciary Committee
April 26, 2005

Good afternoon, Madam Chair and members of the committee. For the record, I am Mike Burns, CEO of the Alaska Permanent Fund Corporation and I am joined by Laura Achee, the corporation's Research and Communications Liaison.

I know that the Legislature has become well acquainted with the finer points of a Percent of Market Value payout method over the last several years. So instead of explaining the mechanics in great detail, I would like to touch on the main points of why the Trustees believe POMV is the best way to manage the Fund and then take any questions the committee may have.

First of all, I would like to emphasize that the Trustees do not see POMV as a "fiscal plan." POMV would not allow the Legislature greater access to the earnings of the Fund, and in fact in most years would lower the amount available for appropriation compared to our current system. The Trustees believe that implementation of POMV and the use of Permanent Fund earnings for state government are two separate issues.

POMV is

1. Predictable - but much more importantly
2. it is Understandable by the people of Alaska - is it any wonder that people are confused and easily mislead by the arcane nature of our Fund's distribution formula?

We manage the Fund on a Real Return methodology - this is quite simply

Total return of the Fund

(Inflation)

Real Return

This is how public and private foundations, pension funds and endowments, trustees, directors and managers view their fiduciary duty and assignment.

What is broken? The current statutory "Realized Income Based Distribution Formula" is. This is the culprit!!

As opposed to the "Real Return" methodology, we are using the confusing and misunderstood formula or the Alaska version of "Return" and "Income."

Income Dividends, interest, rent

+/- Gains/Losses Real & unrealized

- operating expenses

- appropriations

Accounting net income

- unrealized net income

realized net income

- Amerada Hess

Statutory net income used in the distribution formula

Confusing, out of date and unworkable are but a few of the adjectives that come to mind. How did we get to this apex of confusion?

When the Fund was created it was prudent to restrict its investment authority to a "Bond only" strategy -

That being the case, it is important to remember that a bond portfolio generates income in two ways -

- interest or coupon income received
- capital gains from bonds sold at appreciated prices

These are both traditional realized income and the distribution formula based upon this concept made perfect sense - **at the time.**

However, because the Fund's asset allocation now incorporates investments that generate significant unrealized gains as well as realized income, the current payout methodology and protection of principal no longer serve the Fund as well as they once did. The Trustees believe that only a percent of market value payout limited by the sustainable yield from the Fund can provide the necessary protection for the future while allowing current generations their equitable share of Fund earnings. Furthermore, they believe that the only way to ensure full protection for the Fund is to place this limit in the Constitution.

The percent of market value proposal is simple: no more than 5% of the market value of the Fund, averaged over the previous five years, may be appropriated from the Fund. This leaves a minimum of 95% of the Fund protected from spending in any given year.

As I noted earlier, POMV is not a fiscal plan. And with $50 + oil your interest in and focus on a fiscal plan may well be elsewhere. But is this not the opportune time to modernize and increase the transparency of the Fund so that it can not only be managed in harmony with its distribution formula, but also be understood by Alaskans when other decisions must be made.

Modernization

Clarity

Bett[illegible] protection

I urge the committee members to support this proposal and I am prepared to answer any questions that you may have.

HJR

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ALASKA STATE HOUSE OF REPRESENTATIVES

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REPRESENTATIVE JOHN COGHILL

HJR 32 Constitutional Amendment Relating to Marriage

SPONSOR STATEMENT

HJR 32 is offered in response to the recent Supreme Court ruling of October 28, 2005. The ruling stated and ended with the premise that same sex couples are equal to married couples with regard to receiving health benefits from public employment. The conclusion of the court is that spousal limitations are unconstitutional

I will argue that the people of Alaska in a constitutional amendment vote in November 1998 by a 68% margin thought the issue of marriage and its benefits for same-sex couples was settled. Also, I will argue that the plaintiffs in Brause v. Bureau of Vital Statistics treated marital status and marital benefits, as inseparable thereby recognizing that marriage is a special relationship is society and law.

AS 25.05.013(b) passed by the Alaska Legislature in 1996 prohibits any public employer from extending marriage benefits to same-sex partners so the constitutional language in HJR 32 is consistent with the will of the legislature, which is consistent with the 1998 vote of the people of Alaska.

AS 18.80.220(c) is a law ignored by the court. This is under "unlawful Employment Practices" which grants an exception to employers who "provide greater health and retirement benefits to employees who have a spouse or dependent children" enacted in the 1996. Showing the public good of marriage benefits as a societal value for the health of family's in Alaska.

As a Representative Democracy it falls on us to refer this to those who answer to "All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole." Alaska Constitution Article 1, sec.2.

Amending our constitution is a weighty matter and should not be done lightly I my view. My interest is asking the people of Alaska if they agree with their Supreme Court, and if not, should we amend the constitution to better reflect the people's view. I appeal to you with Article 1, Section 2. This is our only recourse in answering this huge sociological question for those of us who disagree with the courts conclusion.

ALASKA STATE LEGISLATURE
SENATE FINANCE COMMITTEE
March 9, 2006

TESTIMONY OF KEVIN G. CLARKSON, ESQ. REGARDING SJR 20

INTRODUCTION

I would like to thank the Co-Chairs of the Committee, Senator Green and Senator Wilken, the Vice Chair of the Committee, Senator Bunde, and the members of the Committee, Senators Dyson, Hoffman, Olson, and Stedman, for the opportunity to speak today regarding SJR 20, a proposed amendment to the Alaska Constitution to preserve the attributes, benefits and privileges of marriage to married couples.

By way of introduction, I was legal counsel for the Alaska Legislature in 1998 in the legal action that related to whether the Marriage Amendment, Art. I, Section 25 of the Alaska Constitution, would remain on the general ballot so that the People of Alaska could vote to ratify it. I also represented the Alaska Legislature in the original same-sex marriage case itself, and I was one of the primary drafters of the Marriage Amendment.

HISTORICAL BACKGROUND

In order to understand the significance of SJR 20 it is essential to understand the history that has lead up to its introduction in the Legislature at this time. Relevant history includes events in the United States Congress, the Lower forty-eight states, and also in Alaska.

I. The Federal Defense of Marriage Act

In 1996, Congress adopted the federal Defense of Marriage Act (DOMA). Pub. L. 104-199, 100 Stat. 2419 (Sept. 21, 1996). Congress passed DOMA because of a decades-long assault that had been made in various courts challenging the definition and constitutionality of marriage, and particularly in response to a Hawaii court decision that suggested there might be a right to same-sex "marriage" in the Hawaii Constitution. The legislative history of DOMA reflects a congressional concern about the effect that legalizing same-sex "marriage" in Hawaii would have on other states, federal laws, the institution of marriage, traditional notions of morality, and state sovereignty. H.R. Rep. No. 104-664 at 1-18 (1996), reprinted in 1996 U.S.C.C.A.N. 2905-23.

DOMA has two sections, one defining "marriage" for purposes of federal law, and the other affirming federalism principles under the authority granted by Article IV, Section 1 of the Constitution, the Full Faith and Credit Clause. The first section states that for purposes of federal law, marriage means a legal union between a man and a woman.

> In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word marriage means only a legal union between one man and one woman as husband and wife, and the word spouse refers only to a person of the opposite sex who is a husband or a wife.

Pub. L. 104-199, sec 1, 100 Stat. 2419 (Sep. 21, 1996), codified at 1 U.S.C. 7 (1997). The second section reaffirmed the power of the states to make their own decisions about marriage:

> No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

Pub. L. 104-199 sec. 2, 100 Stat. 2419 (Sep. 21, 1996), codified at 28 U.S.C. 1738C (1997).

By way of DOMA, all of the various attributes, benefits, and privileges of marriage that are created or assigned by federal law, are assigned or provided only to (1) "marriages," which are limited to only legal unions between one man and one woman as husband and wife and (2) "spouses," which is defined as a person of the opposite sex who is a husband or a wife. None of the various attributes, benefits and/or privileges of marriage that exist under federal law are available to any unmarried couples, whether same-sex or opposite sex.

II. The Alaska Marriage Amendment

The Alaska Marriage Amendment, Art. I. Section 25, was ratified by the People, on a vote of 68%-32% in November, 1998. The Alaska Marriage Amendment can be said to have its origin in reaction to a specific judicial decision. The Marriage Amendment was ratified in response to a decision by a state superior court judge in a case called Brause v. Bureau of Vital Statistics, 1998 WL 88743 (Alaska Super. Ct. 1998). On February 28, 1998 this superior court judge ruled that the Alaska Constitution provided a fundamental right to marry someone of the same sex.

A. The Evolution of Alaska's Marriage Statute

The origin of Alaska's marriage statute, AS 25.05.011, is a territorial law: "Marriage is a civil contract, which may be entered into by males of the age of twenty-one years, and females of the age of eighteen years."[1] After statehood in 1959, this law was slightly revised to read: "Marriage is a civil contract requiring both a license and solemnization which may be entered into by a male

[1] *See* Alaska State Legislature Legislative Research Agency, *Memorandum on Legislative History of AS 25.05.011* (March 8, 1995).

who is 21 years of age or older with a female who is 18 years of age or older."[2] In 1970, the statute was modified to reduce from "21" to "19" the age at which a man could marry."[3] Up to this point in time Alaska's marriage statute clearly restricted marriage to one man and one woman.

Something very interesting, and also very unintended, occurred in 1974. The Alaska Revisor of Statutes[4] set upon the task of rendering Alaska's Statutes "gender neutral" in language and in the process made two unintended substantive changes to the marriage statute, one clear and express and the other implicit. The express substantive change which the Revisor of Statute's made was to change the age of permissible marriage for both genders to "19" from the previous "19" for men and "18" for women.[5] The second substantive change, which was only implicit in effect was to eliminate the words "man" and "woman" from the statute and insert the word "person" in their place. While this "gender neutrality" goal may have seemed "noble" and "appropriate" in the context of the codification of Alaska's statutes, from the standpoint of the substantive meaning and effect of the marriage law the result was drastic. By eliminating the words "man" and "woman" from the marriage statute the Revisor's "gender neutral" language had the appearance of changing Alaska's definition of marriage to a civil contract which could be entered into between any two "persons" (presumably of any combination of either gender) age 19 years or older.[6]

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[2]Sec. 1, ch. 58, SLA 1963 (enacting AS 25.05.011).

[3]Sec. 9, ch. 245, SLA 1970.

[4]The Revisor of Statutes is given the responsibility to codify Alaska's statutes and to make technical changes for purposes of clarity. AS 01.05.036. The Revisor of Statutes submits bills to the Alaska Legislature which encompass many subjects, which are supposed to address only technical or grammatical changes to the statutes, and which are not supposed to make substantive changes to the meaning and effect of the law. In fact, because Revisor's bills address multiple subjects throughout the Alaska statutory scheme, if Revisor's bills did propose substantive changes to the meaning and effect of the laws then the Revisor's bill would very likely violate the single-subject requirement of Article II, section 13 of the Alaska Constitution. This conclusion is bolstered by the fact that Article II, section 13 contains language which exempts bills "codifying, revising, or rearranging existing laws."

[5]Sec. 92, ch. 127, SLA 1974. This change in the age of permissible marriage for women was a clear substantive change which exceeded the authority of the Revisor of Statutes. The change appears to have been motivated by the 1972 amendment to Article I, section 3 of the Alaska Constitution to prohibit discrimination on the basis of sex. The title of the Revisor's 1974 bill ("An Act making corrective amendments in the Alaska statutes as recommended by the revisor of statutes") suggests very strongly that the Revisor was exceeding his ("her?") statutory and constitutional authority.

[6]Sec. 92, ch. 127, SLA 1974. According to Representative Norman Rokeberg's Sponsor Statement regarding House Bill 227, Alaska's Defense of Marriage Act ("Little DOMA"), the 1974 Revisor's bill which made the legal age of consent for marriage the same age for both men and women (HB 817) was amended in the Senate Judiciary Committee to remove the words "man" and "woman" and replace them with the word "person." Representative Rokeberg reported in his Sponsor Statement regarding HB 227 that the amendment was the result of an effort championed by former Representative Genie Chance to "locate all terms relating to the sexes, and replacing them with gender neutral words." Sponsor Statement, Rep. N. Rokeberg, HB 227 (undated). Representative Rokeberg reported that he had discussed the matter with former Representative Chance, and that she confirmed that the amendment was not intended to repudiate the traditional definition of marriage as the union of one man and one

The statute was again modified in 1975, this time by the Alaska Legislature itself, to reduce the legal age of marriage to "18" for both men and women. Apparently unaware of the prior apparent substantive change, the Legislature retained the "gender neutral" language without the slightest comment.[7] The marriage statute remained unchanged and unchallenged in this form for the next twenty-one (21) years until 1996.

B. Related Gay Rights Controversies

Previous to the Marriage Amendment drama, a number of controversies regarding similar issues had already been played out in Alaska. The earliest case was decided in 1978. In 1976, the mayor of Anchorage deleted from a draft of the *1976-77 Anchorage Blue Book*, reference to the Alaska Gay Coalition.[8] The Coalition subsequently sued claiming their First Amendment speech rights had been violated because they were not allowed to access the public forum created by the *Blue Book*. The superior court initially granted the Coalition a temporary injunction prohibiting distribution of the *Blue Book*, but later decided against the Coalition after a trial.[9] The Alaska Supreme Court reversed, holding that the *Blue Book* was a public forum and that the mayor had improperly denied the Coalition its First Amendment rights because of disapproval of the Coalition's aims by not allowing their message to be printed in it.[10]

A few years later, the issue of "sexual orientation" was raised in a family law setting. In *S.N.E. v. R.L.B.*[11], a father sough to have the custody of his child changed so as to give him custody. The father alleged that the mother was a lesbian and that the child's best interests, therefore, demanded that he be the primary custodian of the child.[12] The superior court ruled in favor of the

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woman.

[7]Sec. 1, ch. 28, SLA 1975. The Legislature titled its 1975 bill amending AS 25.05.011(a) "An Act relating to the capacity of persons to consent to marriage," which suggests that the Legislature had no intent or notion that it was enacting a marriage statute which, by its plain language, appeared to allow same-sex marriage. The Legislature's lack of intent to allow same-sex marriage by way of the "gender neutral" language changes of 1974 and 1975 is bolstered by the fact that the Legislature retained the terms "husband" and "wife" in several places to refer to the parties to a marriage. See AS 25.05.041(b); AS 25.05.051. If the Legislature truly intended to adopt and confirm the Revisor's 1974 "gender neutral" change as a "substantive" revision of the definition of marriage so as to include same-sex partners, then the Legislature would have replaced the terms "husband" and "wife" from the marriage laws.

[8]*Alaska Gay Coalition v. Anchorage*, 578 P.2d 951 (Alaska 1978).

[9]Id. at 954.

[10]Id. at 960.

[11]699 P.2d 875 (Alaska 1985).

[12]Id. at 877.

father and the mother appealed. The Alaska Supreme Court reversed, holding that that there was no evidence that the mother's lesbianism "has or is likely to affect the child adversely" and that any perceived stigma on the child because of the mother's lifestyle could not justify a change of custody.[13]

In January 1993, the Anchorage City Assembly enacted an ordinance that banned discrimination based on sexual orientation in public employment over the veto of Mayor Tom Fink.[14] A group called Citizens to Repeal the Homosexual Ordinance immediately began collecting petition signatures to subject the matter to a vote in the April elections. Within a month, the group submitted 20,000 signatures, even though only 5,700 were needed.[15] The city clerked certified the initiative and a group of plaintiffs sued to challenge the certification.[16] The superior court denied a stay, but that decision was appealed to the Alaska Supreme Court which granted the stay on April 14, 1993.[17] Following the stay, the superior court found that the "referendum petition presented the ordinance in a biased and partisan light" because its title read. "Referendum Petition to Repeal a Special Homosexual Ordinance."[18] Focusing on the disagreement between the ordinance's opponents and supporters about whether or not the ordinance granted "special rights" the superior court held that the petition's characterization was misleading because of its partisanship.[19] The Alaska Supreme Court took this characterization as accurate and held that inaccurate referendum petitions are not "legally acceptable."[20] The basis for this decision was the court's belief that an inaccurate petition undercuts the screening function provided by the requirement that a referendum petition have a certain number of signatures to be certified.[21] Thus, the Alaska Supreme Court invalidated the petition and the ballot initiative was not the subject of a vote.[22]

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[13]Id. at 878.

[14]*Opinions in Anchorage Divided as Gay-Rights Measure Goes to Voters*, SEATTLE TIMES B4 (April 12, 1993).

[15]Id.

[16]*Faipeas v. Municipality of Anchorage*, 860 P.2d 1214, 1215 (Alaska 1993).

[17]Id. at 1216.

[18]Id.

[19]Id.

[20]Id. at 1218.

[21]Id. at 1220.

[22]Interestingly, however, in the Municipal election in which the Referendum was to appear, the People of Anchorage voted to change the membership of the Municipal Assembly, rejecting several incumbents who had previously voted for the sexual orientation discrimination ordinance. Very shortly after the election, the newly constituted Anchorage Municipal Assembly voted to rescind the sexual orientation discrimination ordinance.

Just a year before the marriage amendment was adopted, the Alaska Supreme Court heard a case involving two employees of the University of Alaska who wanted health insurance for their same-sex partners.[23] The employees challenged the University's decision not to extend the benefits, claiming a violation of the state Human Rights Act's prohibition of marital status discrimination. The superior court ruled in favor of the plaintiffs and held that the University would have to either stop offering benefits for spouses, or provide benefits to the same-sex partners of employees. The University chose to offer the benefits.[24] While the appeal of the superior court's decision was pending, the Alaska Legislature amended the state discrimination law to allow employers to offer different benefits to employees with spouses and children than those without.[25] Thus, at thje conclusion of the appeal, the Alaska Supreme Court could only rule that the University had violated the pre-amendment act.[26]

Each of these decisions contributed to the highly charged atmosphere in which Alaska's marriage statute was challenged in the Brause case.

C. Alaska's Defense of Marriage Act

As referenced above, in early 1995, in addition to the Brause litigation filed in superior court in Anchorage and discussed below, which challenged the traditional opposite-sex definition of marriage, a separate action filed in Superior Court in Fairbanks[27] challenged the University of Alaska Fairbanks' ("UAF") policies limiting spousal benefits to the "husbands" or "wives" of its married employees. A superior court judge in Fairbanks set loose a firestorm when she ruled that UAF could not legally limit spousal benefits to traditional "husbands" and "wives," basing her decision in part upon the Revisor of Statutes' 1974 bill and Senate Judiciary Committee "gender neutral" amendment, tinkering with the marriage statute so as to eliminate the words "man" and "woman" from the definition of marriage and defining "marriage" as a civil contract between two "persons."

Suddenly at that time, the Alaska Legislature was aware of the potential substantive change (and to at least a portion of the Alaska Judiciary a very real substantive change) which had been made to the marriage statute. In March, 1995, Representative Norman Rokeberg introduced House Bill 227, which was designed to amend the Alaska marriage statute to specify that (1) only one man and one woman can legally marry in Alaska, and (2) no out-of-state marriage between individuals

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[23] *University of Alaska v. Tumeo*, 933 P.2d 1147 (Alaska 1997).

[24] Id. at 1149-1150.

[25] Id. at 1151.

[26] Id. at 1156.

[27] *See University of Alaska v. Tumeo*, 933 P.2d 1147 (Alaska 1997).

of the same-sex would be recognized as valid in Alaska. At about the same time, Representative Pete Kelly introduced HB 226 proposing very similar changes to the Alaska marriage statute.

When asked for its comments regarding HB 227, the Alaska Department of Law offered the opinion that the legislation was unnecessary. Assistant Attorney General John Gaguine offered the Department of Law's opinion to Representative Rokeberg to the effect that the Alaska Supreme Court would most likely find that the 1974 revisions to the marriage statute were not intended to allow legalized same-sex marriage. Mr. Gaguine explained that oddly enough, this event was not unique to Alaska. Prior to 1970, the State of Washington's marriage statute (RCW 26.04.010) provided that only "males" and "females" could marry each other. In 1970, however, Washington's marriage statute was amended to make the age of consent for marriage the same for both genders, and in these same changes (just as had occurred in Alaska) the words "male" and "female" were eliminated and replaced with the word "persons."

Mr. Gaguine explained that the Washington Court of Appeals had been required to review the changes to Washington's marriage statute in 1974 in a case called Singer v. Hara,[28] and in that case concluded that the changes were not intended to allow same-sex marriage. In reaching this conclusion the Washington Court of Appeals noted that 1972 changes to Washington's community property laws had retained references to "husband" and "wife," therefore, indicating a lack of intention by the Washington Legislature to allow same-sex marriage.

Mr. Gaguine also explained that Courts from other states and jurisdictions in addition to Washington had also concluded that same-sex marriages were not authorized by "gender neutral" language changes to marriage statutes.[29] The courts in these cases decided the question presented to them regarding same-sex marriage upon the simple basis of reviewing the dictionary definition of "marriage" which refers to a relationship between a "man" and a "woman" or between members of "opposite sexes." To these courts, the simple use of the word "marriage" and nothing more signaled legislative intent to limit the marriage relationship to a contract between one man and one woman.

In light of the superior court's ruling in Tumeo, however, the Alaska Legislature was not willing to simply entrust the marriage statutes to the Alaska Judiciary. Accordingly, the Legislature went forward with its proposed changes to the marriage statutes. The changes had two ultimate goals: (1) to clearly provide that for purposes of legal recognition and status, marriage in Alaska could only exist between one man and one woman; and (2) to clearly prevent any same-sex marriage, which might at some time be recognized as valid in another state (at that time, potentially Hawaii), from receiving the legal status and recognition of marriage in Alaska simply because the

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[28] 522 P.2d 1187, 1189 (Wash. App. 1974).

[29] *See Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), *appeal dismissed*, 409 U.S. 810 (1972); *Jones v. Hallahan*, 501 S.W.2d 588 (Ky. 1973); *Adams v. Howerton*, 673 F.2d 1036 (9th Cir.), *cert. denied*, 458 U.S. 1111 (1982).

participants in that possible same-sex marriage moved their residence to Alaska.

As finally amended, the Alaska marriage statutes provide as follows:"Marriage is a civil contract entered into between one man and one woman that requires both a license and solemnization."[30]

D. The Brause v. Bureau of Vital Statistics Case

The Plaintiffs in the Brause case sought marriage as a doorway to the benefits and privileges that the law bestows upon married couples. The Plaintiffs in Brause argued repeatedly that there are some 115 benefits and privileges available to married couples under Alaska law which they coud not access. The Plaintiffs in Brause sought to use the status of marriage as a doorway by which they could access the various benefits and privileges of marriage, and attach them to their same sex relationship. The Brause litigation treated marital status and marital benefits as being inseparable. In Brause the Plaintiffs specifically sought benefits *based on* marital status. In fact, the superior court's ruling in Brause treated marital status and benefits as being inseparable. "Once married," the superior court noted, "the state provides benefits and imposes duties that are significant and valuable to society as well as to the individual members of the marriage." Brause, 1998 WL 88743 at * 2. Put another way, the superior court's ruling treated the benefits, privileges and duties of marriage as being entirely consequent upon marital status.

The Marriage Amendment presupposed this context. The Marriage Amendment was specifically designed to close marital status as a doorway by which same-sex couples, or any combination of opposite sex individuals other than "one man and one woman," might access the benefits and privileges of marriage. The Marriage Amendment as it was originally introduced in the Legislature as SJR 42 contained three sentences:

> To be valid or recognized in this State, a marriage may exist only between one man and one woman. No provision of this Constitution may be interpreted to require the State to recognize or permit marriage between individuals of the same sex. Additional requirements related to marriage may be established to the extent permitted by the Constitution of the United States and the Constitution of the State of Alaska.

The third sentence of the Marriage Amendment was dropped by the Legislature during the legislative process.

Before the popular vote, a group of citizens including the Alaska Civil Liberties Union challenged the constitutionality of the proposed amendment in two actions. Bess v. Ulmer, Case No. 3AN-98-7776 Civil (Alaska Super. Ct. 1998); and Dodd v. Ulmer, Case No. 3AN-98-8114 Civil (Alaska Super. Ct. 1998). The Alaska Supreme Court consolidated the cases and then in its decision

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[30]ALASKA REV. STAT. 25.05.011(a) (1998), *amended by* 1996 Alaska S.B. 308.

allowed the Amendment to proceed to a vote, with one change. The Alaska Supreme Court, rightly or wrongly, deleted the second sentence of the Marriage Amendment because the Court viewed the sentence as being "superfluous." See Bess v. Ulmer, 985 P.2d 979, 995 (Alaska 1999).

The first sentence of the Marriage Amendment was presented to the People of Alaska for ratification and it was ratified by a vote of 68%-32%. See Liz Ruskin, Limit on Marriage Passes in Landslide, Anchorage Daily News, November 4, 1998, § A, p. 1.

Following ratification of the Marriage Amendment, the Brause case did not end. Confirming that their primary focus in that case was the benefits and privileges that are attached to marriage and not marriage itself as a status, the Plaintiffs in Brause continued their quest in that case to receive the 115 benefits and privileges that are attached to marriage. Because marriage status had been foreclosed to them by way of the Marriage Amendment, the Brause Plaintiffs sought to require the State to give them all of the various attributes, benefits and privileges of marriage *outside of marriage*. The Brause Plaintiffs' claims were dismissed, however, because their claims for marriage benefits and privileges were not ripe. See Brause v. Bureau of Vital Statistics, 21 P.3d 357, 358 (Alaska 2001).

III. The ACLU v. State Case

Another case, the ACLU v. State litigation, began shortly after the Marriage Amendment was ratified. In this new case, the ACLU and eighteen individuals who alleged that they comprised nine lesbian or gay couples (hereafter referred to collectively as "the ACLU") filed suit against the State of Alaska and the Municipality of Anchorage. The ACLU complained that the state and the municipality maintained employee benefits programs that offer valuable benefits to their employee's spouses that are not offered to the same sex partners of lesbian and gay employees. In other words, the ACLU argued to the effect that when nearly seventy percent of Alaskans voted to ratify the Alaska Marriage Amendment they voted to command government to give marriage benefits to same sex couples, just as if they were married.

The ACLU also argued that those same Alaskans' vote was part of an invidious discriminatory scheme against lesbian and gay people. According to the ACLU, because the Marriage Amendment was created as part of an invidious discriminatory scheme, and because it foreclosed the option of marriage to same sex couples, the Alaska Constitution had to be interpreted to command government to treat same sex couples just as if they were married. The ACLU argued that public employees with same sex partners were being singled out and treated differently due to "sexual orientation" or "gender," because unlike an unmarried male/female couple who can choose to get married if they want to, the same sex couple "can't get married." And thus, the Amendment that was designed to end the constitutional debate in Alaska over same sex marriage, became the force of the claim that same sex couples must be treated "just as if they are married," even though they are not. Most Alaskan's heads were spinning upon hearing this argument.

The state superior court dismissed the ACLU's claims. See ACLU v. State, 3AN-99-11179

Civil (Alaska Super. Ct. 1999). The superior court reasoned that public employees with same sex partners are denied marriage benefits, not because of their sexual orientation or their gender, but instead simply because they are not married. The court concluded that no sexual orientation discrimination existed because same sex couples are treated exactly the same as every unmarried heterosexual couple, who also do not qualify for marital benefits. Finally, the superior court concluded that no gender discrimination existed because men and women equally receive marital benefits for their spouses. The ACLU appealed to the Alaska Supreme Court and on October 28, 2005 the Supreme Court reversed the superior court's decision. ACLU v. State, 122 P.3d 781 (Alaska 2005).

The State of Alaska, Department of Law, argued that the Marriage Amendment foreclosed the ACLU's claim that the Alaska Constitution mandated the extension of marriage benefits and privileges to unmarried same-sex partners. The Alaska Supreme Court rejected the State's argument. ACLU, 122 P.3d at 786-87. The Court reasoned that:

> The Marriage Amendment could have the effect of foreclosing the present challenge only if it could be read to prohibit public employees from offering benefits to their employees' same-sex domestic partners. . . . That the Marriage Amendment effectively prevents same-sex couples from marrying does not automatically permit the government to treat them differently in other ways.

Id. Because the Marriage Amendment did not foreclose the legislative and executive branches of government from *voluntarily* choosing to extend benefits to same sex partners, the Court concluded that the Marriage Amendment stood as no barrier to the ACLU's claim that the Alaska Constitution *commanded* the legislative and executive branches of government to extend benefits to same sex partners. Interestingly, the Court did not address another possible interpretation of the Marriage Amendment, which would have simply construed the Amendment to foreclose any judicially commanded extension of marriage benefits and privileges to unmarried same-sex couples under the guise of constitutional interpretation. Id.

The Court, like the ACLU, used the Marriage Amendment as the driving force for its decision that the Alaska Constitution commands government to treat unmarried same sex couples just as if they are married, even though they are not. Id. at 787-88. The Court explained:

> We agree with the [ACLU] . . . that the proper comparison is between same-sex couples and opposite sex couples, whether or not they are married. The municipality correctly observes that no unmarried employees, whether they are members of same-sex or opposite-sex couples, can obtain the disputed benefits for their domestic partners. But this does not mean that these programs treat same-sex and opposite-sex couples the same. Unmarried public employees in opposite-sex domestic relationships have the opportunity to obtain these benefits, because employees are not prevented by law from marrying their opposite-sex domestic partners. In comparison, public employees in committed same-sex relationships are absolutely

> denied any opportunity to obtain these benefits because these employees are barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska. Same-sex unmarried couples therefore have no way of obtaining these benefits, whereas opposite-sex unmarried couples may become eligible for them by marrying. The programs consequently treat same-sex couples differently from opposite-sex couples.

Id. at 788. In other words, the governments' employee benefits programs that denied marriage benefits to unmarried same-sex couples were discriminatory, and thus in violation of the Equal Protection Clause of the Alaska Constitution, only because the Marriage Amendment forecloses marriage to same-sex couples.

Put another way, according to the Alaska Supreme Court, the Marriage Amendment required the Court to command government to extend marriage benefits to unmarried same-sex partners. Id. The Court put this very conclusion into words in footnote 38 of its Opinion:

> We recognize that the benefits programs became discriminatory only after the legislature acted in 1996 and 1998 and the electorate adopted the Marriage Amendment in 1998.

Id. at 789 n. 38. Thus, apparently, according to the Alaska Supreme Court, when 68% of Alaskans voted to ratify the Marriage Amendment in 1998 they voted to command government to treat unmarried same-sex couples just as if they are married, even though they are not.

IV. Future Impacts of ACLU v. State

A. All of the Benefits and Privileges of Marriage Will Be Required to Be Given to Same Sex Relationships

Although ACLU v. State technically addresses only employment benefits in the context of public employment, State, Borough, or Municipal, the impact of the decision stretches much further. Based upon the logic of ACLU v. State, virtually every distinction that exists in Alaska law and public policy between married couples and unmarried same-sex partners will eventually fall to an equal protection challenge under the Alaska Constitution. There is no logical basis upon which to limit the reach of the ACLU v. State decision to simply public employment benefits. Effectively, the Alaska Supreme Court decision is a first step in the direction of constitutionally mandated domestic partnerships in Alaska just as was imposed upon the State of Vermont by the Vermont Supreme Court in Baker v. State, 744 A2d 864, 886-89 (Vt 1999).

If Alaska Supreme Court believes that unmarried same-sex partners are unconstitutionally discriminated against because the government denies them the employment benefits that are extended to married men and women, it appears a foregone conclusion that the Court will believe

that the state unconstitutionally discriminates against same-sex partners when it denies them other benefits and privileges of marriage, including, but not necessarily limited to, (1) the right of intestate succession; (2) the privilege of not being required to testify against a spouse; (3) the right to receive workers' compensation benefits on the death of a partner; (4) the right to maintain a legal action for loss of consortium, or a wrongful death action for the death of a partner; and/or (5) the right to receive spousal support on the dissolution of a relationship.

B. Private Employers must Extend Marriage Benefits to the Same Sex Partners of Their Employees

It is not a correct statement that the impact of ACLU v. State will be felt only in the context of public employment. The logic of the ACLU v. State decision reaches into private employment as well as public employment. Under Alaska law, every private employment contract between employer and employee contains an implied covenant of good faith and fair dealing. Charles v. Interior Regional Housing Auth., 55 P.3d 57, 62 n. 29 (Alaska 2002); Holland v. Union Oil Co. of Ca., Inc., 993 P.2d 1026, 1032 (Alaska 2000); Belluomini v. Fred Meyer of Alaska, Inc., 993 P.2d 1009, 1012-13 (Alaska 1999). One of the things that the implied covenant of good faith and fair dealing requires is that employers treat "like employees alike." Charles, 55 P.3d at 62 n. 29; Holland, 993 P.2d at 1032; Fred Meyer, 993 P.2d at 1012-13. The legal concept of treating "like employees alike" is much akin to the equal protection concept of not discriminating between "similarly situated individuals." Thus, it requires no stretch of logic to predict that the Alaska Supreme Court will conclude that a private employer violates the implied covenant of good faith and fair dealing when that private employer extends employment benefits to the spouses of its married employees but not to the same-sex partners of its "like" gay or lesbian employees.

V. SJR 20

SJR 20 is designed to allow the People of Alaska the opportunity to address the ACLU v. State decision. SJR 20 is also designed to allow the People of Alaska to decide whether they agree or disagree with the Alaska Supreme Court's interpretation of the meaning and effect of the Marriage Amendment. SJR 20 would add a second sentence to Art. I, Section 25 that would state:

> No other union is similarly situated to a marriage between a man and a woman and, therefore, a marriage between a man and a woman is the only union that shall be valid or recognized in this state and to which the rights, benefits, obligations, qualities, or effects of marriage shall be extended or assigned.

The first phrase of SJR 20 is designed to eliminate the fundamental basis for any equal protection claim, in any context, that involves an effort to compare married couples to unmarried same-sex partners, or for that matter to any unmarried combination of opposite sex individuals. The following language of SJR 20 is designed to confirm that marriage benefits and privileges, qualities, effects and obligations, are limited to marriage relationships as previously defined by the Alaska

Constitution. The word benefits is designed to address such things as employment benefits. The word privileges is designed to address such things as the spousal privilege regarding court testimony. The words qualities and effects are designed to address the various legal qualities and effects of marriage under Alaska law. The word obligations is intended to address such obligations as spousal support in a divorce context.

Nothing in SJR 20 would prohibit private employers from voluntarily deciding to extend marriage like benefits to employees with same-sex partners. A few private employers have decided to voluntarily extend employment benefits to the same-sex partners of their employees. SJR 20 would have the effect of precluding a public employer from extending employment benefits to unmarried same-sex partners. However, in this regard, it is important to note that AS 25.05.013(b), passed by the Alaska Legislature in 1996, already prohibits any public employer from extending marriage benefits to same-sex partners. Any public employer who currently extends marriage benefits to the same-sex partners of employees does so in violation of Alaska law.

VI. MARRIAGE AMENDMENTS ACROSS THE COUNTRY

States With Marriage Amendments:

1. Alaska (1998 by 68%)
2. Arkansas (2004 by 75%)
3. Georgia (2004 by 77%)
4. Hawaii (1998 by 69%)
5. Kansas (2005 by 70%)
6. Kentucky (2004 by 75%)
7. Louisiana (2004 by 78%)
8. Michigan (2004 by 59%)
9. Mississippi (2004 by 86%)
10. Missouri (2004 by 71%)
11. Montana (2004 by 66%)
12. Nebraska (2000 by 70%)
13. Nevada (2002 by 67%)
14. North Dakota (2004 by 73%)
15. Ohio (2004 by 62%)
16. Oklahoma (2004 by 76%)
17. Oregon (2004 by 57%)
18. Texas (2005 by 76%)
19. Utah (2004 by 66%)

States where Amendments Are Expected to Be Voted On In 2006:

1. Alabama

2. Arizona
3. Colorado
4. Idaho
5. Indiana
6. New Hampshire
7. South Carolina
8. South Dakota
9. Tennessee
10. Virginia
11. West Virginia
12. Wisconsin

When marriage related Amendments are presented to the People for a vote they routinely pass by overwhelming margins. Marriage amendments voted on by the people across the country have passed by an average pass rate of 71%, ranging from 57% in Oregon to 86% in Mississippi. SJR 20 would have the effect of bringing Alaska's Marriage Amendment into line with marriage amendments that have passed in other states. Eleven of the nineteen existing marriage related amendments that have been passed in other states contain provisions similar to those of SJR 20 and specifically prohibit the extension of marriage benefits and privileges to unmarried same-sex partners. Seven amendments prohibit same-sex domestic partnerships and also prohibit the extension of marriage benefits to same-sex partners. Four other amendments have the effect of prohibiting the extension of marriage benefits to same-sex partners by prohibiting same-sex domestic partnerships.

A. Amendments That, Like SJR 20, Specifically Foreclose the Extension of Marriage Benefits and Privileges to Same Sex Partners

The Georgia Amendment provides in part that :

. . . . No union between persons of the same sex shall be recognized by this state as entitled to the benefits of marriage. . . .

GA CONST Art. I, Sec. IV.

The Kansas Amendment provides in part:

No relationship, other than a marriage, shall be recognized by the state as entitling the parties to the rights or incidents of marriage. . . .

The Louisiana Amendment provides in part:

. . . . No official or court of the state of Louisiana shall construe this constitution or

any state law to require that marriage or the legal incidents thereof be conferred upon any member of a union other than the union of one man and one woman. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized. . . .

The North Dakota Amendment provides in part:

. . . . No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect.

The Ohio Amendment provides in part:

. . . . This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.

OH CONST. Art. XV, Sec. 11.

The Oklahoma Amendment provides in part:

. . . . Neither this Constitution nor any other provision of law shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.

OK CONST. Art. 2, Sec 35.

The Utah Amendment provides in part:

. . . . No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect. . . .

UTAH CONST Art. 1, Sec. 29.

B. State Amendments That Foreclose the Extension of Marriage Benefits to Same-Sex Partners by Foreclosing the Creation or Recognition of Same-Sex Domestic Partnerships or Civil Unions

Some state amendments foreclose the extension of marriage benefits and privileges to same-sex partners by foreclosing the recognition of same-sex domestic partnerships or civil unions.

The Kentucky Amendment provides:

> Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized.

The Arkansas Amendment provides:

> Section 1. Marriage.
> Marriage consists only of the union of one man and one woman.
>
> Section 2. Marital status.
> Legal status for unmarried persons which is identical or substantially similar to marital status shall not be valid or recognized in Arkansas, except that the legislature may recognize a common law marriage from another state between a man and a woman.

ARK CONST Amend. 83.

The Nebraska Amendment provides in part:

> . . . . The uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska.

The Texas Amendment provides in part:

> . . . . This state or a political subdivision of this state may not create or recognize any legal status identical or similar to marriage. . . .

TX CONST Art. 1, Sec. 32.

VII. Potential Federal Constitutional Challenges to SJR 20

Generally speaking, if a law bears a rational relation to a legitimate end, it will be upheld against a federal constitutional challenge.[31] Yet in 1996, using only rational basis review, the United States Supreme Court struck down a Colorado constitutional amendment which classified on the basis of "homosexual, lesbian or bisexual orientation."[32] This case, Romer v. Evans, is the most

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[31] *Romer v. Evans*, 116 S.Ct. 1620, 1627 (1996).

[32] *Id.* at 1623.

likely basis for a challenge to SJR 20. It was specifically mentioned by the Alaska Supreme Court in ACLU v. State.

Romer invalidated the following Colorado Constitutional Amendment, thta was put on the ballot by initiative:

> No Protected Status Based on Homosexual, Lesbian, or Bisexual Orientation. Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be in all respects self-executing.[33]

The United States Supreme Court interpreted this text not merely as repealing ordinances passed by municipalities prohibiting discrimination on the basis of "sexual orientation," but also as prohibiting "all legislative, executive or judicial action at any level of state or local government designed to protect the named class, a class we shall refer to as homosexual persons or gays and lesbians."[34] The Amendment "imposes a special disability upon those persons alone." Therefore, the Court explained:

> We find nothing special in the protections Amendment 2 withholds. These are protections taken for granted by most people either because they already have them or do not need them; these are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.[35]

Amendment 2 was "at once too narrow and too broad."[36] It was too narrow because it characterized a class of people by "a single trait." It was too broad because, on the basis of that single trait, it

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[33] *Id.* at 1623.

[34] *Id.*

[35] *Id.* at 1627.

[36] *Id.* at 1628.

"then denie[d] them protection across the board."[37] Based on this combination of targeting and potentially limitless breadth, the Court concluded that Amendment 2 could not possibly be justified by the State's purported reasons (i.e., conserving resources, respecting associational privacy). It was not only irrational, it was evil. The rationale of Amendment 2 was "inexplicable by anything but animus toward the class it affects."[38]

> Romer has a narrow and a shallow bite:
>
> It is narrow in the sense that the Court decided only the case before it and avoided creating broad rules that courts might apply in other cases. The decision is shallow in the sense that the Court's reasoning was almost subrational--there is more reflex than reason in Justice Kennedy's opinion in Romer.[39]

Romer is far more notable for what it did not do than for what it did do.[40] Romer would have come out the same way had the Amendment been targeted at *any* "narrowly defined" group. The Court, seemed more concerned about suspect *laws* than suspect *classifications*.[41] It was "the extreme overbreadth of Amendment 2--not the identity of the class of persons covered by the Amendment--that concerned Justice Kennedy and his colleagues in the Romer majority."[42] This can be seen by the fact that Romer left Bowers v. Hardwick standing, and did not hold that sexual orientation is a suspect classification.[43] In sum:

> It was the 'sheer breadth' of Amendment 2, not any perceived 'widespread animus against

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[37] *Id.*

[38] *Id.* at 1627.

[39] Richard F. Duncan, "The Narrow and Shallow Bite of *Romer* and the Eminent Rationality of Dual-Gender Marriage: A (Partial) Response to Professor Koppelman," 6 *Wm. & Mary Bill of Rts. J.* 147, 148 (1997); *see also* Duncan. Wigstock and the Kulturkampf: Supreme Court Storytelling, The Culture War, and *Romer v. Evans*, 72 *Notre Dame L. Rev.* 345, 346-355 (1997).

[40] Duncan, 6 *Wm. & Mary Bill of Rts. J.* at 149.

[41] *Id.*

[42] *Id.* at 150.

[43] *Id.* Duncan notes that the Respondents in *Romer* did not ask the Supreme Court to overrule *Hardwick*. *Id.* at 154, n. 42. From this he concludes that *Romer* "did not hold that moral disapproval of homosexual conduct is invidious or irrational." *Id.* at 150. *See Bowers v. Hardwick*, 478 U.S. 186 (1986).

> gays,' that undermined the state's attempt to provide an innocent explanation in support of the law. Romer is not a 'gay rights' case; it is a case about a purposeless and unlimited legal disability.[44]

The "rule of Romer," is something like the following: (1) does a law narrowly target a specific group, and impose upon it a broad and undifferentiated disability? (2) do the justifications offered by the State patently fail to offer a rational purpose for the law? (3) if the answers to (1) and (2) are yes, then one may *infer* the presence of irrational "animus." One does not *begin*, in other words, by searching the public record for "evidence" of "animus." In any heated debate, both sides are likely to hurl some dirt. Instead, one looks at the law itself and the justifications offered for it, and only infers "animus" if these first two conditions are not met.

"Those who wish to use Romer and the rational basis test to overturn conventional marriage laws are tilting at windmills."[45] This is so because:

> Laws defining marriage as a relationship between one man and one woman do not target a class of persons and deny that class the opportunity to protect itself politically against a limitless number of discriminatory harms and exclusions. Marriage laws define and regulate the institution of marriage, but they do not forbid any individual or group that seek the law's protection against *any kind* of public or private discrimination.[46]

Rather than being based upon "animus," marriage laws and laws limiting the benefits and privileges of marriage to married couples have a variety of rational purposes, including, but not limited to (1) encouraging childbirth within marriage, (2) offering and encouraging the advantages of dual-gender parenting, (3) providing positive educative effects, and (4) avoiding a slippery slope whereby marriage becomes anarchic and incoherent.[47]

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[44] Duncan, 6 *W & M B of R J* at 155.

[45] Duncan, 6 *Wm. & Mary Bill Rts. J.* at 157.

[46] *Id. See also generally* Duncan, From *Loving* to *Romer*: Homosexual Marriage and Moral Discernment, 12 *B.Y.U. J. Pub. L.* 239 (1998).

[47] Duncan, 6 *Wm. & Mary Bill Rts. J.* at 158-165; see also Duncan, 12 *B.Y.U. J. Pub. Law* at 245-248.

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ACLU v. State & Municipality of Anchorage (10/28/2005) sp-5950

THE SUPREME COURT OF THE STATE OF ALASKA

ALASKA CIVIL LIBERTIES UNION,	)
DAN CARTER and AL INCONTRO,	) Supreme Court No. S- 10459
LIN DAVIS and MAUREEN	)
LONGWORTH, SHIRLEY DEAN and	) Superior Court No.
CARLA TIMPONE, DARLA MADDEN and	) 3AN-99-11179 CI
KAREN WOOD, AIMEE OLEJASZ and	)
FABIENNE PETER-CONTESSE, KAREN	) O P I N I O N
STURNICK and ELIZABETH ANDREWS,	)
THERESA TAVEL and KAREN WALTER,	) [No. 5950 - October 28, 2005]
CORIN WHITTEMORE and GANI	)
RUTHELLEN, and ESTRA BENSUSSEN	)
and CAROL ROSE GACKOWSKI,	)
	)
Appellants,	)
	)
v.	)
	)
STATE OF ALASKA and MUNICIPALITY	)

OF ANCHORAGE.)
)
Appellees.)
)

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Stephanie Joannides, Judge.

Appearances: Allison E. Mendel, Mendel & Associates, Anchorage, Kenneth Y. Choe, American Civil Liberties Union Foundation, New York City, New York, and Tobias B. Wolff, Davis, California, for Appellants. John B. Gaguine, Assistant Attorney General, and Bruce M. Botelho, Attorney General, Juneau, for Appellee State of Alaska. Neil T. ODonnell, Atkinson, Conway & Gagnon, Anchorage, for Appellee Municipality of Anchorage. James M. Gorski, Hughes, Thorsness, Gantz, Powell, Huddleston & Bauman LLC, Anchorage, for Amicus Curiae The Alaska Catholic Conference. Rebecca L. Maxey, Law Offices of Rebecca L. Maxey, L.L.C., Anchorage, and Jennifer Middleton, Lambda Legal Defense and Education Fund, Inc., New York City, New York, for Amicus Curiae Lambda Legal Defense and Education Fund, Inc. Kevin G. Clarkson, Brena, Bell & Clarkson, P.C., Anchorage, for Amici Curiae North Star Civil Rights Defense Fund, Inc. and Marriage Law Project.

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

EASTAUGH, Justice.

I. INTRODUCTION

The State of Alaska and the Municipality of Anchorage offer valuable benefits to their employees spouses that they do not offer to their unmarried employees domestic partners. Essentially all opposite-sex adult couples may marry and thus become eligible for these benefits. But no same-sex couple can ever become eligible for these benefits because same-sex couples may not marry in Alaska.1 The spousal limitations in the benefits programs therefore affect public employees with same-sex domestic partners differently than public employees who are married. This case requires us to determine if it is reasonable to pay public employees who are in committed domestic relationships with same-sex partners less in terms of employee benefits than their co-workers who are married. In making this determination, we must decide whether the spousal limitations in the benefits programs violate the rights of public employees with same-sex domestic partners to equal rights, opportunities, and protection under the law.2

The Alaska Constitution dictates the answer to that

constitutional question. Irrelevant to our analysis must be personal, moral, or religious beliefs held deeply by many about whether persons should enter into intimate same-sex relationships or whether same-sex domestic partners should be permitted to marry. It is the duty of courts to define the liberty of all, not to mandate [their] own moral code.3 Our duty here is to decide whether the eligibility restrictions satisfy established standards for resolving equal protection challenges to governmental action.

We do not need to decide whether heightened scrutiny should be applied here because the benefits programs cannot withstand minimum scrutiny. Although the governmental objectives are presumably legitimate, the difference in treatment is not substantially related to those objectives. We accordingly hold that the spousal limitations are unconstitutional as applied to public employees with same-sex domestic partners, and we vacate the judgment below. We ask the parties to file supplemental memoranda addressing the issue of remedy.

II. FACTS AND PROCEEDINGS

The State of Alaska and the Municipality of Anchorage offer health insurance and other employment benefits to the spouses of their employees.4 These benefits are financially valuable to employees and their spouses. Only couples who are married are eligible to receive these benefits; unmarried couples are not eligible. The state and the municipality have offered some form of these employment benefits since 1955 and at least 1985, respectively.

The Alaska Civil Liberties Union and eighteen individuals who alleged that they comprised nine lesbian or gay couples (collectively, the plaintiffs) filed suit against the state and the municipality in 1999, complaining that these benefits programs violated their right to equal protection under the Alaska Constitution. They alleged that at least one member of each same-sex couple was an employee or retiree of the state or the municipality, that the eighteen individual plaintiffs were involved in intimate, committed, loving long-term relationships with same-sex domestic partners, and that, as gay and lesbian couples, they are excluded by state law from the institution of marriage. Members of eight of the couples asserted in affidavits that they are in committed relationships.5 Their amended complaint alleged that because they are prohibited from marrying each other by Alaska Constitution article I, section 25, they are ineligible for the employment benefits the defendants provide to married couples, resulting in a denial of the individual plaintiffs right to equal protection.

Article I, section 25 was adopted by Alaska voters in 1998. Commonly known as the Marriage Amendment, it provides: To be valid or recognized in this State, a marriage may exist only between one man and one woman. It effectively prohibits marriage in Alaska between persons of the same sex.6 The plaintiff employees consequently cannot enter into the formal relationship marriage that the benefits programs require if the employees are to confer these benefits on their domestic partners.

Put another way, the plaintiff employees and their same-sex partners are absolutely precluded from becoming eligible for these benefits. Although all opposite-sex couples who are unmarried are also ineligible for these employment benefits, by marrying they can change the status that makes them ineligible.

The plaintiffs did not challenge the Marriage Amendment in the superior court (nor do they on appeal). Instead, their

amended complaint asked the superior court to declare that denying employment benefits to same-sex domestic partners violates, among other things, article I, section 1 of the Alaska Constitution, which states in part: This constitution is

> dedicated to the principle[] . . . that all persons are equal and entitled to equal rights, opportunities, and protection under the law.

All parties moved for summary judgment. The superior court denied the plaintiffs motion and granted the defendants motion. The court first rejected plaintiffs assertion that it was necessary to apply heightened scrutiny in considering their equal protection challenge; the court reasoned that heightened scrutiny was unwarranted because the state and the municipality were discriminating between married and unmarried employees, not between opposite-sex and same-sex couples. The court also determined that the only right at issue was a right to employee benefits, which it ruled was not a fundamental right. Because the court found that no suspect class or fundamental right was involved, it applied the lowest level of scrutiny to the governmental action. The court ruled that the defendants had a legitimate interest in reducing costs, increasing administrative efficiency, and promoting marriage. It then ruled that granting benefits only to spouses of married employees bore a fair and substantial relationship to those interests.

The plaintiffs appealed. Briefing on their appeal was completed and oral argument took place before the United States Supreme Court decided Lawrence v. Texas.7 With our permission, the parties filed supplemental briefs discussing Lawrence.

III. DISCUSSION

A. Standard of Review

We review a grant or denial of summary judgment de novo.8 Summary judgment is only appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.9 Deciding the applicable standard of scrutiny in an equal protection challenge to an allegedly discriminatory statute presents a question of law.10 Likewise, identifying the nature of the challengers interest and assessing the importance of the governmental interest and the fit between that interest and the means chosen to advance it, present questions of law.11 We will apply our independent judgment to questions of law and adopt the rule of law most persuasive in light of precedent, reason, and policy.12 We apply our independent judgment when interpreting constitutional provisions or statutes.13 A constitutional challenge to a statute must overcome a presumption of constitutionality.14

B. Effect of the Marriage Amendment on Plaintiffs Equal Protection Arguments

The plaintiffs, in challenging the spousal limitations in the benefits programs, rely on article I, section 1 of the Alaska Constitution, which guarantees the right to equal treatment. It states that all persons are equal and entitled to equal rights, opportunities, and protection under the law.15 Often referred to as the equal protection clause, this clause actually guarantees not only equal protection, but also equal rights and opportunities under the law.16

But Alaska Constitution article I, section 25, the Marriage Amendment, states that [t]o be valid or recognized in this State, a marriage may exist only between one man and one woman. It effectively prohibits same-sex domestic partners from

marrying in Alaska and denies recognition in Alaska to foreign marriages between same-sex couples.17 We must decide as a threshold matter whether, as contended by the municipality and amici curiae North Star Civil Rights Defense Fund, Inc. and the Marriage Law Project, the Marriage Amendment precludes challenges by same-sex couples to government policies that discriminate between married and unmarried couples.

We must give effect to every word, phrase, and clause of the Alaska Constitution.18 [S]eemingly conflicting parts are to be harmonized, if possible, so that effect can be given to all parts of the constitution.19

The Alaska Constitutions equal protection clause and Marriage Amendment can be harmonized in this case because it concerns a dispute about employment benefits. The Marriage Amendment effectively precludes same-sex couples from marrying in Alaska, but it does not explicitly or implicitly prohibit public employers from offering to their employees same-sex domestic partners all benefits that they offer to their employees spouses. It does not address the topic of employment benefits at all.20

Nor have we been referred to any legislative history implying that, despite its clear words, the Marriage Amendment should be interpreted to deny employment benefits to public employees with same-sex domestic partners.21 The Marriage Amendment could have the effect of foreclosing the present challenge only if it could be read to prohibit public employers from offering benefits to their employees same-sex domestic partners. But nothing in its text would permit that reading, and indeed the state and the municipality implicitly assume on appeal that governments are free to offer employment benefits to their employees unmarried, domestic partners, including same-sex domestic partners.

Because the public employers benefits programs could be amended to include unmarried same-sex domestic partners without offending the Marriage Amendment, that amendment does not foreclose plaintiffs equal protection claims here. That the Marriage Amendment effectively prevents same-sex couples from marrying does not automatically permit the government to treat them differently in other ways. It therefore does not preclude public employees with same-sex domestic partners from claiming that the spousal limitations in the benefits programs invidiously discriminate against them.

The state equal protection clause cannot override more specific provisions in the Alaska Constitution.22 But the plaintiffs do not contend that the Marriage Amendment violates Alaskas equal protection clause. They argue not that they have a right to marry each other, but that the benefits programs discriminate against them by denying them benefits that the programs provide to others who, plaintiffs claim, are similarly situated.

Because the Marriage Amendment does not resolve this appeal, we turn to the merits of plaintiffs equal protection arguments.

C. Challenge to the Spousal Limitations Under the Equal Protection Clause of the Alaska Constitution

Article I, section 1 of the Alaska Constitution mandates equal treatment of those similarly situated; it protects Alaskans right to non-discriminatory treatment more robustly than does the federal equal protection clause.23 We have long recognized that [this clause] affords greater protection to

individual rights than the United States Constitutions Fourteenth Amendment.24

To implement Alaskas more stringent equal protection standard, we have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interest at stake 25

1. The benefits programs distinctions between same-sex and opposite-sex domestic partners

A person or group asserting an equal protection violation must demonstrate that the challenged law treats similarly situated persons differently.26 Absent disparate treatment of similarly situated persons, the law as applied to the aggrieved group does not violate the groups right to equal protection.27 We first consider whether, as the municipality contends, there is no evidence of differential treatment, making it unnecessary to engage in a sliding-scale analysis.28

The plaintiffs assert that the defendant governments treat same-sex and opposite-sex couples differently. The defendants argue that their programs differentiate on the basis of marital status, not sexual orientation or gender. The municipality asserts that all married employees can confer benefits on their spouses, and no unmarried employees can confer benefits on their partners. It therefore argues that it treats same sex couples no differently than any other unmarried couples, and that there is consequently no basis for an equal protection claim. Several courts examining similar programs have reached this conclusion.29

We must therefore decide whether there is a classification that results in different treatment for similarly situated people.

We agree with the plaintiffs that the proper comparison is between same-sex couples and opposite-sex couples, whether or not they are married. The municipality correctly observes that no unmarried employees, whether they are members of same-sex or opposite-sex couples, can obtain the disputed benefits for their domestic partners. But this does not mean that these programs treat same-sex and opposite-sex couples the same. Unmarried public employees in opposite-sex domestic relationships have the opportunity to obtain these benefits, because employees are not prevented by law from marrying their opposite-sex domestic partners.30 In comparison, public employees in committed same-sex relationships are absolutely denied any opportunity to obtain these benefits, because these employees are barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska. Same-sex unmarried couples therefore have no way of obtaining these benefits, whereas opposite-sex unmarried couples may become eligible for them by marrying The programs consequently treat same-sex couples differently from opposite-sex couples.31

2. Intent to discriminate

The state argues that an intent to discriminate is, or should be, an essential element of a state equal protection claim in Alaska. Both defendants contend that there was no discriminatory intent, or evidence of animus against gays and lesbians. Plaintiffs respond that Alaskas equal protection clause does not require a showing of discriminatory intent.

We need not resolve this dispute here because we

conclude that the benefits programs are facially discriminatory. When a law by its own terms classifies persons for different treatment, this is known as a facial classification.32 And when a law is discriminatory on its face, the question of discriminatory intent is subsumed by the determination that the classification established by the terms of the challenged law or policy is, itself, discriminatory.33

To determine whether the benefits programs make a facial classification, we must therefore examine the meaning of the term spouse. The United States Supreme Court, in Personnel Administrator v. Feeney, considered whether a state statute granting a hiring preference to veterans violated equal protection on the basis of gender.34 The Court concluded in part that the statute was gender-neutral because the definition of veterans in the statute ha[d] always been neutral as to gender and that Massachusetts ha[d] consistently defined veteran status in a way that ha[d] been inclusive of women who ha[d] served in the military 35

But unlike the neutral definition of veteran in Feeney, Alaskas definition of the legal status of marriage (and, hence, who can be a spouse) excludes same-sex couples.36 By restricting the availability of benefits to spouses, the benefits programs by [their] own terms classif[y] same-sex couples for different treatment.37 Heterosexual couples in legal relationships have the opportunity to marry and become eligible for benefits. In comparison, because of the legal definition of marriage, the partner of a homosexual employee can never be legally considered as that employees spouse and, hence, can never become eligible for benefits. We therefore conclude that the benefits programs are facially discriminatory.38

The next question is whether the disparate treatment is permitted under the sliding-scale analysis for equal protection challenges in Alaska.39

3. Sliding-scale analysis under the Alaska Constitution

Having resolved these preliminary issues by determining (1) that it cannot be said as a matter of law that the benefits programs do not treat public employees with same-sex domestic partners differently, and (2) that the benefits programs are facially discriminatory, we turn to the three-step, sliding-scale analysis applicable to equal protection challenges under the Alaska Constitution. This approach involves the following process:

> First, it must be determined at the outset what weight should be afforded the constitutional interest impaired by the challenged enactment. The nature of this interest is the most important variable in fixing the appropriate level of review . . . . Depending upon the primacy of the interest involved, the state will have a greater or lesser burden in justifying its legislation.
>
> Second, an examination must be undertaken of the purposes served by a challenged statute. Depending on the level of review determined, the state may be required to show only that its objectives

> were legitimate, at the low end of the continuum, or, at the high end of the scale, that the legislation was motivated by a compelling state interest.
>
> Third, an evaluation of the states interest in the particular means employed to further its goals must be undertaken. Once again, the states burden will differ in accordance with the determination of the level of scrutiny under the first stage of analysis. At the low end of the sliding scale, we have held that a substantial relationship between means and ends is constitutionally adequate. At the higher end of the scale, the fit between means and ends must be much closer. If the purpose can be accomplished by a less restrictive alternative, the classification will be invalidated.[40]

The plaintiffs advance four alternative arguments to support their equal protection challenge to the spousal limitation in the benefits programs. The first three ask us to apply a heightened level of scrutiny because the programs allegedly (1) discriminate on the basis of sexual orientation; (2) discriminate on the basis of gender; or (3) significantly burden at least one of several important personal interests. The plaintiffs alternatively contend that the programs cannot withstand even the minimum level of scrutiny, either because the governmental interests advanced are not legitimate, or because the eligibility restrictions do not bear a fair and substantial relationship to advancing those interests.

Because we conclude that the benefits programs cannot survive minimum scrutiny, we need not address plaintiffs alternative arguments.

a. Nature of plaintiffs interests: level of scrutiny

The first step of our analysis requires us to determine what weight to give the individual interests affected by the benefits programs.41 Plaintiffs contend that the spousal limitations significantly burden important personal interests, such as the right to intimate association, and are therefore subject to heightened scrutiny. But because minimum scrutiny is sufficient to resolve this case, we do not need to decide whether the plaintiffs interests are important or whether a fundamental right is affected.42 Government action affecting an economic interest receives minimum scrutiny,43 and the employment benefits at issue here are undeniably economic.

b. The governmental interests and the relationship between those interests and the means chosen to advance them

The second step of the sliding-scale analysis requires us to consider the governmental interests advanced by a challenged law.44 Under minimum scrutiny, these interests need only be legitimate.45 The third step requires us to evaluate the means chosen to advance the interests identified from the second step. Minimum scrutiny requires a fair and substantial relation between the means (i.e., the classification) and the object of

the legislation.46

The state and the municipality contend that they have three legitimate interests cost control, administrative efficiency, and promotion of marriage in limiting employment benefits to spouses and dependent children. We must therefore consider whether these interests are legitimate and, if so, whether the classification bears a fair and substantial relationship to those interests.

Cost control. The state and the municipality argue that cost control is a primary purpose of limiting the availability of benefits to spouses of married employees. The state explains that it must offer health insurance to attract and retain a qualified work force and that the legislature should be entitled to take reasonable measures to control the cost of that offering. As the number of program participants increases, so does the cost.

The state also asserts that the legislature wanted to limit participation to that small group in a truly close relationship with the employee. The municipality asserts that it decided to limit employee benefits to a small, readily ascertainable group of individuals closely connected to the employee. These assertions indicate to us that the governmental interest here is more specific than just cost control. Indeed, if the governments were interested in simply saving money, the companion goal of promoting marriage would seem to do the opposite. As the benefits programs succeed in convincing couples to marry or to stay married, the governments have to provide benefits to more people. This apparent tension between cost control and promotion of marriage can be harmonized by more appropriately describing the governments interest in cost control as an interest in controlling costs by limiting benefits to those people in truly close relationship[s] with or closely connected to the employee.

We assume that limiting benefit programs to those in truly close relationships with the employee is a legitimate governmental goal. But we do not see how an absolute exclusion of same-sex domestic partners from being eligible for benefits is substantially related to this interest. Many same-sex couples are no doubt just as truly close[ly] relat[ed] and closely connected as any married couple, in the sense of providing the same level of love, commitment, and mutual economic and emotional support, as between married couples, and would choose to get married if they were not prohibited by law from doing so. Although limiting benefits to spouses, and thereby excluding all same-sex domestic partners, does technically reduce costs, such a restriction fails to advance the expressed governmental goal of limiting benefits to those in truly close relationships with and closely connected to the employee.

Administrative efficiency. The state and the municipality argue that the need to efficiently administer the benefits programs justifies the spousal limitations. They argue that marriage provides a bright-line distinction that is easily applied, and that allowing employees to designate beneficiaries other than spouses will make it more difficult to administer the programs. The director of the benefits section of the Alaska Division of Retirement and Benefits explained during deposition the potential administrative difficulties that could arise if employees were allowed to designate benefits recipients other than spouses. She discussed theoretical burdens of determining who other than a spouse might be eligible for coverage. The